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4 July – 12 August 2011

STUDY MATERIALS
PART VIII

Codification Division of the United Nations Office of Legal Affairs

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8. LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, pp. 466-517


REGIONAL HUMAN RIGHTS SYSTEMS
DR. BERTRAND RAMCHARAN

Codification Division of the United Nations Office of Legal Affairs

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**Recommended Readings (not reproduced)**


Serious systems for the protection of human rights exist in Africa, the Americas, and Europe. They offer different levels of protection and have good bodies of jurisprudence. But all three are experiencing problems and in need of more support and of modernization. Incipient human rights systems exist in the League of Arab States and in ASEAN but protection has hardly taken off under them.

This course will concentrate on three themes: (1) What is the concept of protection of the African, American, and European human rights bodies as laid down in their jurisprudence? This will be a classical legal inquiry. (2) How do the five regional bodies measure up from the perspective of the Responsibility to Protect. The traditional approaches can no longer be considered adequate. (3) How can the regional systems be modernized? All are in need of modernization.

On the first issue, the concept of protection of the African, American, and European bodies, there are good books that can be consulted: Shelton on the different systems; Evans and Murray on the African system; Faundez-Ledesma on the American system; and Jacobs, White and Ovey on the European system. There is also an insightful study on the implementation of decisions of the regional bodies issued by the Open Society Justice Programme: From Judgment to Justice.

On the second issue, regional organizations and the responsibility to protect, this was the subject of a report by the Stanley Foundation issued on 11 May, 2011, and a report of the UN Secretary-General submitted to the UN General Assembly in June. The UN General Assembly discussed this report in the summer of 2011.

On the third issue, a recent book by Stacy, Human Rights for the 21st Century, advances the idea of a hybrid regional international human rights court system to be situated between national courts and international human rights institutions. There was a Council of Europe conference in 2010 on the future of the European machinery. The documents and concluding document of that conference indicates the problems being experienced by the European Court of Human Rights. On the African, American, and European systems there has so far been little discussion on how they might be modernized. Participants will be invited to share their thoughts on the issue of modernization.

Participants will also be invited to share their thoughts on how the Arab and ASEAN arrangements can be turned into true human rights protection machineries.
Resolution adopted by the General Assembly

[on the report of the Third Committee (A/63/435)]

63/117. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The General Assembly,

Taking note of the adoption by the Human Rights Council, by its resolution 8/2 of 18 June 2008, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

1. Adopts the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the text of which is annexed to the present resolution;

2. Recommends that the Optional Protocol be opened for signature at a signing ceremony to be held in 2009, and requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide the necessary assistance.

Annex

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “the Covenant”) undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as “the Committee”) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Article 1
Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.

2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2
Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3
Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.


2 Resolution 217 A (III).

3 Resolution 2200 A (XXI), annex.
2. The Committee shall declare a communication inadmissible when:

(a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;

(c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(d) It is incompatible with the provisions of the Covenant;

(e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;

(f) It is an abuse of the right to submit a communication; or when

(g) It is anonymous or not in writing.

Article 4
Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5
Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6
Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7
Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8
Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. When examining a communication under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9
Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10
Inter-State communications

1. A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee.
No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication, the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

### Article 11

**Inquiry procedure**

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under the present article.

2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.

8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

### Article 12

**Follow-up to the inquiry procedure**

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.
Article 13
Protection measures
A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14
International assistance and cooperation
1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.
3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the Financial Regulations and Rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.
4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfill its obligations under the Covenant.

Article 15
Annual report
The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16
Dissemination and information
Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

Article 17
Signature, ratification and accession
1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18
Entry into force
1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Protocol after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

Article 19
Amendments
1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20
Denunciation
1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.
Article 21
Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under the present Protocol;
(b) The date of entry into force of the present Protocol and of any amendment under article 19;
(c) Any denunciation under article 20.

Article 22
Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.
Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;
Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;
Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;
Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;
Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,
Have agreed as follows:

Article 1
Obligation to respect human rights
The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I
Rights and freedoms

Article 2
Right to life
1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
   (a) in defence of any person from unlawful violence;
   (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3
Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4
Prohibition of slavery and forced labour
1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the
Article 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;
(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12
Right to marry

Men and women of marriagable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13
Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14
Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15
Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 § 1 and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16
Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17
Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18
Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Article 19
Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20
Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21
Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurists of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22
Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 23
Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Article 24
registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

Article 25
Plenary Court

The plenary Court shall (a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected; (b) set up Chambers, constituted for a fixed period of time; (c) elect the Presidents of the Chambers of the Court; they may be re-elected; (d) adopt the rules of the Court; (e) elect the Registrar and one or more Deputy Registrars; (f) make any request under Article 26 § 2.

Article 26
Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in Committees of three judges, in Chambers of seven judges
Article 28
Competence of Committees
1. In respect of an application submitted under Article 34, a Committee may, by a unanimous vote, (a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or (b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
2. Decisions and judgments under paragraph 1 shall be final.
3. If the judge elected in respect of the High Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings invite that judge to take the place of one of the members of the Committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1 (b).

Article 29
Decisions by Chambers on admissibility and merits
1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30
Relinquishment of jurisdiction to the Grand Chamber
Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31
Powers of the Grand Chamber
The Grand Chamber shall:
(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46 § 4; and
(c) consider requests for advisory opinions submitted under Article 47.

Article 32
Jurisdiction of the Court
1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33
Inter-State cases
Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

Article 34
Individual applications
The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35
Admissibility criteria
1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
(a) is anonymous; or
(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36
Third party intervention
1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in
the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Article 37

Striking out applications
1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
   (a) the applicant does not intend to pursue his application; or
   (b) the matter has been resolved; or
   (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38

Examination of the case
The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

Article 39

Friendly settlements
1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

Article 40

Public hearings and access to documents
1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41

Just satisfaction
If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42

Judgments of Chambers
Judgments of Chambers shall become final in accordance with the provisions of Article 44 § 2.

Article 43

Referral to the Grand Chamber
1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44

Final judgments
1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final upon
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

Article 45

Reasons for judgments and decisions
1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46

Binding force and execution of judgments
1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the Committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Article 47

Advisory opinions
1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion submitted by the Court for a ruling on the question of competency as defined in Article 47.
Article 49
Reasons for advisory opinions
1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Section III
Miscellaneous provisions

Article 50
Expenditure on the Court
The expenditure on the Court shall be borne by the Council of Europe.

Article 51
Privileges and immunities of judges
The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Article 52
Inquiries by the Secretary General
On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53
Safeguard for existing human rights
Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

Article 54
Powers of the Committee of Ministers
Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55
Exclusion of other means of dispute settlement
The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56
Territorial application
1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided for in Article 34 of the Convention.

Article 57
Reservations
1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.
2. Any reservation made under this Article shall contain a brief statement of the law concerned.

Article 58
Denunciation
1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59
Signature and ratification
1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The European Union may accede to this Convention.
3. The present Convention shall come into force after the deposit of ten instruments of ratification.
4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Protection of property
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

Right to education
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3

Right to free elections
The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4

Territorial application
Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

Article 5

Relationship to the Convention
As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 6

Signature and ratification
This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto

Strasbourg, 16.IX.1963

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20 March 1952, have agreed as follows:

Article 1

Prohibition of imprisonment for debt
No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2

Freedom of movement
1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

Prohibition of expulsion of nationals
1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4

Prohibition of collective expulsion of aliens
Collective expulsion of aliens is prohibited.

Article 5

Territorial application
1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration...
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

Strasbourg, 28.IV.1983

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1
Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2
Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3
Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4
Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5
Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6
Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7
Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1983, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory States.

European Convention on Human Rights
ratification, acceptance or approval; (c) any date of entry into force of this Protocol in accordance with Articles 5 and 8; (d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
   (a) to submit reasons against his expulsion,
   (b) to have his case reviewed, and
   (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of that State, concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying
Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4 XI.2000

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

Article 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe.
Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

The member States of the Council of Europe signatory hereto,

Convinced that everyone’s right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings; Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”); Noting that Protocol No. 6 to the Convention concerning the abolition of the death penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war; Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1

Abolition of the death penalty
The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2

Prohibitions of derogations
No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3

Prohibitions of reservations
No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4

Territorial application
1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 5

Relationship to the Convention
As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6

Signature and ratification
This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7

Entry into force
1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 8

Depositary functions
The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:
(a) any signature;
(b) the deposit of any instrument of ratification, acceptance or approval;
(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;
(d) any other act, notification or communication relating to this Protocol;

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.
American Convention on Human Rights
(Pact of San José, Costa Rica), 1969
AMERICAN CONVENTION ON HUMAN RIGHTS: “PACT OF SAN JOSÉ, COSTA RICA”

PREAMBLE

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man,

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states,

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope,

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1 Came into force on 18 July 1978, i.e., the date of deposit of the eleventh instrument of ratification or adherence. On 11 September 1977 the General Secretariat of the Organization of American States, in accordance with article 74 (2), registered the eighteenth instrument of ratification or adherence. Instruments of ratification or adherence were deposited as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Date of deposit of the instrument of ratification or adherence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>31 July 1973</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>8 April 1970</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>19 April 1978</td>
</tr>
<tr>
<td>Ecuador</td>
<td>28 December 1977</td>
</tr>
<tr>
<td>El Salvador*</td>
<td>23 June 1978</td>
</tr>
<tr>
<td>Grenada</td>
<td>18 July 1978</td>
</tr>
<tr>
<td>Guatemala*</td>
<td>25 May 1978</td>
</tr>
<tr>
<td>Haiti</td>
<td>27 September 1977</td>
</tr>
<tr>
<td>Honduras</td>
<td>8 September 1977</td>
</tr>
<tr>
<td>Panama</td>
<td>32 June 1978</td>
</tr>
<tr>
<td>Venezuela*</td>
<td>9 August 1977</td>
</tr>
</tbody>
</table>
| * See p. 209 of this volume for the text of the declaration and reservations made upon ratification or adherence.

Subsequently, the Convention came into force for the following States on the date of deposit of their instruments of ratification or adherence with the General Secretariat of the Organization of American States, in accordance with article 74 (2):

<table>
<thead>
<tr>
<th>State</th>
<th>Date of deposit of the instrument of ratification or adherence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peru</td>
<td>28 July 1978</td>
</tr>
<tr>
<td>Jamaica*</td>
<td>7 August 1978</td>
</tr>
<tr>
<td>Bolivia*</td>
<td>19 July 1979</td>
</tr>
</tbody>
</table>

* See p. 209 of this volume for the text of the declarations and reservations made upon ratification or adherence.

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Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights, and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I. STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I. GENERAL OBLIGATIONS

Article 1. Obligation to respect rights. 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, “person” means every human being.

Article 2. Domestic legal effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II. CIVIL AND POLITICAL RIGHTS

Article 3. Right to juridical personality. Every person has the right to recognition as a person before the law.

Article 4. Right to life. 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

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5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to humane treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from slavery. 1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labor:

   a. Work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority; such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

   b. Military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

   c. Service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

   d. Work or service that forms part of normal civic obligations.

Article 7. Right to personal liberty. 1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

Article 8. Right to a fair trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

   a. The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

   b. Prior notification in detail to the accused of the charges against him;

   c. Adequate time and means for the preparation of his defense;

   d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

   e. The inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g. The right not to be compelled to be a witness against himself or to plead guilty; and

h. The right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9. Freedom from "Ex Post Facto" Laws. No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10. Right to Compensation. Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11. Right to Privacy. 1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of Conscience and Religion. 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. Respect for the rights or reputations of others; or

b. The protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14. Right of Reply. 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. Right of Assembly. The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16. Freedom of Association. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.
Article 17. Rights of the family. 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a name. Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the child. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to nationality. 1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21. Right to property. 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 22. Freedom of movement and residence. 1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

Article 23. Right to participate in government. 1. Every citizen shall enjoy the following rights and opportunities:

a. To take part in the conduct of public affairs, directly or through freely chosen representatives;

b. To vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

c. To have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, race, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to equal protection. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to judicial protection. 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. To develop the possibilities of judicial remedy; and

c. To ensure that the competent authorities shall enforce such remedies when granted.
CHAPTER III. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. PROGRESSIVE DEVELOPMENT. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires. 1

CHAPTER IV. SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION

Article 27. SUSPENSION OF GUARANTEES. 1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to juridical personality), Article 4 (Right to life), Article 5 (Right to humane treatment), Article 6 (Freedom from slavery), Article 9 (Freedom from ex post facto laws), Article 12 (Freedom of conscience and religion), Article 18 (Right to a name), Article 19 (Rights of the child), Article 20 (Right to nationality), and Article 23 (Right to participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organizat on of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28. FEDERAL CLAUSE. 1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.


Article 29. RESTRICTIONS REGARDING INTERPRETATION. No provision of this Convention shall be interpreted as:

a. Permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

b. Restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

c. Precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

d. Excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30. SCOPE OF RESTRICTIONS. The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31. RECOGNITION OF OTHER RIGHTS. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

CHAPTER V. PERSONAL RESPONSIBILITIES

Article 32. RELATIONSHIP BETWEEN DUTIES AND RIGHTS. 1. Every person has responsibilities to his family, his community, and mankind.

2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

PART II. MEANS OF PROTECTION

CHAPTER VI. COMPETENT ORGANS

Article 33. The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

a. The Inter-American Commission on Human Rights, referred to as "The Commission"; and

b. The Inter-American Court of Human Rights, referred to as "The Court."

CHAPTER VII. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Section 1. ORGANIZATION

Article 34. The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.
Article 35. The Commission shall represent all the member countries of the Organization of American States.

Article 36. 1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.

2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 37. 1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.

2. No two nationals of the same state may be members of the Commission.

Article 38. Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39. The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40. Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

Section 2. FUNCTIONS

Article 41. The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

a. To develop an awareness of human rights among the peoples of America;

b. To make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

c. To prepare such studies or reports as it considers advisable in the performance of its duties;

d. To request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

e. To respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

f. To take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

g. To submit an annual report to the General Assembly of the Organization of American States.

Article 42. The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43. The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

Section 3. COMPETENCE

Article 44. Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45. 1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46. 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. That the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b. That the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
c. That the subject of the petition or communication is not pending in another international proceeding for settlement; and

d. That, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1a and 1b of this article shall not be applicable when:

a. The domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. There has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47. The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

a. Any of the requirements indicated in Article 46 has not been met;

b. The petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;

c. The statement of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

d. The petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section 4. Procedure

Article 48. 1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violation and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.


e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49. If a friendly settlement has been reached in accordance with paragraph 1f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50. 1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Committee may make such proposals and recommendations as it sees fit.

Article 51. 1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

Chapter VIII. Inter-American Court of Human Rights

Section I. Organization

Article 52. 1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among
jurists of the highest moral authority and of recognized competence in the field of
human rights, who possess the qualifications required for the exercise of the
highest judicial functions in conformity with the law of the state of which they
are nationals or of the state that proposes them as candidates.

2. No two judges may be nationals of the same state.

Article 53. 1. The judges of the Court shall be elected by secret ballot by an
absolute majority vote of the States Parties to the Convention, in the General
Assembly of the Organization, from a panel of candidates proposed by those
states.

2. Each of the States Parties may propose up to three candidates, nationals
of the state that proposes them or of any other member state of the Organization
of American States. When a slate of three is proposed, at least one of the candidates
shall be a national of a state other than the one proposing the slate.

Article 54. 1. The judges of the Court shall be elected for a term of six
years and may be reelected only once. The term of three of the judges chosen
in the first election shall expire at the end of three years. Immediately after
the election, the names of the three judges shall be determined by lot in the
General Assembly.

2. A judge elected to replace a judge whose term has not expired shall complete
the term of the latter.

3. The judges shall continue in office until the expiration of their term.
However, they shall continue to serve with regard to cases that they have begun
to hear and that are still pending, for which purposes they shall not be replaced
by the newly elected judges.

Article 55. 1. If a judge is a national of any of the States Parties to a case
submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case should be a national of one
of the States Parties to the case, any other State Party in the case may
appoint a person of its choice to serve on the Court as an ad hoc judge.

3. If among the judges called upon to hear a case none is a national of any
of the States Parties to the case, each of the latter may appoint an ad hoc judge.

4. An ad hoc judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest
in a case, they shall be considered as a single party for purposes of the above
provisions. In case of doubt, the Court shall decide.

Article 56. Five judges shall constitute a quorum for the transaction of
business by the Court.

Article 57. The Commission shall appear in all cases before the Court.

Article 58. 1. The Court shall have its seat at the place determined by the
States Parties to the Convention in the General Assembly of the Organization;
however, it may convene in the territory of any member state of the Organization
of American States when a majority of the Court consider it desirable, and with
the prior consent of the state concerned. The seat of the Court may be changed
by the States Parties to the Convention in the General Assembly by a two-thirds
vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its
seat and shall attend the meetings that the Court may hold away from its seat.

Article 59. The Court shall establish its Secretariat, which shall function
under the direction of the Secretary of the Court, in accordance with the adminis-
trative standards of the General Secretariat of the Organization in all respect[s] not
incompatible with the independence of the Court. The staff of the Court's Secre-
tariat shall be appointed by the Secretary General of the Organization, in consul-
tation with the Secretary of the Court.

Article 60. The Court shall draw up its Statute which it shall submit to the
General Assembly for approval. It shall adopt its own Rules of Procedure.

Section 2. JURISDICTION AND FUNCTIONS

Article 61. 1. Only the States Parties and the Commission shall have the
right to submit a case to the Court.

2. In order for the Court to hear a case, it is necessary that the procedures
set forth in Articles 48 to 50 shall have been completed.

Article 62. 1. A State Party may, upon depositing its instrument of ratifica-
tion or adherence to this Convention, or at any subsequent time, declare that it
recognizes as binding, ipso facto, and not requiring special agreement, the juris-
diction of the Court on all matters relating to the interpretation or application of
this Convention.

2. Such declaration may be made unconditionally, on the condition of
reciprocity, for a specified period, or for specific cases. It shall be presented
to the Secretary General of the Organization, who shall transmit copies thereof
to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the
interpretation and application of the provisions of this Convention that are sub-
mitted to it, provided that the States Parties to the case recognize or have recog-
nized such jurisdiction, whether by special declaration pursuant to the preceding
paragraphs, or by a special agreement.

Article 63. 1. If the Court finds that there has been a violation of a right
or freedom protected by this Convention, the Court shall rule that the injured
party be ensured the enjoyment of his right or freedom that was violated. It
shall also rule, if appropriate, that the consequences of the measure or situation
that constituted the breach of such right or freedom be remedied and that fair
compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid
irreparable damage to persons, the Court shall adopt such provisional measures
as it deems pertinent in matters it has under consideration. With respect to a case
not yet submitted to the Court, it may act at the request of the Commission.

Article 64. 1. The member states of the Organization may consult the
Court regarding the interpretation of this Convention or of other treaties con-
cerning the protection of human rights in the American states. Within their
spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65. To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Section 3. Procedure

Article 66. 1. Reasons shall be given for the judgment of the Court.

2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67. The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68. 1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.

2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69. The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

CHAPTER IX. Common Provisions

Article 70. 1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.

2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71. The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72. The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73. The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

PART III. GENERAL AND TRANSITIONAL PROVISIONS

CHAPTER X. Signature, Ratification, Reservations, Amendments, Protocols, and Denunciation

Article 74. 1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.

2. Ratification or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75. This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.1

Article 76. 1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77. 1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78. 1. The States Parties may denounced this Convention at the expiration of a five-year period starting from the date of its entry into force and

by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI. TRANSITORY PROVISIONS

SECTION 1. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Article 79. Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80. The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

SECTION 2. INTER-AMERICAN COURT OF HUMAN RIGHTS

Article 81. Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82. The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

STATEMENTS AND RESERVATIONS

Statement of Chile

The Delegation of Chile signs this Convention, subject to its subsequent parliamentary approval and ratification, in accordance with the constitutional rules in force.

Statement of Ecuador

The Delegation of Ecuador has the honor of signing the American Convention on Human Rights. It does not believe that it is necessary to make any specific reservation at this time, without prejudice to the general power set forth in the Convention itself that leaves the governments free to ratify it or not.

Reservation of Uruguay

Article 80.2 of the Constitution of Uruguay provides that citizenship is suspended "for a person indicted according to law in a criminal prosecution that may result in a sentence of imprisonment in a penitentiary". This restriction on the exercise of the rights recognized in Article 23 of the Convention is not envisaged among the circumstances provided for in this respect by paragraph 2 of Article 23, for which reason the Delegation of Uruguay expresses a reservation on this matter.

In witness whereof, the undersigned Plenipotentiaries, whose full powers were found in good and due form, sign this Convention, which shall be called "Pact of San José, Costa Rica", (in the city of San José, Costa Rica, this twenty-second day of November, nineteen hundred and sixty-nine.)
Arab Charter on Human Rights, 2004
Draft Arab Charter on Human Rights
Text adopted by the Arab Standing Committee for Human Rights
5-14 January 2004

(Translation from the Office of the High Commissioner for Human Rights)

Proceeding from the faith of the Arab nation in the dignity of the human person whom God has exalted since the Creation and that the Arab nation is the cradle of religions and the homeland of civilizations with lofty human values that affirm the human right to a life of dignity based on freedom, justice and equality,

In implementation of the eternal principles of fraternity, equality and tolerance among human beings imparted by the noble Islamic religion and by the other divine religions,

Being proud of the humanitarian values and principles that it has firmly established throughout its long history and that have played a key role in spreading centres of knowledge in the East and the West, making them destinations for the people of the earth and for those searching for knowledge and wisdom,

Believing in the unity of the Arab nation as it struggles for its freedom, defends the right of nations to self-determination and to the protection of their wealth and development, and believing in the sovereignty of the law and its role in the protection of human rights in the most comprehensive sense of the term, and believing also that the individual's enjoyment of freedom, justice and equality of opportunity is a fundamental measure of any society,

Rejecting all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security, recognizing the close link between human rights and international peace and security, reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the two International Covenants on civil and political rights and on economic, social and cultural rights, and having regard to the Cairo Declaration on Human Rights in Islam.

Now therefore, the States parties to the Charter have agreed as follows:

Article 1
The present Charter seeks in the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following objectives:
(a) To place human rights at the centre of the key national concerns of the Arab States so as to make them lofty and fundamental ideals that shape the will of individuals in the Arab States and enable them to improve their lives in accordance with noble human values;
(b) To inculcate in human beings in the Arab States a sense of pride in their identity and attachment to the land, history and common interests of their homeland and to imbue them with the culture of human brotherhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments;
(c) To prepare the new generations in the Arab States for a free and responsible life in a civil society that is characterized by solidarity and founded on the interdependence between awareness of rights and commitment to duties and governed by the values of equality, tolerance and moderation;
(d) To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

Article 2
(a) All peoples have the right of self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development.
(b) All peoples have the right to national sovereignty and territorial integrity.
(c) All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.
(d) All peoples have the right to resist foreign occupation.

Article 3
(a) Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.
(b) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enunciated in the present Charter so as to ensure protection against all forms of discrimination on any of the grounds mentioned in the preceding paragraph.
(c) Men and women have equal human dignity and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

Article 4
(a) In exceptional situations of emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Charter may take measures derogating from their obligations under the present Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
(b) In exceptional situations of emergency, no derogation shall be made from the following articles: article 5, article 8, article 9, article 10, article 13, article 14 (h), article 15, article 18, article 19, article 31, article 20, article 22, article 27, article 28 and article 29. Likewise, the judicial guarantees required for the protection of the aforementioned rights may not be suspended.
(c) Any State party to the present Charter availing itself of the right of derogation shall immediately inform the other States parties, through the intermediary of the Secretary-General of the League of Arab States, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5
(a) Every human being has the inherent right to life.
(b) This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 6
Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgement rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 7
(a) Sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime.
(b) The death penalty shall not be inflicted on a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery; in all cases, the best interests of
the infant shall be the primary consideration.

Article 8
(a) No one shall be subjected to physical or psychological torture or to cruel, inhuman, degrading or humiliating treatment.
(b) Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of or participation in such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

Article 9
No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.

Article 10
(a) All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.
(b) Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others and all other forms of exploitation or the exploitation of children in armed conflict are prohibited.

Article 11
All persons are equal before the law and have the right to enjoy its protection without discrimination.

Article 12
All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to bring proceedings before all courts of law.

Article 13
(a) Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite resources legal aid to enable them to defend their rights.
(b) Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.

Article 14
(a) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.
(b) No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedures as are established thereby.
(c) Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.
(d) Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.
(e) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. It shall not be the general rule that persons awaiting trial shall be detained in custody.
(f) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is not lawful.
(g) Anyone who has been the victim of arbitrary or unlawful arrest or detention shall have an enforceable right to compensation.

Article 15
No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favourable to the defendant shall be applied.

Article 16
Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty by a final judgement rendered according to law. In the course of prosecution and trial, he shall enjoy the following minimum guarantees:
(a) To be informed promptly, in detail and in a language which he understands, of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with his family;
(c) To be tried in his presence before an ordinary court and to defend himself in person or through legal assistance of his own choosing and to communicate with his legal counsel freely and in confidence;
(d) To have the free legal assistance of a defence lawyer, if he cannot defend himself or if the interests of justice so require, and to have the right to the free assistance of an interpreter if he cannot understand or speak the language used in court;
(e) 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;
(f) Not to be compelled to testify against himself or to confess guilt;
(g) To have the right, if convicted of a crime, to file an appeal according to law before a higher tribunal;
(h) To have the right to respect for his person and his privacy in all circumstances.

Article 17
Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and implementation of sentence, as well as to special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.

Article 18
No one who is shown to be unable to pay a debt arising from a contractual obligation shall be imprisoned.

Article 19
(a) No one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.
(b) Anyone whose innocence is established by a final judgement shall be entitled to compensation for the damage suffered.

Article 20
(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
(b) Accused persons shall be segregated from convicted persons and shall be subject to a treatment appropriate to their status as unconvicted persons.
(c) The penitentiary system shall comprise treatment of prisoners the aim of which shall be their
reformation and social rehabilitation.

Article 21
(a) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation.
(b) Everyone has the right to the protection of the law against such interference or attacks.

Article 22
Everyone shall have the right to recognition as a person before the law.

Article 23
Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 24
(a) Every citizen has the right to freely pursue a political activity.
(b) Every citizen has the right to take part in the conduct of public affairs, directly or through freely chosen representatives.
(c) Every citizen shall have the right to stand for election or to choose his representatives in free and impartial elections, or the basis of equality among all citizens and guaranteeing the free expression of his will.
(d) Every citizen has the right of equal access to public service in his country on the basis of equality of opportunity.
(e) Every citizen has the right to freely form and join associations with others.
(f) Every citizen has the right to freedom of association and peaceful assembly.
(g) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

Article 25
Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practise their own religion. The exercise of these rights shall be governed by law.

Article 26
(a) Every person lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.
(b) No State party may expel an alien lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to seek a review by the competent authority, unless compelling reasons of national security preclude it. Collective expulsion of aliens is prohibited under all circumstances.

Article 27
(a) No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.
(b) No one may be exiled from his country or prevented from returning thereto.

Article 28
Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence against public order under ordinary law. Political refugees may not be extradited.

Article 29
(a) Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.
(b) States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.
(c) No one shall be denied the right to acquire another nationality in accordance with the domestic legislation in his country.

Article 30
(a) Everyone has the right to freedom of thought, conscience and religion. No restrictions may be imposed on the exercise of such freedoms except as provided for by law.
(b) The freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms to protect public safety, public order, public health or morals or the fundamental rights and freedoms of others.
(c) Parents or guardians have the freedom to ensure the religious and moral education of their children.

Article 31
Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

Article 32
(a) The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers.
(b) Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

Article 33
(a) The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of full age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.
(b) The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons the most ample opportunities for physical and mental development.
(c) The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.
(d) The States parties shall take all the necessary measures to guarantee, particularly to young persons, the right to pursue a sporting activity.

Article 34
(a) The right to work is a natural right of every citizen. The State shall endeavour to provide, to
the extent possible, a job for the largest number of those willing to work, while ensuring production, on the freedom to choose one's work and equal opportunities, without discrimination of any kind as to race, colour, sex, religion, language, political opinion, union affiliation, national or social origin, disability or other status.

(b) Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family, and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work.

(c) The States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

1. Provide for a minimum age for admission to employment;
2. Provide for appropriate regulation of the hours and conditions of employment;
3. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of these provisions.

(d) There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

(e) Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.

Article 35
(a) Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

(b) No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

(c) States parties to the present Charter guarantee the right to strike within the limits laid down by law in accordance with the international labour criteria.

Article 36
The States parties shall ensure the right of every citizen to social security, including social insurance.

Article 37
The right to development is a fundamental human right and all States are required to establish the development policies and the measures necessary to guarantee this right. They have a duty to implement the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. Pursuant to this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

Article 38
Every person has the right to an adequate standard of living for himself and his family, that ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Article 39
(a) The States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind.

(b) The measures taken by States parties shall include the following:
1. Development of basic health-care services and the guaranteeing of free and easy access to the centres that provide these services, regardless of geographical location or economic status;
2. Efforts to control disease by means of prevention and cure in order to reduce the mortality rate;
3. Promotion of health awareness and health education;
4. Suppression of traditional practices which are harmful to the health of the individual;
5. Provision of basic nutrition and safe drinking water for all;
6. Combating environmental pollution and providing proper sanitation systems;
7. Combating smoking and abuse of drugs and psychotropic substances.

Article 40
(a) The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.

(b) The States parties shall provide social services free of charge for all persons with disabilities, shall provide the material support needed by those persons, their families or the families caring for them, and shall also do whatever is needed to avoid placing those persons in institutions. They shall in all cases take account of the best interests of the disabled person.

(c) The States parties shall take all necessary measures to curtail the incidence of disabilities by all possible means, including preventive health programmes, awareness raising and education.

(d) The States parties shall provide full educational services suited to persons with disabilities, taking into account the importance of integrating these persons in the educational system and the importance of vocational training and apprenticeship and the creation of suitable job opportunities in the public or private sectors.

(e) The States parties shall provide all health services appropriate for persons with disabilities, including all education to these persons as a means of integrating them into society.

(f) The States parties shall endeavour to enable persons with disabilities to make use of all public and private services.

Article 41
(a) The eradication of illiteracy is a binding obligation upon the State and every person has the right to education.

(b) The States parties shall guarantee every citizen free education at least throughout the primary and fundamental levels. All types and levels of primary education shall be compulsory and accessible to all without discrimination of any kind.

(c) The States parties shall take appropriate measures in all domains to ensure partnership between men and women with a view to achieving national development goals.

(d) The States parties shall guarantee to provide education directed to the full development of the human person and strengthening respect for human rights and fundamental freedoms.

(e) The States parties shall endeavour to incorporate the principles of human rights and fundamental freedoms into formal and informal education curricula and educational and training programmes.

(f) The States parties shall guarantee the establishment of the requisite mechanisms to provide ongoing education for every citizen and the creation of national plans for adult education.

Article 42
(a) Every person has the right to participate in cultural life and to enjoy the benefits of scientific progress and its application.

(b) The States parties undertake to respect the freedom of scientific research and creative activity, and to ensure the protection of moral and material interests resulting from scientific, literary and artistic production.

(c) The State parties shall work together and enhance cooperation among them at all levels, with
the full participation of intellectuals and creative artists and their organizations, with a view to
developing and implementing recreational, cultural, artistic and scientific programmes.

Article 43
Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms
protected by the domestic laws of the States parties or those set forth in the international and
regional human rights instruments which the States parties have adopted or ratified, including the
rights of women, the rights of the child and the rights of persons belonging to minorities.

Article 44
When their existing legislative or non-legislative measures do not effectively ensure the
implementation of the rights enunciated in this Charter, the States parties undertake to take, in
conformity with their constitutional procedures and with the provisions of the present Charter,
whatever legislative or non-legislative measures that may be necessary for the implementation of
these rights.

Article 45
(a) Pursuant to this Charter, an "Arab Human Rights Committee", hereinafter referred to as "The
Committee", shall be established. This Committee shall consist of seven members who shall be
elected by secret ballot by the States parties to this Charter.
(b) The Committee shall consist of nationals of the States parties to the present Charter, who
must be highly experienced and competent in the Committee's field of work. The members of the
Committee shall serve in their personal capacity and with full independence and impartiality.
(c) The Committee shall not include more than one member from a State party, such a member
may only be re-elected once. Due regard shall be given to the rotation principle.
(d) The members of the Committee shall be elected for a four-year term, although the mandate of
each of the members elected during the first election and selected by lot, shall be for two years.
(e) Six months prior to the date of the election, the Secretary-General of the League of Arab
States shall invite the States parties to submit their nominations within the following three
months. He shall transmit the list of candidates to the States parties two months prior to the date of the
election. The candidates who obtain the largest number of votes cast shall be elected to
membership of the Committee. If, because various candidates have an equal number of votes,
the number of candidates with the largest number of votes exceeds the number required, a
second ballot will be held between the persons with equal numbers of votes. If the votes are
again equal, the member or members shall be selected by lot. The first election for
the membership of the Committee shall be held at least six months after the Charter enters into force.
(f) The Secretary-General shall invite the States parties to a meeting at the headquarters of the
League of Arab States in order to elect the members of the Committee. The presence of the
majority of the States parties shall constitute a quorum. If there is no quorum, the Secretary-
General shall call another meeting at which at least two-thirds of the States parties must be
present. If there is still no quorum, the Secretary-General shall call a third meeting, which will be
held regardless of the number of States parties present.
(g) The Secretary-General shall convene the first meeting of the Committee, during the course of
which the Committee shall elect its Chairman, from among its members, for a two-year term
renewable only once and for a similar period. The Committee shall establish its own rules of
procedure and methods of work and shall determine how often it shall meet. The Committee shall
hold its meetings at the headquarters of the League of Arab States. It may also meet in any other
State party to the present Charter at that party's invitation.

Article 46
(a) If, in the unanimous view of other members, a member of the Committee has ceased to
perform his functions for any reason other than temporary absence, the Chairman of the
Committee shall inform the Secretary-General of the League of Arab States who, in turn, shall
declare vacant the seat occupied by the member concerned.
(b) In the event of the death or resignation of a Committee member, the Chairman shall
immediately inform the Secretary-General, who shall then declare vacant the seat occupied by
the member concerned as of the date of his death or that on which the resignation took effect.
(c) Whenever a member's seat is declared vacant pursuant to the provisions of paragraphs (a)
and (b) above and the term of office of the member to be replaced does not expire within six
months from the date on which the vacancy was declared, the Secretary-General of the League of Arab
States shall refer the matter to the States parties to the present Charter which may, within
two months, submit nominations, pursuant to article 45, in order to fill the vacant seat.
(d) The Secretary-General of the League of Arab States shall draw up an alphabetical list of all
the duly nominated candidates, which he shall transmit to the States parties to the present
Charter. The elections to fill the vacant seat shall be held in accordance with the relevant
provisions.
(e) Any member of the Committee elected to fill a seat declared vacant in accordance with the
provisions of (a) and (b) above shall remain a member of the Committee until the expiry of the
remainder of the term of the member whose seat was declared vacant pursuant to the provisions of
the two aforementioned paragraphs.
(f) The Secretary-General of the League of Arab States shall make provision within the budget of
the League of Arab States for all the necessary financial and human resources and facilities that
the Committee needs to discharge its functions effectively. The members of the Committee shall
be afforded the same treatment as experts recruited by the secretariat of the League of Arab
States with respect to remuneration and reimbursement of expenses.

Article 47
The States parties undertake to ensure that members of the Committee shall enjoy the requisite
immunities for the purpose of their work in accordance with any existing law or the laws of the
States parties to the present Charter and the privileges and immunities of international
organization with which the Committee may engage in its work.

Article 48
(a) The States parties undertake to submit reports to the Secretary-General of the League of Arab
States on the measures they have taken to give effect to the rights and freedoms recognized in
this Charter and on the progress made towards the enjoyment thereof. The Secretary-General
shall transmit these reports to the Committee for its consideration.
(b) Each State party shall submit an initial report to the Committee within one year from the date
on which the Charter enters into force and a periodic report every three years thereafter. The
Committee may request the States parties to supply it with additional information relating to the
implementation of the Charter.
(c) The Committee shall consider the reports submitted by the States parties pursuant to
paragraph (b) of this article in the presence and with the participation of the representative of the
State party concerned.
(d) In discussing the report, formulating its comments and submitting its recommendations for
the necessary action, the Committee shall act in accordance with the objectives of the Charter.
(e) The Committee shall submit an annual report containing its comments and recommendations
to the Council of the League, through the intermediary of the Secretary-General.
(f) The reports, final comments and recommendations of the Committee shall be public
documents which the Committee shall disseminate widely.

Article 49
(a) The Secretary-General of the League of Arab States shall submit the present Charter, once it
has been approved by the Council of the League, to the States parties for signature, ratification or
accreditation.
(b) The present Charter shall enter into force two months after the date on which the seventh
instrument of ratification is deposited with the secretariat of the League of Arab States.
(c) After its entry into force, the present Charter shall become effective, for each State party, two
months after it has deposited its instrument of ratification or accession with the secretariat.
(d) The Secretary-General shall notify the States parties of the deposit of each instrument of
ratification or accession.
Article 50
Any State party may submit written proposals, though the Secretary-General, to amend the present Charter. After the States members have been notified of these proposals, the Secretary-General shall invite them to consider the proposed amendments before submitting them to the Council of the League for adoption.

Article 51
The amendments shall take effect, with regard to the States parties that have approved them, once they have been approved by two-thirds of the States parties.

Article 52
Any State party may propose additional optional protocols to the present Charter and they shall be adopted according to the same procedures followed for the adoption of amendments to the Charter.

Article 53
(a) Any State party when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and purposes of the Charter.
(b) Any State party that has made a reservation pursuant to paragraph (a) of this article may withdraw this reservation at any time by means of a notification addressed to the Secretary-General of the League of Arab States.
(c) The Secretary-General shall notify the States parties of reservations made and of requests for their withdrawal.
Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, 2009
Terms of Reference
of the
ASEAN Intergovernmental Commission on Human Rights

Pursuant to Article 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) shall operate in accordance with the following Terms of Reference (TOR):

1 PURPOSES

The purposes of the AICHR are:

1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

2 PRINCIPLES

The AICHR shall be guided by the following principles:

2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular:

a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

b) non-interference in the internal affairs of ASEAN Member States;

c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
d) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
f) upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and
g) respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity.

2.2 Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation;

2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State;

2.4 Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights; and

2.5 Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.

2 CONSULTATIVE INTER-GOVERNMENTAL BODY

The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.

4 MANDATE AND FUNCTIONS

4.1 To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;

4.2 To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;

4.3 To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;

4.4 To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

4.5 To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;

4.6 To promote the full implementation of ASEAN instruments related to human rights;
4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;

4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;

4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;

4.12. To prepare studies on thematic issues of human rights in ASEAN;

4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and

4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

5. **COMPOSITION**

**Membership**

5.1 The AICHR shall consist of the Member States of ASEAN.

5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.

**Qualifications**

5.3 When appointing their Representatives to the AICHR, Member States shall give due consideration to gender equality, integrity and competence in the field of human rights.

5.4 Member States should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR.

**Term of Office**

5.5 Each Representative serves a term of three years and may be consecutively re-appointed for only one more term.

5.6 Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.
Responsibility

5.7 Each Representative, in the discharge of his or her duties, shall act impartially in accordance with the ASEAN Charter and this TOR.

5.8 Representatives shall have the obligation to attend AICHR meetings. If a Representative is unable to attend a meeting due to exceptional circumstances, the Government concerned shall formally notify the Chair of the AICHR of the appointment of a temporary representative with a full mandate to represent the Member State concerned.

Chair of the AICHR

5.9 The Chair of the AICHR shall be the Representative of the Member State holding the Chairmanship of ASEAN.

5.10 The Chair of the AICHR shall exercise his or her role in accordance with this TOR, which shall include:

a) leading in the preparation of reports of the AICHR and presenting such reports to the ASEAN Foreign Ministers Meeting;

b) coordinating with the AICHR’s Representatives in between meetings of the AICHR and with the relevant ASEAN bodies;

c) representing the AICHR at regional and international events pertaining to the promotion and protection of human rights as entrusted by the AICHR; and

d) undertaking other specific functions entrusted by the AICHR in accordance with this TOR.

Immunities and Privileges

5.11 In accordance with Article 19 of the ASEAN Charter, Representatives participating in official activities of the AICHR shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

6 MODALITIES

Decision-making

6.1 Decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.

Number of Meetings

6.2 The AICHR shall convene two regular meetings per year. Each meeting shall normally be not more than five days.

6.3 Regular meetings of the AICHR shall be held alternately at the ASEAN Secretariat and the Member State holding the Chair of ASEAN.

6.4 As and when appropriate, the AICHR may hold additional meetings at the ASEAN Secretariat or at a venue to be agreed upon by the Representatives.
6.5 When necessary, the ASEAN Foreign Ministers may instruct the AICHR to meet.

Line of Reporting

6.6 The AICHR shall submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration.

Public Information

6.7 The AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR.

Relationship with Other Human Rights Bodies within ASEAN

6.8 The AICHR is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN.

6.9 The AICHR shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities for their ultimate alignment with the AICHR. To this end, the AICHR shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence in ASEAN's promotion and protection of human rights.

7 ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT

7.1 The Secretary-General of ASEAN may bring relevant issues to the attention of the AICHR in accordance with Article 11.2 (a) and (b) of the ASEAN Charter. In so doing, the Secretary-General of ASEAN shall concurrently inform the ASEAN Foreign Ministers of these issues.

7.2 The ASEAN Secretariat shall provide the necessary secretarial support to the AICHR to ensure its effective performance. To facilitate the Secretariat's support to the AICHR, ASEAN Member States may, with the concurrence of the Secretary-General of ASEAN, second their officials to the ASEAN Secretariat.

8 WORK PLAN AND FUNDING

8.1 The AICHR shall prepare and submit a Work Plan of programmes and activities with indicative budget for a cycle of five years to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

8.2 The AICHR shall also prepare and submit an annual budget to support high priority programmes and activities, which shall be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.
8.3 The annual budget shall be funded on equal sharing basis by ASEAN Member States.

8.4 The AICHR may also receive resources from any ASEAN Member States for specific extra-budgetary programmes from the Work Plan.

8.5 The AICHR shall also establish an endowment fund which consists of voluntary contributions from ASEAN Member States and other sources.

8.6 Funding and other resources from non-ASEAN Member States shall be solely for human rights promotion, capacity building and education.

8.7 All funds used by the AICHR shall be managed and disbursed in conformity with the general financial rules of ASEAN.

8.8 Secretarial support for the AICHR shall be funded by the ASEAN Secretariat’s annual operational budget.

9.1. This TOR shall come into force upon the approval of the ASEAN Foreign Ministers Meeting.

Amendments

9.2. Any Member State may submit a formal request for an amendment of this TOR.

9.3. The request for amendment shall be considered by the Committee of Permanent Representatives to ASEAN in consultation with the AICHR, and presented to the ASEAN Foreign Ministers Meeting for approval.

9.4. Such amendments shall enter into force upon the approval of the ASEAN Foreign Ministers Meeting.

9.5. Such amendments shall not prejudice the rights and obligations arising from or based on this TOR before or up to the date of such amendments.

Review

9.6. This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.

9.7. In this connection, the AICHR shall assess its work and submit recommendations for the consideration of the ASEAN Foreign Ministers Meeting on future efforts that could be undertaken in the promotion and protection of human rights within ASEAN consistent with the principles and purposes of the ASEAN Charter and this TOR.

Interpretation

9.8. Any difference concerning the interpretation of this TOR which cannot be resolved shall be referred to the ASEAN Foreign Ministers Meeting for a decision.
LIST OF MEMBERS OF THE HIGH LEVEL PANEL ON AN ASEAN HUMAN RIGHTS BODY (HLP)

■ Brunei Darussalam

H.E. DATO SHOFRY ABDUL GHAFOR
Permanent Secretary
Ministry of Foreign Affairs and Trade

■ Cambodia

H.E. MR. OM YENITENG
Advisor to the Royal Government of Cambodia
President of the Human Rights Committee of Cambodia

■ Indonesia

H.E. MR. RACHMAT BUDIMAN
Director of Political, Security and Territorial Treaties
Department of Foreign Affairs

■ Lao PDR

H.E. MR. BOUNKEUT SANGSOMSAK
Deputy Foreign Minister
Ministry of Foreign Affairs

■ Malaysia

H.E. TAN SRI AHMAD FUZI ABDUL RAZAK
Ambassador—at-Large
Ministry of Foreign Affairs

■ Myanmar

H.E. MR. U MYAT KO
Secretary of Myanmar Human Rights Group
Director-General, General Administration Department
Ministry of Home Affairs

■ The Philippines

H.E. AMBASSADOR ROSARIO G. MANALO
Special Envoy
Department of Foreign Affairs

■ Singapore

H.E. MR. BILAHARI KAUSIKAN
Second Permanent Secretary
Ministry of Foreign Affairs

■ Thailand

H.E. AMBASSADOR SIHASAK PHUANGKETKEOW
Permanent Representative of Thailand to the UN Office in Geneva

■ Viet Nam

H.E. MR. PHAM QUANG VINH
Assistant Minister
Ministry of Foreign Affairs
INTERNATIONAL ORGANIZATIONS
PROF. MAKANE MOÏSE MBENGUE

Codification Division of the United Nations Office of Legal Affairs

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PROF. MAKANE MOïSE MBENGUE

Legal Instruments and Documents

2. Articles of Agreement of the International Monetary Fund, 1944  
3. Articles of Agreement of the International Bank for Reconstruction and Development, 1944  
4. Convention on International Civil Aviation, 1944  
10. Singapore Declaration of Commonwealth Principles, 1971  
   For text, see “The Work of the International Law Commission”, 7th ed., vol. II (United Nations publication, Sales No. E.07.V.9), page 228  
14. Agreement between the International Committee of the Red Cross and the Swiss Federal Council to determine the legal status of the Committee in Switzerland, 1993  
15. Agreement Establishing the World Trade Organization, 1994  
   For text, see Study Materials Part VI, International Trade Law, page 12  
20. Responsibility of international organizations: Texts and titles of draft articles 1 to 67 adopted by the Drafting Committee of the International Law Commission on second reading in 2011 (A/CN.4/L.778)  
22. Chart of the United Nations System

Jurisprudence

3. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime
Consultative Organization, Advisory Opinion, I.C.J. Reports 1960, pp. 150-172
7. Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996, pp. 66-84
For text, see Study Materials Part I, Law of Treaties, page 224
10. Behrami v. France and Saramati v. France, Germany and Norway, ((dec.) [GC], nos. 71412/01 and 78166/01) ECHR, 2 May 2007
11. Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland, Appeal (Joined Cases C-402/05 P and C-415/05 P), ECJ, 3 September 2008

Recommended Readings (not reproduced)

Constituent Charter of the Bank of International Settlements, 1930
Constituent Charter of the Bank for International Settlements
(of 20 January 1930)\(^1\)

Whereas the Powers signatory to the Hague Agreement of January, 1930, have adopted a Plan which contemplates the founding by the central banks of Belgium, France, Germany, Great Britain, Italy and Japan and by a financial institution of the United States of America of an International Bank to be called the Bank for International Settlements;

And whereas the said central banks and a banking group including Messrs. J. P. Morgan & Company of New York, the First National Bank of New York, New York, and the First National Bank of Chicago, Chicago, have undertaken to found the said Bank and have guaranteed or arranged for the guarantee of the subscription of its authorised capital amounting to five hundred million Swiss francs equal to 145,161,290.32 grammes fine gold, divided into 200,000 shares;

And whereas the Swiss Federal Government has entered into a treaty with the Governments of Germany, Belgium, France, Great Britain, Italy and Japan whereby the said Federal Government has agreed to grant the present Constituent Charter of the Bank for International Settlements and not to repeal, amend or supplement the said Charter and not to sanction amendments to the Statutes of the Bank referred to in Paragraph 4 of the present Charter except in agreement with the said Powers;

1. The Bank for International Settlements (hereinafter called the Bank) is hereby incorporated.

2. Its constitution, operations and activities are defined and governed by the annexed Statutes\(^2\) which are hereby sanctioned.

3. Amendment of Articles of the said Statutes other than those enumerated in Paragraph 4 hereof may be made and shall be put into force as provided in Article 57 of the said Statutes and not otherwise.

4. Articles 2, 3, 8, 14, 19, 24, 27, 44, 51, 54, 57 and 58 of the said Statutes shall not be amended except subject to the following conditions: the amendment must be adopted by a two-thirds majority of the Board, approved by a majority of the General Meeting and sanctioned by a law supplementing the present Charter.

5. The said Statutes and any amendments which may be made thereto in accordance with Paragraphs 3 or 4 hereof respectively shall be valid and operative notwithstanding any inconsistency therewith in the provisions of any present or future Swiss law.

6. The Bank shall be exempt and immune from all taxation included in the following categories:

(a) stamp, registration and other duties on all deeds or other documents relating to the incorporation or liquidation of the Bank;

(b) stamp and registration duties on any first issue of its shares by the Bank to a central bank, financial institution, banking group or underwriter at or before the time of incorporation or in pursuance of Articles 5, 6, 8 or 9 of the Statutes;

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\(^1\) Text amended on account of the renumbering of the Articles of the Statutes and sanctioned on 10 December 1969 in accordance with the conditions laid down in Article 1 of the Convention respecting the Bank for International Settlements.

\(^2\) See text of the Statutes currently in force.
(c) all taxes on the Bank's capital, reserves or profits, whether distributed or not, and whether assessed on the profits of the Bank before distribution or imposed at the time of distribution under the form of a coupon tax payable or deductible by the Bank. This provision is without prejudice to the State's right to tax the residents of Switzerland other than the Bank as it thinks fit;

(d) all taxes upon any agreements which the Bank may make in connection with the issue of loans for mobilising the German annuities and upon the bonds of such loans issued on a foreign market;

(e) all taxes on the remunerations and salaries paid by the Bank to members of its administration or its employees of non-Swiss nationality.

7. All funds deposited with the Bank by any Government in pursuance of the Plan adopted by the Hague Agreement of January, 1930, shall be exempt and immune from taxation whether by way of deduction by the Bank on behalf of the authority imposing the same or otherwise.

8. The foregoing exemptions and immunities shall apply to present and future taxation by whatsoever name it may be described, and whether imposed by the Confederation, or by the cantonal, communal or other public authorities.

9. Moreover, without prejudice to the exemptions specified above, there may not be levied on the Bank, its operation or its personnel any taxation other than that of a general character and to which other banking establishments established at Basle or in Switzerland, their operations and their personnel, are not subjected de facto and de jure.

10. The Bank, its property and assets and all deposits and other funds entrusted to it shall be immune in time of peace and in time of war from any measure such as expropriation, requisition, seizure, confiscation, prohibition or restriction of gold or currency export or import, and any other similar measures.

11. Any dispute between the Swiss Government and the Bank as to the interpretation or application of the present Charter shall be referred to the Arbitral Tribunal provided for by the Hague Agreement of January, 1930.

The Swiss Government shall appoint a member to sit on the occasion of such dispute, the President having a casting vote.

In having recourse to the said Tribunal the Parties may nevertheless agree to submit their dispute to the President or to a member of the Tribunal chosen to act as sole arbiter.
Articles of Agreement of the International Monetary Fund, 1944
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The Governments on whose behalf the present Agreement is signed agree as follows:

Introductory Article

(i) The International Monetary Fund is established and shall operate in accordance with the provisions of this Agreement as originally adopted and subsequently amended.

(ii) To enable the Fund to conduct its operations and transactions, the Fund shall maintain a General Department and a Special Drawing Rights Department. Membership in the Fund shall give the right to participation in the Special Drawing Rights Department.

(iii) Operations and transactions authorized by this Agreement shall be conducted through the Special Drawing Rights Department.
Article I

Purposes

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of productive resources of all members as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

Article II

Membership

Section 1. Original members

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments have accepted membership before December 31, 1945, and shall be entitled to vote in proportion to their quotas.

Section 2. Other members

Membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governors. These terms, including the terms for subscriptions, shall be based on principles consistent with those applied to other countries that are already members.

Article III

Quotas and Subscriptions

Section 1. Quotas and payment of subscriptions

Each member shall be assigned a quota expressed in special drawing rights. The quotas of the members represented at the United Nations Monetary and Financial Conference whose governments have accepted membership before December 31, 1945, shall be those set forth in Schedule A. The quotas of other members shall be determined by the Board of Governors in accordance with the provisions of this Article.

Section 2. Adjustment of quotas

(a) The Board of Governors shall at intervals of not more than five years examine the quotas of the members, and will determine if it appears that changes in the economic situations of the members have occurred sufficiently important to justify an adjustment of the quotas of any member. If the Board determines that such an adjustment is necessary, it shall propose such adjustment to the General Council.

(b) The Board of Governors may prescribe that this payment may be made in the currency of the member. No member shall be subject to a change in its quota under this provision.

(c) An eighty-five percent majority of the total voting power shall be required for any change in quotas.

Section 3. Payments when quotas are changed

(a) Each member which consents to an increase in its quota under Section 2(a) of this Article shall, within a period determined by the Fund, pay to the Fund twenty-five percent of the increase in special drawing rights, but the Board of Governors may prescribe that this payment may be made in the currency of the member specified, with their concurrence, by the Fund, or in the currencies of other members specified, with the concurrence of the members specified.

(b) The Fund may at any time propose an increase in the quotas of those members of the Fund that were members on August 31, 1975 in proportion to their quotas on that date, to a cumulative amount equal to the cumulative amount of increases approved under Article V, Section 12(f) and (j) from the Special Disbursement Account to the General Resources Account.

(c) An eighty-five percent majority of the total voting power shall be required for any change in quotas.

Section 4. Payments when quotas are changed

(a) Each member which consents to an increase in its quota under Section 2(b) of this Article shall be deemed to have paid to the Fund an amount of subscription equal to such increase.

(b) Each member which consents to an increase in its quota under Section 2(b) of this Article shall be deemed to have paid to the Fund a corresponding increase in its subscription under Section 8 of this Article.

(c) If a member consents to a reduction in its quota, the Fund shall, within sixty days, pay to the member an amount equal to the reduction. The payment shall be made in the member's currency. The Fund may reduce its holdings of the currency below the new quota by payment to the member in its own currency.

(d) A seventy percent majority of the total voting power shall be...
required for any decision under (a) above, except for the determination of a period and the specification of currencies under that provision.

Section 4. Substitution of securities for currency

The Fund shall accept from any member, in place of any part of the member's currency in the General Resources Account which in the judgment of the Fund is not needed for its operations and transactions, notes or similar obligations issued by the member or the depositary designated by the member under Article XII, Section 2, which shall be non-negotiable, non-interest bearing and payable at their face value on demand by crediting the account of the Fund in the designated depository. This Section shall apply not only to currency subscribed by members but also to any currency otherwise due to, or acquired by, the Fund and to be placed in the General Resources Account.

Article IV

Obligations Regarding Exchange Arrangements

Section 1. General obligations of members

Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member undertakes to collaborate with the Fund and other members to ensure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, each member shall:

(i) endeavor to direct its economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;

(ii) seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;

(iii) avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members; and

(iv) follow exchange policies compatible with the undertakings under this Section.

Section 2. General exchange arrangements

(a) Each member shall notify the Fund, within thirty days after the date of the second amendment of this Agreement, of the exchange arrangements it intends to apply in fulfillment of its obligations under Section 1 of this Article, and shall notify the Fund promptly of any changes in its exchange arrangements.

(b) Under an international monetary system of the kind prevailing on January 1, 1976, exchange arrangements may include (i) the maintenance by a member of a value for its currency in terms of the special drawing right as another denominator, other than gold, selected by the member, or (ii) cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, or (iii) other exchange arrangements of a member's choice.

(c) To accord with the development of the international monetary system, the Fund, by an eighty-five percent majority of the total voting power, may make provision for general exchange arrangements without limiting the right of members to have exchange arrangements of their choice consistent with the purposes of the Fund and the obligations under Section 1 of this Article.

Section 3. Surveillance over exchange arrangements

(a) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1 of this Article.

(b) In order to fulfill its functions under (a) above, the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies. Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member's exchange rate policies. The principles adopted by the Fund shall be consistent with cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, as well as with other exchange arrangements of a member's choice consistent with the purposes of the Fund and Section 1 of this Article. These principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members.

Section 4. Par values

The Fund may determine, by an eighty-five percent majority of the total voting power, that international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. The Fund shall make the determination on the basis of the underlying stability of the world economy, and for this purpose shall take into account price movements and rates of expansion in the economies of members. The determination shall be made in light of the evolution of the international monetary system, with particular reference to sources of liquidity, and, in order to ensure the effective operation of a system of par values, to arrangements under which both members in surplus and members in deficit in their balances of payments take prompt, effective, and symmetrical action to achieve adjustment, as well as to arrangements for intervention and the treatment of imbalances. Upon making such determination, the Fund shall notify members that the provisions of Schedule C apply.

Section 5. Separate currencies within a member's territories

(a) Action by a member with respect to its currency under this Article shall be deemed to apply to the separate currencies of all territories in respect of which the member has accepted this Agreement under Article XXXI, Section 2(g) unless the member declares that its action relates either to the metropolitan currency alone, or only to one or more specified separate currencies, or to the metropolitan currency and one or more specified separate currencies.
(b) Action by the Fund under this Article shall be deemed to relate to all currencies of a member referred to in (a) above unless the Fund declares otherwise.

Article V
Operations and Transactions of the Fund

Section 1. Agencies dealing with the Fund

Each member shall deal with the Fund only through its Treasury, central bank, stabilization fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies.

Section 2. Limitation on the Fund’s operations and transactions

(a) Except as otherwise provided in this Agreement, transactions on the account of the Fund shall be limited to transactions for the purpose of supplying a member, on the initiative of such member, with special drawing rights or the currencies of other members from the general resources of the Fund, which shall be held in the General Resources Account, in exchange for the currency of the member desiring to make the purchase.

(b) If requested, the Fund may decide to perform financial and technical services, including the administration of resources contributed by members, that are consistent with the purposes of the Fund. Operations involved in the performance of such financial services shall not be on the account of the Fund. Services under this subsection shall not impose any obligation on a member without its consent.

Section 3. Conditions governing use of the Fund’s general resources

(a) The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

(b) A member shall be entitled to purchase the currencies of other members from the Fund in exchange for an equivalent amount of its own currency subject to the following conditions:

(i) the member’s use of the general resources of the Fund would be in accordance with the provisions of this Agreement and the policies adopted under them;

(ii) the member represents that it has a need to make the purchase because of its balance of payments or its reserve position or developments in its reserves;

(iii) the proposed purchase would be a reserve tranche purchase, or would not cause the Fund’s holdings of the purchasing member’s currency to exceed two hundred percent of its quota;

(iv) the Fund has not previously declared under Section 5 of this Article, Article VI, Section 1, or Article XXVI, Section 2(a) that the member desiring to purchase is ineligible to use the general resources of the Fund.

(c) The Fund shall examine a request for a purchase to determine whether the proposed purchase would be consistent with the provisions of this Agreement and the policies adopted under them, and declared that requests for reserve tranche purchases shall not be subject to challenge.

(d) The Fund shall adopt policies and procedures on the selection of currencies to be sold that take into account, in consultation with members, the balance of payments and reserve position of members and developments in the exchange markets, as well as the desirability of promoting over time balanced positions in the Fund, provided that if a member represents that it is proposing to purchase the currency of another member because the purchasing member wishes to obtain an equivalent amount of its own currency offered by the other member, it shall be entitled to purchase the currency of the other member unless the Fund has given notice under Article VII, Section 3 that its holdings of the currency have become scarce.

(e) (i) Each member shall ensure that balances of its currency purchased from the Fund are balances of a freely usable currency or can be exchanged at the time of purchase for a freely usable currency of its choice at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).

(ii) Each member whose currency is purchased from the Fund or is obtained in exchange for currency purchased from the Fund shall collaborate with the Fund and other members to enable such balances of its currency to be exchanged, at the time of purchase, for the freely usable currencies of other members.

(iii) An exchange under (i) above of a currency that is not freely usable shall be made by the member whose currency is purchased unless that member and the purchasing member agree on another procedure.

(iv) A member purchasing from the Fund the freely usable currency of another member and wishing to exchange it at the time of purchase for another freely usable currency shall make the exchange with the other member if requested by that member. The exchange shall be made for a freely usable currency selected by the other member at the rate of exchange referred to in (i) above.

(f) Under policies and procedures which it shall adopt, the Fund may agree to provide a participant making a purchase in accordance with this Section with special drawing rights instead of the currencies of other members.

Section 4. Waiver of conditions

The Fund may, in its discretion, and on terms which safeguard its interests, waive any of the conditions prescribed in Section 3(b)(iii) and (iv) of this Article, especially in the case of members with a record of avoiding large or continuous use of the Fund’s general resources. In making a waiver it shall take into consideration periodic or exceptional requirements of the member requesting the waiver. The Fund shall also take into consideration a member’s willingness to pledge as collateral security acceptable assets having a value sufficient in the opinion of the Fund to protect its interests and may require as a condition of waiver the pledge of such collateral security.

Section 5. Ineligibility to use the Fund’s general resources
Whenever the Fund is of the opinion that any member is using the general resources of the Fund in a manner contrary to the purposes of the Fund, it shall present to the member a report setting forth the views of the Fund and prescribing a suitable time for reply. After presenting such a report to a member, the Fund may limit the use of its general resources by the member. If no reply to the report is received from the member within the prescribed time, or if the reply received is unsatisfactory, the Fund may continue to limit the member’s use of the general resources of the Fund or may, after giving reasonable notice to the member, declare it ineligible to use the general resources of the Fund.

Section 6. Other purchases and sales of special drawing rights by the Fund

(a) The Fund may accept special drawing rights offered by a participant in exchange for an equivalent amount of the currencies of other members.

(b) The Fund may provide a participant, at its request, with special drawing rights for an equivalent amount of the currencies of other members. The Fund’s holdings of a member’s currency shall not be increased as a result of these transactions above the level at which the holdings would be subject to charges under Section 8(b)(ii) of this Article.

(c) The currencies provided or accepted by the Fund under this Section shall be selected in accordance with policies that take into account the principles of Section 3(d) or 7(i) of this Article. The Fund may enter into transactions under this Section only if a member whose currency is provided or accepted by the Fund concurs in that use of its currency.

Section 7. Repurchase by a member of its currency held by the Fund

(a) A member shall be entitled to repurchase at any time the Fund’s holdings of its currency that are subject to charges under Section 8(b) of this Article.

(b) A member that has made a purchase under Section 3 of this Article will be expected normally, as its balance of payments and reserve position improves, to repurchase the Fund’s holdings of its currency that result from purchases that are subject to charges under Section 8(b) of this Article. A member shall repurchase these holdings if, in accordance with policies on repurchase that the Fund shall adopt and after consultation with the member, the Fund represents to the member that it should repurchase because of an improvement in its balance of payments and reserve position.

(c) A member that has made a purchase under Section 3 of this Article shall repurchase the Fund’s holdings of its currency that result from purchases and are subject to charges under Section 8(b) of this Article not later than five years after the date on which the purchase was made. The Fund may prescribe that repurchase shall be made by a member in installments during the period beginning three years and ending five years after the date of a purchase. The Fund, by an eighty-five percent majority of the total voting power, may change the periods for repurchase under this subsection, and any period so adopted shall apply to all members.

(d) The Fund, by an eighty-five percent majority of the total voting power, may adopt periods other than those that apply in accordance with (c) above, which shall be the same for all members, for the repurchase of holdings of currency acquired by the Fund pursuant to a special policy on the use of its general resources.

(e) A member shall repurchase, in accordance with policies that the Fund shall adopt by a seventy percent majority of the total voting power, the Fund’s holdings of its currency that are not acquired as a result of purchases and are subject to charges under Section 8(b)(ii) of this Article.

(f) A decision prescribing that under a policy on the use of the general resources of the Fund the period for repurchase under (c) or (d) above shall be shorter than the one in effect under the policy shall apply only to holdings acquired by the Fund subsequent to the effective date of the decision.

(g) The Fund, on the request of a member, may postpone the date of discharge of a repurchase obligation, but not beyond the maximum period under (c) or (d) above or under policies adopted by the Fund under (e) above, unless the Fund determines, by a seventy percent majority of the total voting power, that a longer period for repurchase which is consistent with the temporary use of the general resources of the Fund is justified because discharge on the due date would result in exceptional hardship for the member.

(h) The Fund’s policies under Section 3(d) of this Article may be supplemented by policies under which the Fund may decide after consultation with a member to sell under Section 3(b) of this Article its holdings of the member’s currency that have not been repurchased in accordance with this Section 7, without prejudice to any action that the Fund may be authorized to take under any other provision of this Agreement.

(i) All repurchases under this Section shall be made with special drawing rights or with the currencies of other members specified by the Fund. The Fund shall adopt policies and procedures with regard to the currencies to be used by members in making repurchases to take into account the principles in Section 3(d) of this Article. The Fund’s holdings of a member’s currency that is used in repurchase shall not be increased by the repurchase above the level at which they would be subject to charges under Section 8(b)(ii) of this Article.

(j) (i) If a member’s currency specified by the Fund under (i) above is not a freely usable currency, the member shall ensure that the repurchasing member can obtain it at the time of the repurchase in exchange for a freely usable currency selected by the repurchasing member. An exchange of currency under this provision shall take place at an exchange rate between the two currencies equivalent to the exchange rate between them on the basis of Article XIX, Section 7(a).

(ii) Each member whose currency is specified by the Fund for repurchase shall collaborate with the Fund and other members to enable repurchasing members, at the time of the repurchase, to obtain the specified currency in exchange for the freely usable currencies of other members.

(iii) An exchange under (j)(i) above shall be made with the member whose currency is specified unless that member and the repurchasing member agree on another procedure.

(iv) If a repurchasing member wishes to obtain, at the time of the repurchase, the freely usable currency of another member specified by the Fund under (i) above, it shall, if requested by the other member, obtain the currency from the other member in exchange for a freely usable currency at the rate of exchange referred to in (j)(i) above. The Fund may adopt regulations on the freely usable currency to be provided in an exchange.
Section 8. Charges

(a) The Fund shall levy a service charge on the purchase by a member of special drawing rights or the currency of another member held in the General Resources Account in exchange for its own currency, provided that the Fund may levy a lower service charge on reserve tranche purchases than on other purchases. The service charge on reserve tranche purchases shall not exceed one percent of the purchase amount.

(b) The Fund may levy a charge for stand-by or similar arrangements. The Fund may decide that the charge for an arrangement shall be offset against the service charge levied under (a) above on purchases under the arrangement.

(c) The Fund shall levy charges on its average daily balances of a member's currency held in the General Resources Account to the extent that they have been acquired under a policy that has been the subject of an exclusion under Article III, Section 3(b) above, or exceed the amount of the member's quota after excluding any balances referred to in (i) above. The rates of charge normally shall rise at intervals during the period in which the balances are held.

(d) A seventy percent majority of the total voting power shall be required for the determination of the rates of charge under (a) and (b) above.

(e) A member shall pay all charges in special drawing rights, provided that the Fund may permit a member to pay charges in the currencies of other members specified by the member, with the approval of a seventy percent majority of the total voting power.

Section 9. Remuneration

(a) The Fund shall pay remuneration on the amount by which the percentage of quota prescribed under (b) or (c) below exceeds the Fund's average daily balances of a member's currency held in the General Resources Account, other than balances resulting from operations under Sections 7 and 8.

(b) A seventy percent majority of the total voting power shall be required for the determination of the rates of remuneration under (a) above.

(c) The Fund shall pay remuneration in the same currency as the balances referred to in (b) above, subject to the Fund's right to make payments in any other currency.
Section 12. Other operations and transactions

(a) The Fund shall be guided in all its policies and decisions under this Section by the objectives set forth in Article VIII, Section 7 and by the objective of avoiding the management of the price, or the establishment of a fixed price, in the gold market.

(b) Decisions of the Fund to engage in operations or transactions under (c), (d), and (e) below shall be made by an eighty-five percent majority of the total voting power.

(c) The Fund may sell gold for the currency of any member after consulting the member for whose currency the gold is sold, provided that the Fund’s holdings of a member’s currency held in the General Resources Account shall not be increased by the sale above the level at which they would be subject to charges under Section 8(b) (ii) of this Article without the concurrence of the member, and provided that, at the request of the member, the Fund at the time of sale shall exchange for the currency of another member such part of the currency received as would prevent such an increase. The exchange of a currency for the currency of another member shall be made after consultation with that member, and shall not increase the Fund’s holdings of that member’s currency above the level at which they would be subject to charges under Section 8(b) (ii) of this Article. The Fund shall adopt policies and procedures with regard to exchanges that take into account the principles applied under Section 7(ii) of this Article. Sales under this provision to a member shall be at a price agreed for each transaction on the basis of prices in the market.

(d) The Fund may accept payments from a member in gold instead of special drawing rights or currency in any operations or transactions under this Agreement. Payments to the Fund under this provision shall be at a price agreed for each operation or transaction on the basis of prices in the market.

(e) The Fund may sell gold held by it on the date of the second amendment of this Agreement to those members that were members on August 31, 1975, at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold.

(f) Whenever under (c) above the Fund sells gold held by it on the date of the second amendment of this Agreement, an amount of the proceeds equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and, except as the Fund may decide otherwise under (g) below, any excess shall be held in the Special Disbursement Account. The assets held in the Special Disbursement Account shall be held separately from the other accounts of the General Department, and may be used at any time:

(i) to make transfers to the General Resources Account for immediate use in operations and transactions authorized by provisions of this Agreement other than this Section;

(ii) for operations and transactions that are not authorized by other provisions of this Agreement but are consistent with the purposes of the Fund. Under this subsection (f) (ii) balance of payments assistance may be extended under special terms to developing members in difficult circumstances, and for this purpose the Fund shall take into account the level of per capita income;

(iii) for distribution to those developing members that were members on August 31, 1975, in proportion to their quotas on that date, of such part of the assets that the Fund decides to use for the purposes of (i) above as corresponds to the proportion of the quotas of these members on the date of distribution to the total of the quotas of all members on the same date, provided that the distribution under this provision to a member that has been declared ineligible to use the general resources of the Fund under Section 5 of this Article shall be made when the ineligibility ceases, unless the Fund decides to make the distribution sooner.

Decisions to use assets pursuant to (i) above shall be taken by a seventy percent majority of the total voting power, and decisions pursuant to (ii) and (iii) above shall be taken by an eighty-five percent majority of the total voting power.

(g) The Fund may decide, by an eighty-five percent majority of the total voting power, to transfer a part of the excess referred to in (f) above to the Investment Account for use pursuant to the provisions of Article XII, Section 6(f).

(h) Pending uses specified under (f) above, the Fund may invest a member’s currency in the Special Disbursement Account in marketable obligations of that member or in marketable obligations of international financial organizations. The income of investment and interest received under (f) above may be invested in the Special Disbursement Account. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment.

(i) The General Resources Account shall be reimbursed from time to time in respect of the expenses of administration of the Special Disbursement Account paid from the General Resources Account by transfers from the Special Disbursement Account on the basis of a reasonable estimate of such expenses.

(j) The Special Disbursement Account shall be terminated in the event of the liquidation of the Fund and may be terminated prior to liquidation of the Fund by a seventy percent majority of the total voting power. Upon termination of the account because of the liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K. Upon termination prior to liquidation of the Fund, any assets in this account shall be transferred to the General Resources Account for immediate use in operations and transactions. The Fund, by a seventy percent majority of the total voting power, shall adopt rules and regulations for the administration of the Special Disbursement Account.

Article VI

Capital Transfers
Section 1. Use of the Fund's general resources for capital transfers

(a) A member may not use the Fund's general resources to meet a large or sustained outflow of capital except as provided in Section 2 of this Article, and the Fund may request a member to exercise appropriate controls, the Fund may declare the member ineligible to use the general resources of the Fund.

(b) Nothing in this Section shall be deemed:

(i) to prevent the use of the general resources of the Fund for capital transactions of reasonable amount required for the expansion of exports or in the ordinary course of trade, banking, or other business; or

(ii) to affect capital movements which are met out of a member's own resources, but members undertake that such capital movements will be in accordance with the purposes of the Fund.

Section 2. Special provisions for capital transfers

A member shall be entitled to make reserve tranche purchases to meet capital transfers.

Section 3. Controls of capital transfers

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 2.

Article VII

Replenishment and Scarce Currencies

Section 1. Measures to replenish the Fund's holdings of currencies

(a) Measures may be adopted by the Fund to replenish its holdings of currencies, if it is evident to the Director that the Fund's holdings of any member's currency seriously threaten the stability or convertibility of such currency. Such measures may include:

(i) requiring the member to lend its currency to the Fund, or to make loans to the Fund, or to make loans to the Fund from any other source; or

(ii) requiring the member to sell its currency to the Fund for special drawing rights held in the General Resources Account, subject to Article XIX, Section 4.

(b) The Fund shall pay due regard to the principles of designation under Article XIX, Section 5.

Section 2. General scarcity of currency

(a) If the Fund finds that a general scarcity of a particular currency is developing, the Fund may propose to members to take such steps as are necessary to bring the currency into the Fund's holdings, and it may take such steps as are necessary to bring the currency into the Fund's holdings.

(b) If the Fund finds that any member's currency is no longer scarce, it may declare that currency to be no longer scarce.

(c) The authorization under (b) above shall expire whenever the Fund for any reason declares the currency in question to be no longer scarce.

(d) The authorization under (b) above shall expire whenever the Fund for any reason declares the currency in question to be no longer scarce.

Section 3. Scarcity of the Fund's holdings

(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the stability or convertibility of such currency, the Fund may, with the concurrence of the member, take such steps as are necessary to bring that currency into the Fund's holdings.

(b) A formal declaration under (a) above shall operate as a formal declaration under Section 3(b) of Article III of the Articles of Agreement, and shall be made subject to the provisions of Article III, Section 3(b).

Section 4. Administration of restrictions

Any member imposing restrictions in respect of the currency of any other member pursuant to the provisions of Section 3(b) of Article III shall give sympathetic consideration to any representations by the other member in question, and they shall be relaxed and removed as conditions permit.

Section 5. Effect of other international agreements on restrictions

Members agree not to invoke the obligations of any engagements entered into with other members prior to this Agreement in such manner as will prevent the operation of the provisions of this Article.

Section 6. Exchange controls

(a) Members shall agree not to impose exchange controls on the currency of any other member.

(b) Exchange controls which involve the currency of any member and which
are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Section 3. Avoidance of discriminatory currency practices

No member shall engage in, or permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any discriminatory currency arrangements or multiple currency practices, whether within or outside margins under Article IV or prescribed by or under Schedule C, except as authorized under this Agreement or approved by the Fund. If such arrangements and practices are engaged in at the date when this Agreement enters into force, the member concerned shall consult with the Fund as to their progressive removal unless they are maintained or imposed under Article XIV, Section 2, in which case the provisions of Section 3 of that Article shall apply.

Section 4. Convertibility of foreign-held balances

(a) Each member shall buy balances of its currency held by another member if the latter, in requesting the purchase, represents:

(i) that the balances to be bought have been recently acquired as a result of current transactions; or

(ii) that their conversion is needed for making payments for current transactions.

The buying member shall have the option to pay either in special drawing rights, subject to Article XIX, Section 4, or in the currency of the member making the request.

(b) The obligation in (a) above shall not apply when:

(i) the convertibility of the balances has been restricted consistently with Section 2 of this Article or Article VI, Section 3;

(ii) the balances have accumulated as a result of transactions effected before the removal by a member of restrictions maintained or imposed under Article XIV, Section 2;

(iii) the balances have been acquired contrary to the exchange regulations of the member which is asked to buy them; the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3(a); or

(iv) the currency of the member requesting the purchase has been declared scarce under Article VII, Section 3(a); or

(v) the member requested to make the purchase is for any reason not entitled to buy currencies of other members from the Fund for its own currency.

Section 5. Furnishing of information

(a) The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on the following matters:

(i) official holdings at home and abroad of (1) gold, (2) foreign exchange;

(ii) holdings at home and abroad by banking and financial agencies, other than official agencies, of (1) gold, (2) foreign exchange;

(iii) production of gold;

(iv) gold exports and imports according to countries of destination and origin;

(v) total exports and imports of merchandise, in terms of local currency values, according to countries of destination and origin;

(vi) international balance of payments, including (1) trade in goods and services, (2) gold transactions, (3) known capital transactions, and (4) other items;

(vii) international investment position, i.e., investments within the territories of the member owned abroad and investments abroad owned by persons in its territories so far as it is possible to furnish this information;

(viii) national income;

(ix) price indices, i.e., indices of commodity prices in wholesale and retail markets and of export and import prices;

(x) buying and selling rates for foreign currencies;

(xi) exchange controls, i.e., a comprehensive statement of exchange controls in effect at the time of assuming membership in the Fund and details of subsequent changes as they occur; and

(xii) where official clearing arrangements exist, details of amounts awaiting clearance in respect of commercial and financial transactions, and of the length of time during which such arrears have been outstanding.

(b) In requesting information the Fund shall take into consideration the varying ability of members to furnish the data requested. Members shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Members undertake, however, to furnish the desired information in as detailed and accurate a manner as is practicable and, so far as possible, to avoid mere estimates.

(c) The Fund may arrange to obtain further information by agreement with members. It shall act as a centre for the collection and exchange of information on monetary and financial problems, thus facilitating the preparation of studies designed to assist members in developing policies which further the purposes of the Fund.

Section 6. Consultation between members regarding existing international agreements

Where under this Agreement a member is authorized in the special or temporary circumstances specified in the Agreement to maintain or establish
Section 7. Privilege for communications

All Governors, Executive Directors, Alternates, members of committees, and representatives of the Fund acting in any official capacity shall enjoy the same treatment as the representatives of the Fund acting in any official capacity except when the Fund waives its immunity. The Fund shall also be immune from liability for actions and omissions of its officers and employees and from all customs duties. The Fund shall also be immune from taxation of its property and assets, wherever located and by whomsoever held, unless it waives its immunity. The Fund shall also be immune from judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract. The archives of the Fund shall be inviolable. To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Section 8. Freedom of assets from restrictions

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.
The Fund shall cooperate within the terms of this Agreement with any general international organizations and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XXVIII.

Article XI
Relations with Non-Member Countries

Section 1. Undertakings regarding relations with non-member countries

Each member undertakes:
(i) not to engage in, nor to permit any of its fiscal agencies referred to in Article V, Section 1 to engage in, any transactions with a non-member or with persons in a non-member's territories which would be contrary to the provisions of this Agreement or the purposes of the Fund;
(ii) not to cooperate with a non-member or with persons in a non-member's territories in practices which would be contrary to the provisions of this Agreement or the purposes of the Fund;
(iii) to cooperate with the Fund with a view to the application in its territories of appropriate measures to prevent transactions with non-members or with persons in their territories which would be contrary to the provisions of this Agreement or the purposes of the Fund.

Section 2. Restrictions on transactions with non-member countries

Nothing in this Agreement shall affect the right of any member to impose restrictions on exchange transactions with non-members or with persons in their territories unless the Fund finds that such restrictions prejudice the interests of members and are contrary to the purposes of the Fund.

Article XII
Organization and Management

Section 1. Structure of the Fund

The Fund shall have a Board of Governors, an Executive Board, a Managing Director, and a staff, and a Council if the Board of Governors decides, by an eighty-five percent majority of the total voting power, that the provisions of Schedule D shall be applied.

Section 2. Board of Governors

(a) All powers under this Agreement not conferred directly on the Board of Governors, the Executive Board, or the Managing Director shall be vested in the Board of Governors. The Board of Governors shall consist of one governorshalld be elected by the Executive Directors or their Alternates.

(b) The Board of Governors may delegate to the Executive Board authority to exercise any powers of the Board of Governors, except the powers conferred directly by this Agreement on the Board of Governors, and the Executive Board may exercise such powers without calling a meeting of the Board of Governors.

(c) If, at the second regular election of Executive Directors and thereafter, the number of Executive Directors on the Board of Governors is less than one-quarter of the total voting power, the Executive Directors shall reelect their Alternates until this condition is satisfied.

(d) The Executive Board shall consist of the five members having the largest quotas, and five shall be appointed by the five members having the largest quotas. Each member may appoint one of its Executive Directors or its Alternate as a member of the Executive Board, or the Executive Board shall decide upon the appointment of its Alternate member. Each executive director or his Alternate or his deputy, as the case may be, shall attend in his absence or the absence of the Executive Director or his Alternate at the meetings of the Board of Governors or of the Executive Board or of Executive Directors or would threaten to upset a desirable balance in the Executive Board.

(e) The Executive Board shall act in accordance with the directions of the Board of Governors, and the Executive Board may appoint such committees as they deem advisable. The Board of Governors shall serve as such committees as may be necessary or appropriate to carry out the provisions of Schedule D.

(f) Governors and Alternates shall be entitled to attend meetings of the Board of Governors, but shall have no vote except in the absence of his principal. The Board of Governors shall select one of the governors as Chairman.

(g) The Board of Governors may by regulation establish a procedure whereby the Executive Board may be called to vote on a specific question without calling a meeting of the Board of Governors.

(h) Governors and Alternates shall serve as such committees as may be necessary or appropriate to carry out the provisions of Schedule D.

(i) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and their Alternates and the salary and terms of the contract of service of the Managing Director.

(j) The Board of Governors and the Executive Board may appoint such committees as they deem advisable. The Board of Governors shall serve as such committees as may be necessary or appropriate to carry out the provisions of Schedule D.

(k) The Board of Governors shall consist of the five members having the largest quotas, and five shall be appointed by the five members having the largest quotas. Each member may appoint one of its Executive Directors or its Alternate as a member of the Executive Board, or the Executive Board shall decide upon the appointment of its Alternate member. Each executive director or his Alternate or his deputy, as the case may be, shall attend in his absence or the absence of the Executive Director or his Alternate at the meetings of the Board of Governors or of the Executive Board or of Executive Directors or would threaten to upset a desirable balance in the Executive Board.

(l) The Executive Board shall consist of the five members having the largest quotas, and five shall be appointed by the five members having the largest quotas. Each member may appoint one of its Executive Directors or its Alternate as a member of the Executive Board, or the Executive Board shall decide upon the appointment of its Alternate member. Each executive director or his Alternate or his deputy, as the case may be, shall attend in his absence or the absence of the Executive Director or his Alternate at the meetings of the Board of Governors or of the Executive Board or of Executive Directors or would threaten to upset a desirable balance in the Executive Board.

(m) The Board of Governors may by regulation establish a procedure whereby the Executive Board may be called to vote on a specific question without calling a meeting of the Board of Governors.

(n) Governors and Alternates shall serve as such committees as may be necessary or appropriate to carry out the provisions of Schedule D.

(o) The Board of Governors shall determine the remuneration to be paid to the Executive Directors and their Alternates and the salary and terms of the contract of service of the Managing Director.

(p) The Board of Governors and the Executive Board may appoint such committees as they deem advisable. The Board of Governors shall serve as such committees as may be necessary or appropriate to carry out the provisions of Schedule D.
Section 4. Managing Director and staff

(a) The Executive Board shall select a Managing Director who shall not be a Governor or an Executive Director. The Managing Director shall be chairman of the Executive Board, but shall have no vote at such meetings. The Managing Director shall cease to hold office when the Executive Board so decides.

(b) The Managing Director shall be chief of the operating staff of the Fund and shall conduct, under the direction of the Executive Board, the ordinary business of the Fund. Subject to the general control of the Executive Board, he shall be responsible for the organization, appointment, and dismissal of the staff of the Fund.

(c) The Managing Director and the staff of the Fund, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each member of the Fund shall make him responsible for the discharge of this duty and shall refrain from all attempts to influence any of the staff in the discharge of these functions.

Section 5. Voting

(a) Each member shall have two hundred fifty votes plus one additional vote for the equivalent of one hundred thousand special drawing rights. Whenever voting is required under Article V, Section 4 or 5, each member shall have the number of votes to which it is entitled under (a) above adjusted by the addition of one vote for the equivalent of one hundred thousand special drawing rights of net sales of its currency from the general resources of the Fund up to the date when the vote is taken, or by the subtraction of one vote for the equivalent of one hundred thousand special drawing rights of net purchases under Article V, Section 3(b) and (f). In no case shall the number of votes allotted to any member exceed the amount calculated on the basis of the quota of the member involved.

(b) Except as otherwise specifically provided, all decisions of the Fund shall be by majority vote of the members present or represented. A quorum for any meeting of the Executive Board shall be the number of members entitled to appoint Executive Directors under (b)(i) above. The members entitled to appoint Executive Directors under (b)(i) above do not include the two members of the General Board of Governors whose currencies by the Fund in the General Resources Account have been allocated to the Fund by the member in whose General Board of Governors Account the member is entitled to appoint an Executive Director. The number of votes allotted to the member is one or two, as the case may be, of the members entitled to appoint an Executive Director under (b)(i) above, and the number of votes allotted to each member appointed by a member entitled to appoint an Executive Director under (b)(i) above shall be the number of votes allotted to the member entitled to appoint an Executive Director under (b)(i) above.

(c) Each appointed Executive Director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.

(d) Each elected Executive Director shall be entitled to cast the number of votes which counted towards his election.

(e) When the provisions of Section 5(b) of this Article are applicable, the votes allotted to other members as a result of the election of an Executive Director shall be increased or decreased correspondingly. All the votes which an Executive Director is entitled to cast shall be cast as a unit.

(f) When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(b), and the member is not entitled to appoint an Executive Director, the member may agree with all the members that have elected an Executive Director that the number of votes allotted to the member shall be cast by that Executive Director. A member making such an agreement shall not participate in the election of the Executive Director entitled to cast the number of votes allotted to the member.

(g) The Executive Board shall function in continuous session at the principal office of the Fund and shall meet as often as the business of the Fund may require.

(h) A quorum for any meeting of the Executive Board shall be a majority of the Executive Directors having not less than one-half of the total voting power.

(i) (i) Each appointed Executive Director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.

(ii) If the votes allotted to a member that appoints an Executive Director under (c) above were cast by an Executive Director together with the votes allotted to other members as a result of the election of an Executive Director, the votes of the member appointing the Executive Director shall be increased or decreased correspondingly.

(iii) Each elected Executive Director shall be entitled to cast the number of votes which counted towards his election.

(iv) When the provisions of Section 5(b) of this Article are applicable, the votes allotted to other members as a result of the election of an Executive Director shall be increased or decreased correspondingly. All the votes which an Executive Director is entitled to cast shall be cast as a unit.

(v) When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(b), and the member is not entitled to appoint an Executive Director, the member may agree with all the members that have elected an Executive Director that the number of votes allotted to the member shall be cast by that Executive Director. A member making such an agreement shall not participate in the election of the Executive Director entitled to cast the number of votes allotted to the member.

(e) Each appointed Executive Director shall be entitled to cast the number of votes allotted under Section 5 of this Article to the member appointing him.

(f) Each elected Executive Director shall be entitled to cast the number of votes which counted towards his election.

(g) When the provisions of Section 5(b) of this Article are applicable, the votes allotted to other members as a result of the election of an Executive Director shall be increased or decreased correspondingly. All the votes which an Executive Director is entitled to cast shall be cast as a unit.

(h) When the suspension of the voting rights of a member is terminated under Article XXVI, Section 2(b), and the member is not entitled to appoint an Executive Director, the member may agree with all the members that have elected an Executive Director that the number of votes allotted to the member shall be cast by that Executive Director. A member making such an agreement shall not participate in the election of the Executive Director entitled to cast the number of votes allotted to the member.
shall be made by a majority of the votes cast.

Section 6.
Reserves, distribution of net income, and investment

(a) The Fund shall determine annually what part of its net income shall be placed to general reserve or special reserve, and what part, if any, shall be distributed.

(b) The Fund may use the special reserve for any purpose for which it may use the general reserve, except distribution.

(c) If any distribution is made of the net income of any year, it shall be made to all members in proportion to their quotas.

(d) The Fund, by a seventy percent majority of the total voting power, may decide at any time to distribute any part of the general reserve. Any such distribution shall be made to all members in proportion to their quotas.

(e) Payments under (c) and (d) above shall be made in special drawing rights, provided that either the Fund or the member may decide that the payment to the member shall be made in its own currency.

(f) (i) The Fund may establish an Investment Account for the purposes of this subsection (f). The assets of the Investment Account shall be held separately from the other accounts of the General Department.

(ii) The Fund may decide to transfer to the Investment Account a part of the proceeds of the sale of gold in accordance with Article V, Section 12(g) and, by a seventy percent majority of the total voting power, may decide to transfer to the Investment Account, for immediate investment, currencies held in the General Resources Account. The amount of these transfers shall not exceed the total amount of the general reserve and the special reserve at the time of the decision.

(iii) The Fund may invest a member's currency held in the Investment Account in marketable obligations of that member or in marketable obligations of international financial organizations. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment.

(iv) The income of investment may be invested in accordance with the provisions of this subsection (f). Income not invested shall be held in the Investment Account or may be used for meeting the expenses of conducting the business of the Fund.

(v) The Fund may use a member's currency held in the Investment Account to obtain the currencies needed to meet the expenses of conducting the business of the Fund.

(vi) The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy percent majority of the total voting power. The Fund, by a seventy percent majority of the total voting power, shall adopt rules and regulations regarding administration of the Investment Account, which shall be consistent with (vii), (viii), and (ix) below.

(vii) Upon termination of the Investment Account because of liquidation of the Fund, any assets in this account shall be distributed in accordance with the provisions of Schedule K, provided that a portion of these assets corresponding to the proportion of the assets transferred to this account under Article V, Section 12(g) to the total of the assets transferred to this account shall be deemed to be assets held in the Special Disbursement Account and shall be distributed in accordance with Schedule K, paragraph 2(a)(i)(ii).

(viii) Upon termination of the Investment Account prior to liquidation of the Fund, a portion of the assets held in this account corresponding to the proportion of the assets transferred to the Special Disbursement Account if it has not been terminated, and the balance of the assets held in the Investment Account shall be transferred to the General Resources Account for immediate use in operations and transactions.

(ix) On a reduction of the amount of the investment by the Fund, a portion of the reduction corresponding to the proportion of the assets transferred to the Investment Account under Article V, Section 12(g) to the total of the assets transferred to this account shall be transferred to the Special Disbursement Account if it has not been terminated, and the balance of the reduction shall be transferred to the General Resources Account for immediate use in operations and transactions.

Section 7. Publication of reports

(a) The Fund shall publish an annual report containing an audited statement of its accounts, and shall issue, at intervals of three months or less, a summary of the Fund’s operations and transactions and its holdings of special drawing rights, gold, and currencies of members.

(b) The Fund may publish such other reports as it deems desirable for carrying out its purposes.

Section 8. Communication of views to members

The Fund shall at all times have the right to communicate its views informally to any member on any matter arising under this Agreement. The Fund may, by a seventy percent majority of the total voting power, decide to publish a report made to a member regarding its monetary or economic conditions and developments which directly tend to produce a serious disequilibrium in the international balance of payments of members. If the member is not entitled to appoint an Executive Director, it shall be entitled to representation in accordance with Section 3(j) of this Article. The Fund shall not publish a report involving changes in the fundamental structure of the economic organization of members.

Article XIII

Offices and Depositories

Section 1. Location of offices

The principal office of the Fund shall be located in the territory of the member having the largest quota, and agencies or branch offices may be established in the territories of other members.
Section 2. Depositories

(a) Each member shall designate its central bank as a depository for all the Fund's holdings of its currency, or if it has no central bank it shall designate such other institution as may be acceptable to the Fund.

(b) The Fund may hold other assets, including gold, in the depositories designated by the five members having the largest quotas and in such other designated depositories as the Fund may select. Initially, at least one-half of the holdings of the Fund shall be held in the depository designated by the member in whose territories the Fund has its principal office and at least forty percent shall be held in the depositories designated by the remaining four members referred to above. However, all transfers of gold by the Fund shall be made with due regard to the costs of transport and anticipated requirements of the Fund. In an emergency the Executive Board may transfer all or any part of the Fund's gold holdings to any place where they can be adequately protected.

Section 3. Guarantee of the Fund's assets

Each member guarantees all assets of the Fund against loss resulting from failure or default on the part of the depository designated by it.

Article XIV
Transitional Arrangements

Section 1. Notification to the Fund

Each member shall notify the Fund whether it intends to avail itself of the transitional arrangements in Section 2 of this Article, or whether it is not prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept these obligations.

Section 2. Exchange restrictions

A member that has notified the Fund that it intends to avail itself of transitional arrangements under this provision may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund, and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the promotion of a stable system of exchange rates. In particular, members shall withdraw restrictions maintained under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the general resources of the Fund.

Section 3. Action of the Fund relating to restrictions

The Fund shall make annual reports on the restrictions in force under Section 2 of this Article. Any member retaining any restrictions inconsistent with Article VIII, Sections 2, 3, or 4 shall consult the Fund annually as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other articles of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XXVI, Section 2(a).

Article XV
Special Drawing Rights

Section 1. Authority to allocate special drawing rights

To meet the need, as and when it arises, for a supplement to existing reserve assets, the Fund is authorized to allocate special drawing rights to members that are participants in the Special Drawing Rights Department.

Section 2. Valuation of the special drawing right

The method of valuation of the special drawing right shall be determined by the Fund by a seventy percent majority of the total voting power, provided, however, that an eighty-five percent majority of the total voting power shall be required for a change in the principle of valuation or a fundamental change in the application of the principle in effect.

Article XVI
General Department and Special Drawing Rights Department

Section 1. Separation of operations and transactions

All operations and transactions involving special drawing rights shall be conducted through the Special Drawing Rights Department. All other operations and transactions authorized by or under this Agreement shall be conducted through the General Department.

Section 2. Separation of assets and property

All assets and property of the Fund, except resources administered under Article V, Section 2(b), shall be held in the General Department, provided that assets and property acquired under Article XX, Section 2 and Articles XXIV and XXV and Schedules H and I shall be held in the Special Drawing Rights Department. Any assets or property held in one Department shall not be available to discharge or meet the liabilities, obligations, or losses of the Fund incurred in the conduct of the operations and transactions of the other Department, except that the expenses of conducting the business of the Special Drawing Rights Department shall be paid by the Fund from the General Department which shall be reimbursed in special drawing rights from time to time by assessments under Article XX, Section 4 made on the basis of a reasonable estimate of such expenses.

Section 3. Recording and information

All changes in holdings of special drawing rights shall take effect only when recorded by the Fund in the Special Drawing Rights Department.
Participants shall notify the Fund of the provisions of this Agreement under which special drawing rights are used. The Fund may require participants to furnish it with such other information as it deems necessary for its functions.

Article XVII

Participants and Other Holders of Special Drawing Rights

Section 1. Participants

Each member of the Fund that deposits with the Fund an instrument setting forth that it undertakes all the obligations of a participant in the Special Drawing Rights Department in accordance with its law and that it has taken all steps necessary to enable it to carry out all of these obligations shall become a participant in the Special Drawing Rights Department as of the date the instrument is deposited, except that no member shall become a participant before the provisions of this Agreement pertaining exclusively to the Special Drawing Rights Department have entered into force and instruments have been deposited under this Section by members that have at least seventy-five percent of the total of quotas.

Section 2. Fund as a holder

The Fund may hold special drawing rights in the General Resources Account and may accept and use them in operations and transactions conducted through the General Resources Account with participants in accordance with the provisions of this Agreement or with prescribed holders in accordance with the terms and conditions prescribed under Section 3 of this Article.

Section 3. Other holders

The Fund may prescribe:

(i) as holders, non-members, members that are non-participants, institutions that perform functions of a central bank for more than one member, and other official entities;

(ii) the terms and conditions on which prescribed holders may be permitted to hold special drawing rights and may accept and use them in operations and transactions with participants and other prescribed holders; and

(iii) the terms and conditions on which participants and the Fund through the General Resources Account may enter into operations and transactions in special drawing rights with prescribed holders. An eighty-five percent majority of the total voting power shall be required for prescriptions under (i) above. The terms and conditions prescribed by the Fund shall be consistent with the provisions of this Agreement and the effective functioning of the Special Drawing Rights Department.

Article XVIII

Allocation and Cancellation of Special Drawing Rights

Section 1. Principles and considerations governing allocation and cancellation

(a) In all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world.

(b) The first decision to allocate special drawing rights shall take into account, as special considerations, a collective judgment that there is a global need to supplement reserves, and the attainment of a better balance of payments equilibrium, as well as the likelihood of a better working of the adjustment process in the future.

Section 2. Allocation and cancellation

(a) Decisions of the Fund to allocate or cancel special drawing rights shall be made for basic periods which shall run consecutively and shall be five years in duration. The first basic period shall begin on the date of the first decision to allocate special drawing rights or such later date as may be specified in that decision. Any allocations or cancellations shall take place at yearly intervals.

(b) The rates at which allocations are to be made shall be expressed as percentages of quotas on the date of each decision to allocate. The rates at which special drawing rights are to be cancelled shall be expressed as percentages of net cumulative allocations of special drawing rights on the date of each decision to cancel. The percentages shall be the same for all participants.

(c) In its decision for any basic period the Fund may provide, notwithstanding (a) and (b) above, that:

(i) the duration of the basic period shall be other than five years; or

(ii) the allocations or cancellations shall take place at other than yearly intervals; or

(iii) the basis for allocations or cancellations shall be the quotas or net cumulative allocations on dates other than the dates of decisions to allocate or cancel.

(d) A member that becomes a participant after a basic period starts shall receive allocations beginning with the next basic period in which allocations are made after it becomes a participant unless the Fund decides that the new participant shall start to receive allocations beginning with the next allocation after it becomes a participant. If the Fund decides that a member that becomes a participant during a basic period shall receive allocations during the remainder of that basic period and the participant was not a member on the dates established under (b) or (c) above, the Fund shall determine the basis on which these allocations to the participant shall be made.

(e) A participant shall receive allocations of special drawing rights made pursuant to any decision to allocate unless:

(i) the Governor for the participant did not vote in favor of the decision; and

(ii) the participant has notified the Fund in writing prior to the first allocation of special drawing rights under that decision that it does
not wish special drawing rights to be allocated to it under the decision. On the request of a participant, the Fund may decide to terminate the effect of the notice with respect to allocations of special drawing rights subsequent to the termination.

(f) If on the effective date of any cancellation the amount of special drawing rights held by a participant is less than its share of the special drawing rights that are to be cancelled, the participant shall eliminate its negative balance as promptly as its gross reserve position permits and shall remain in consultation with the Fund for this purpose. Special drawing rights acquired by the participant after the effective date of the cancellation shall be applied against its negative balance and cancelled.

Section 3. Unexpected major developments

The Fund may change the rates or intervals of allocation or cancellation during the rest of a basic period or change the length of a basic period or start a new basic period, if at any time the Fund finds it desirable to do so because of unexpected major developments.

Section 4. Decisions on allocations and cancellations

(a) Decisions under Section 2(a), (b), and (c) or Section 3 of this Article shall be made by the Board of Governors on the basis of proposals of the Managing Director concurred in by the Executive Board.

(b) Before making any proposal, the Managing Director, after having satisfied himself that it will be consistent with the provisions of Section 1(a) of this Article, shall conduct such consultations as will enable him to ascertain that there is broad support among participants for the proposal. In addition, before making a proposal for the first allocation, the Managing Director shall satisfy himself that the provisions of Section 1(b) of this Article have been met and that there is broad support among participants to begin allocations; he shall make a proposal for the first allocation as soon after the establishment of the Special Drawing Rights Department as he is so satisfied.

(c) The Managing Director shall make proposals:

(i) not later than six months before the end of each basic period;

(ii) if no decision has been taken with respect to allocation or cancellation for a basic period, whenever he is satisfied that the provisions of (b) above have been met;

(iii) when, in accordance with Section 3 of this Article, he considers that it would be desirable to change the rate or intervals of allocation or cancellation or change the length of a basic period or start a new basic period; or

(iv) within six months of a request by the Board of Governors or the Executive Board; provided that, if under (i), (iii), or (iv) above the Managing Director certifies that there is no proposal which he considers to be consistent with the provisions of Section 1 of this Article that has broad support among participants in accordance with (b) above, he shall report to the Board of Governors and to the Executive Board.

(d) An eighty-five percent majority of the total voting power shall be required for decisions under Section 2(a), (b), and (c) or Section 3 of this Article except for decisions under Section 3 with respect to a decrease in the rates of allocation.

Article XIX
Operations and Transactions in Special Drawing Rights

Section 1. Use of special drawing rights

Special drawing rights may be used in the operations and transactions authorized by or under this Agreement.

Section 2. Operations and transactions between participants

(a) A participant shall be entitled to use its special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article.

(b) A participant, in agreement with another participant, may use its special drawing rights to obtain an equivalent amount of currency from the other participant.

(c) The Fund, by a seventy percent majority of the total voting power, may prescribe operations in which a participant is authorized to engage in agreement with another participant on such terms and conditions as the Fund deems appropriate. The terms and conditions shall be consistent with the effective functioning of the Special Drawing Rights Department and the proper use of special drawing rights in accordance with this Agreement.

(d) The Fund may make representations to a participant that enters into any operation or transaction under (b) or (c) above that in the judgment of the Fund may be prejudicial to the process of designation according to the principles of Section 5 of this Article or is otherwise inconsistent with Article XXIX. A participant that persists in entering into such operations or transactions shall be subject to Article XXIII, Section 2(b).

Section 3. Requirement of need

(a) In transactions under Section 2(a) of this Article, except as otherwise provided in (c) below, a participant will be expected to use its special drawing rights only if it has a need because of its balance of payments or its reserve position or developments in its reserves, and not for the sole purpose of changing the composition of its reserves.

(b) The use of special drawing rights shall not be subject to challenge on the basis of the expectation in (a) above, but the Fund may make representations to a participant that fails to fulfill this expectation. A participant that persists in failing to fulfill this expectation shall be subject to Article XXIII, Section 2(b).

(c) The Fund may waive the expectation in (a) above in any transactions in which a participant uses special drawing rights to obtain an equivalent amount of currency from a participant designated under Section 5 of this Article that would promote reconstitution by the other participant under Section 6(a) of this Article; prevent or reduce a negative balance of the other participant; or offset the effect of a failure by the other participant to fulfill the expectation in (a) above.
Section 4. Obligation to provide currency

(a) A participant designated by the Fund under Section 5 of this Article shall provide on demand a freely usable currency to a participant using special drawing rights under Section 2(a) of this Article. A participant’s obligation to provide currency shall not extend beyond the point at which its holdings of special drawing rights in excess of its net cumulative allocation or such higher limit as may be agreed between a participant and the Fund.

(b) A participant may provide currency in excess of the obligatory limit or any agreed higher limit.

Section 5. Designation of participants to provide currency

(a) The Fund shall ensure that a participant will be able to use its special drawing rights by designating participants to provide currency for specified amounts of special drawing rights for the purposes of Sections 2(a) and 4 of this Article. Designations shall be made in accordance with the following general principles supplemented by such other principles as the Fund may adopt from time to time:

(i) A participant shall be subject to designation if its balance of payments and gross reserve position is sufficiently strong, but this will not preclude the possibility that a participant with a strong reserve position will be designated even though it has a moderate balance of payments deficit. Participants shall be designated in such manner as will promote over time a balanced distribution of holdings of special drawing rights among them.

(ii) Participants shall be subject to designation in order to promote reconstitution under Section 6(a) of this Article, to reduce negative balances in holdings of special drawing rights, or to offset the effect of failures to fulfill the expectation in Section 3(a) of this Article.

(iii) In designating participants, the Fund normally shall give priority to those that need to acquire special drawing rights to meet the objectives of designation under (ii) above.

(b) In order to promote over time a balanced distribution of holdings of special drawing rights under (a)(i) above, the Fund shall apply the rules for designation in Schedule F or such rules as may be adopted under (c) below.

(c) The rules for designation may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted, the rules in force at the time of the review shall continue to apply.

Section 6. Reconstitution

(a) Participants that use their special drawing rights shall reconstitute their holdings of them in accordance with the rules for reconstitution in Schedule G or such rules as may be adopted under (b) below.

(b) The rules for reconstitution may be reviewed at any time and new rules shall be adopted if necessary. Unless new rules are adopted or a decision is made to abrogate rules for reconstitution, the rules in force at the time of review shall continue to apply. A seventy percent majority of the total voting power shall be required for decisions to adopt, modify, or abrogate the rules for reconstitution.

Section 7. Exchange rates

(a) Except as otherwise provided in (b) below, the exchange rates for transactions between participants under Section 2(a) and (b) of this Article shall be such that participants using special drawing rights shall receive the same value whatever currencies might be provided and whichever participants provide those currencies, and the Fund shall adopt regulations to give effect to this principle.

(b) The Fund, by an eighty-five percent majority of the total voting power, may adopt policies under which in exceptional circumstances the Fund, by a seventy percent majority of the total voting power, may authorize participants entering into transactions under Section 2(b) of this Article to agree on exchange rates other than those applicable under (a) above.

(c) The Fund shall consult a participant on the procedure for determining rates of exchange for its currency.

(d) For the purpose of this provision the term participant includes a terminating participant.

Article XX

Special Drawing Rights Department Interest and Charges

Section 1. Interest

Interest at the same rate for all holders shall be paid by the Fund to each holder on the amount of its holdings of special drawing rights. The Fund shall pay the amount due to each holder whether or not sufficient charges are received to meet the payment of interest.

Section 2. Charges

Charges at the same rate for all participants shall be paid to the Fund by each participant on the amount of its net cumulative allocation of special drawing rights plus any negative balance of the participant or unpaid charges.

Section 3. Rate of interest and charges

The Fund shall determine the rate of interest by a seventy percent majority of the total voting power. The rate of charges shall be equal to the rate of interest.

Section 4. Assessments

When it is decided under Article XVI, Section 2 that reimbursement shall be made, the Fund shall levy assessments for this purpose at the same rate for all participants on their net cumulative allocations.

Section 5. Payment of interest, charges, and assessments

Interest, charges, and assessments shall be paid in special drawing rights. A participant that needs special drawing rights to pay any charge or assessment shall be obligated and entitled to obtain them, for currency acceptable to the Fund, in a transaction with the Fund conducted through
the General Resources Account. If sufficient special drawing rights cannot be obtained in this way, the participant shall be obligated and entitled to obtain them with a freely usable currency from other participants. The special drawing rights acquired by a participant after the date for payment shall be applied against its unpaid charges and cancelled.

Article XXI
Administration of the General Department and the Special Drawing Rights Department
(a) The General Department and the Special Drawing Rights Department shall be administered in accordance with the provisions of Article XII, subject to the following provisions:

(i) For meetings of or decisions by the Board of Governors on matters pertaining exclusively to the Special Drawing Rights Department only requests by, or the presence and the votes of, participants having at least one seat on the Board may be counted.

(ii) For decisions by the Executive Board on matters pertaining exclusively to the Special Drawing Rights Department only Executive Directors appointed or elected by at least one member that is a participant shall entitle an appointed Executive Director to vote and cast the number of votes allotted to the member.

(iii) Questions of the general administration of the Fund, including reimbursement under Article XVI, Section 2, and any question whether a matter pertains to both Departments or to one Department, shall be decided by the Executive Board. A decision on a matter pertaining to the Special Drawing Rights Department shall so indicate.

(b) In addition to the privileges and immunities that are accorded under Article IX of this Agreement, no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.

(c) A question of interpretation of the provisions of this Agreement on matters pertaining exclusively to the Special Drawing Rights Department shall be submitted to the Executive Board pursuant to Article XXIX(a) only on the request of a participant. In any case where the Executive Board has given a decision on a question of interpretation pertaining exclusively to the Special Drawing Rights Department, the participant shall be entitled to use its special drawing rights if the conclusion of the Executive Board is that the participant has failed to fulfill its obligations under the Agreement.

(d) Whenever a disagreement arises between the Fund and a participant with respect to any matter arising exclusively from special drawing rights, the decision of the Executive Board shall be final and binding on the parties and shall be made known to the Committee on Interpretation on questions pertaining exclusively to the Special Drawing Rights Department.

Article XXIII
General Obligations of Participants
In addition to the obligations assumed with respect to special drawing rights under other articles of this Agreement, each participant undertakes to collaborate with the Fund and with other participants in order to facilitate the effective functioning of the Special Drawing Rights Department and to achieve the objective of making the special drawing right the principal reserve asset in the international monetary system.

Section 1. Emergency provisions
In the event of an emergency or the development of unforeseen circumstances threatening the activities of the Fund with respect to the Special Drawing Rights Department, the Executive Board, by an eighty-five percent majority of the total voting power, may suspend the provisions of Article XXVII, Section 1(b), (c), and (d), shall apply.

Section 2. Failure to fulfill obligations
(a) If the Fund finds that a participant has failed to fulfill any other obligation with respect to special drawing rights, the Fund may suspend the right of the participant to use special drawing rights acquired after the suspension.

(b) If the Fund finds that a participant has failed to fulfill any obligation under Article XIX, Section 4, the right of the participant to use its special drawing rights shall be suspended unless the Fund otherwise determines.

(c) Regulations shall be adopted to ensure that before action is taken against any participant under (a) or (b) above, the participant shall be given notice of the complaint against it and an opportunity to contest it. In any case, if the participant, after having had notice of a complaint relating to (a) above, shall not use special drawing rights pending the disposition of the complaint, the participant shall not be entitled to use special drawing rights pending the disposition of the complaint.
Article XXIV
Termination of Participation

Section 1. Right to terminate participation

(a) Any participant may terminate its participation in the Special Drawing Rights Department at any time by transmitting a notice in writing to the Fund at its principal office. Termination shall become effective on the date the notice is received.

(b) A participant that withdraws from membership in the Fund shall be deemed to have simultaneously terminated its participation in the Special Drawing Rights Department.

Section 2. Settlement on termination

(a) When a participant terminates its participation in the Special Drawing Rights Department, all operations and transactions by the terminating participant in special drawing rights shall cease except as otherwise permitted under an agreement made pursuant to Section 3. When a participant terminates its participation, the Fund may direct that a reconstituted participant account in accordance with Article XIX, Section 4, shall be established, and no interest shall accrue thereafter to the account of the participant that terminated.

(b) The right of a participant to use its special drawing rights shall not be suspended because it has become ineligible for participation.

(c) A participant shall be required to use all special drawing rights held by it in accordance with the provisions applicable to participants in the Fund.

Section 3. Interest and charges

After the date of termination the Fund shall pay interest on any outstanding balance of special drawing rights held by a terminating participant and the terminating participant shall pay to the Fund an amount equal to the maximum amount of interest payable to the Fund for special drawing rights held by the terminating participant that is used in the settlement to extinguish its obligation to the Fund. Any interest paid to the terminating participant that is used in the settlement to extinguish its obligation to the Fund shall be cancelled.

Section 4. Settlement of obligation to the Fund

Currency received by the Fund from a terminating participant shall be used by the Fund to redeem special drawing rights held by members in proportion to the amount by which each member's holdings of special drawing rights exceed its net cumulative cash payment or receipt due under an agreement on settlement or under Schedule H and set off against that installment shall be cancelled.

Section 5. Settlement of obligation to a terminating participant

Whenever the Fund is required to redeem special drawing rights held by a terminating participant, redemption shall be made with currency provided by participants specified by the Fund. These provisions shall apply with respect to any participant that is a non-member of the Fund.

Section 6. General Reorganization Account transactions

In order to facilitate settlement with a reconstituted participant, the reconstituted participant account shall be established, and no interest shall accrue thereafter to the account of the participant that terminated.

Section 7. General Reorganization Account transactions

In order to facilitate settlement with a reconstituted participant, the Fund may direct that a reconstituted participant account in accordance with Article XIX, Section 4, shall be established, and no interest shall accrue thereafter to the account of the participant that terminated.
(a) The Special Drawing Rights Department may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Board decides that liquidation of the Special Drawing Rights Department may be necessary, it may temporarily suspend allocations or cancellations and all operations and transactions in special drawing rights pending decision by the Board of Governors. A decision by the Board of Governors to liquidate the Fund shall be a decision to liquidate both the General Department and the Special Drawing Rights Department.

(b) If the Board of Governors decides to liquidate the Special Drawing Rights Department, all allocations or cancellations and all operations and transactions in special drawing rights and the activities of the Fund with respect to the Special Drawing Rights Department shall cease except those incidental to the orderly discharge of the obligations of participants and of the Fund with respect to special drawing rights, and all obligations of the Fund and of participants under this Agreement with respect to special drawing rights shall cease except those set out in this Article, Article XX, Article XXI (d), Article XXIV, Article XXIX (c), and Schedule H, or any agreement reached under Article XXIV subject to paragraph 4 of Schedule H, and Schedule I.

(c) Upon liquidation of the Special Drawing Rights Department, interest and charges that accrued to the date of liquidation and assessments levied before that date but not paid shall be paid in special drawing rights. The Fund shall be obligated to redeem all special drawing rights held by holders, and each participant shall be obligated to pay the Fund an amount equal to its net cumulative allocation of special drawing rights and such other amounts as may be due and payable because of its participation in the Special Drawing Rights Department.

(d) Liquidation of the Special Drawing Rights Department shall be administered in accordance with the provisions of Schedule I.

Article XXVI
Withdrawal from Membership
Section 1. Right of members to withdraw
Any member may withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective on the date such notice is received.

Section 2. Compulsory withdrawal
(a) If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund. Nothing in this Section shall be deemed to limit the provisions of Article V, Section 5 or Article VI, Section 1.

(b) If, after the expiration of a reasonable period following a declaration of ineligibility under (a) above, the member persists in its failure to fulfill any of its obligations under this Agreement, the Fund may, by a seventy percent majority of the total voting power, suspend the voting rights of the member. During the period of the suspension, the provisions of Schedule I shall apply. The Fund may, by a seventy percent majority of the total voting power, terminate the suspension at any time.

(c) If, after the expiration of a reasonable period following a decision of suspension under (b) above, the member persists in its failure to fulfill any of its obligations under this Agreement, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the Governors having eighty-five percent of the total voting power.

(d) Regulations shall be adopted to ensure that before action is taken against any member under (a), (b), or (c) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing.

Section 3. Settlement of accounts with members withdrawing
When a member withdraws from the Fund, normal operations and transactions of the Fund in its currency shall cease and settlement of all accounts between it and the Fund shall be made with reasonable dispatch by agreement between it and the Fund. If agreement is not reached promptly, the provisions of Schedule J shall apply to the settlement of accounts.

Article XXVII
Emergency Provisions
Section 1. Temporary suspension
(a) In the event of an emergency or the development of unforeseen circumstances threatening the activities of the Fund, the Executive Board, by an eighty-five percent majority of the total voting power, may suspend for a period of not more than one year the operation of any of the following provisions:

(i) Article V, Sections 2, 3, 7, 8(a)(i) and (e);

(ii) Article VI, Section 2;

(iii) Article XI, Section 1;

(iv) Schedule C, paragraph 5.

(b) A suspension of the operation of a provision under (a) above may not be extended beyond one year except by the Board of Governors which, by an eighty-five percent majority of the total voting power, may extend a suspension for an additional period of not more than two years if it finds that the emergency or unforeseen circumstances referred to in (a) above continue to exist.

(c) The Executive Board may, by a majority of the total voting power, terminate such suspension at any time.

(d) The Fund may adopt rules with respect to the subject matter of a provision during the period in which its operation is suspended.

Section 2. Liquidation of the Fund
(a) The Fund may not be liquidated except by decision of the Board of Governors. In an emergency, if the Executive Board decides that liquidation of the Fund may be necessary, it may temporarily suspend all operations and
transactions, pending decision by the Board of Governors.

(b) If the Board of Governors decides to liquidate the Fund, the Fund shall forthwith cease to engage in any activities except those incidental to the orderly collection and liquidation of its resources. For this purpose, the Board of Governors may, after consultation with the Fund, appoint a liquidator to take charge of its affairs. In such a case, the liquidator shall promptly report on the progress of his work to the Board of Governors.

(c) Liquidation shall be administered in accordance with the provisions of Schedule K.

Article XXVIII Amendments

(a) Any proposal to introduce modifications in this Agreement shall be communicated to the chairman of the Board of Governors. The proposal shall be submitted in writing and shall state the nature of the modification and the reasons for it. The Board of Governors may accept or reject the proposal, or may request further information or consultation before making a decision. The decision to accept or reject a proposal shall be taken by a majority of the Board of Governors, including any securities accepted by the Fund under Article XXVIII(a).

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying:

(i) the right to withdraw from the Fund (Article XXVI, Section 1);
(ii) the provision that no change in a member's quota shall be made without its consent except on the proposal of that member (Schedule C, paragraph 6);
(iii) the provision that no change may be made in the par value of a member's currency except on the proposal of that member (Schedule C, paragraph 6).

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

Article XXIX Interpretation

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Board for interpretation. The Board of Governors may choose to appoint an Executive Director, in which case it shall be entitled to representation in accordance with Article XII, Section 3(j).

(b) In any case where the Executive Board has given a decision under (a) above, any member may require, within three months from the date of the decision, that the question be referred to the Board of Governors. Any question referred to the Board of Governors shall be considered by a Committee on Interpretation of the Board of Governors. Each Committee member shall have one vote. The Board of Governors may refer any question to a Committee of Inquiry or to a special Board of Inquiry.

(c) Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of experts appointed by agreement between the parties or by the International Court of Justice. The decision of the arbitral tribunal shall be final. Any question referred to the Board of Governors shall be decided by a majority of its members present at the meeting. The decision of the Board of Governors shall be communicated to the parties concerned.

Article XXX Explanation of Terms

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following provisions:

(a) The Fund's holdings of a member's currency in the General Resources Account shall include any securities accepted by the Fund under Article III, paragraph 7, and in Schedule J, paragraph 6.

(b) Reserve tranche purchase means a purchase by the Fund of a member's currency in exchange for its own currency which does not cause the Fund's holdings of that currency to exceed its quota.

(c) Payments for current transactions mean payments which are not for the purpose of transferring capital, and include, without limitation:

(i) all payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
(ii) payments for current transactions in connection with financing policies on the use of its general resources in respect of products and operations of its own account, or at its own risk.

(d) Reserve tranche purchase means a purchase by the member of its own currency in exchange for its own currency which does not cause the Fund's holdings of that currency to exceed its quota.

(e) Payments for current transactions mean payments which are not for the purpose of transferring capital, and include, without limitation:

(i) all payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;
The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

(e) Net cumulative allocation of special drawing rights means the total amount of special drawing rights allocated to a participant less its share of special drawing rights that have been cancelled under Article XVIII, Section 2(a).

(f) A freely usable currency means a member's currency that the Fund determines (i) is, in fact, widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets.

(g) Members that were members on August 31, 1975 shall be deemed to include a member that accepted membership after that date pursuant to a resolution of the Board of Governors adopted before that date.

(h) Transactions of the Fund means exchanges of monetary assets by the Fund for other monetary assets. Operations of the Fund means other uses or receipts of monetary assets by the Fund.

(i) Transactions in special drawing rights means exchanges of special drawing rights for other monetary assets. Operations in special drawing rights means other uses or receipts of special drawing rights.

Article XXXI
Section 1. Entry into force
This Agreement shall enter into force when it has been signed by the member governments referred to in (i) above, and when the instruments referred to in Section 2(a) of this Agreement have been deposited with the government of the United States of America, which shall inform the governments referred to above of the date of such deposit.

Section 2. Signature
(a) Each government on whose behalf this Agreement is signed shall deposit with the government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each country shall become a member of the Fund as from the date of the signature and depositary clause reproduced below.
Ethiopia 6
France 450
Greece 40
Guatemala 5
Haiti 5
Honduras 2.5
Iceland 1
India 400
Iran 25
Iraq 8
Ireland .5
Liberia .5
Luxembourg 10
Mexico 90
Netherlands 275
New Zealand 50
Nicaragua 2
Norway 50
Panama .5
Paraguay 2
Peru 25
Philippine Commonwealth 15
Poland 125
Union of South Africa 100
Union of Soviet Socialist Republics 1200
United Kingdom 1300
United States 2750
Uruguay 15
Venezuela 15
Yugoslavia 60

*The quota of Denmark shall be determined by the Fund after the Danish Government has declared its readiness to sign this Agreement but before signature takes place.

Schedule B

Transitional Provisions with Respect to Repurchase, Payment of Additional Subscriptions, Gold, and Certain Operational Matters

1. Repurchase obligations that have accrued pursuant to Article V, Section 7(b) before the date of the second amendment of this Agreement and that remain undischarged at that date shall be discharged not later than the date or dates at which the obligations had to be discharged in accordance with the provisions of this Agreement before the second amendment.

2. A member shall discharge with special drawing rights any obligation to pay gold to the Fund in repurchase or as a subscription that is outstanding at the date of the second amendment of this Agreement and that remain undischarged at that date shall be discharged not later than the date or dates at which the obligations had to be discharged in accordance with the provisions of this Agreement before the second amendment.

3. For the purposes of 2 above 0.888 671 gram of fine gold shall be equivalent to one special drawing right, and the amount of currency payable under 2 above shall be determined in this basis on the basis of the value of the currency in terms of the special drawing right at the date of discharge.

4. A member’s currency held by the Fund in excess of seventy-five percent of the member’s quota at the date of the second amendment of this Agreement and not subject to repurchase under 1 above shall be repurchased in accordance with the following rules:

   (i) Holdings that resulted from a purchase shall be repurchased in accordance with the policy on the use of the Fund’s general resources under which the purchase was made.

   (ii) Other holdings shall be repurchased not later than four years after the date of the second amendment of this Agreement.

5. Repurchases under 1 above that are not subject to 2 above, repurchases under 4 above, and any specification of currencies under 2 above shall be in accordance with Article V, Section 7(i).

6. All rules and regulations, rates, procedures, and decisions in effect at the date of the second amendment of this Agreement shall remain in effect until they are changed in accordance with the provisions of this Agreement.

7. To the extent that arrangements equivalent in effect to (a) and (b) below have not been completed before the date of the second amendment of this Agreement, the Fund shall

   (a) sell up to 25 million ounces of fine gold held by it on August 31, 1975 to those members that were members on that date and that agree to buy it, in proportion to their quotas on that date. The sale to a member under this sub-paragraph (a) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold, and

   (b) sell up to 25 million ounces of fine gold held by it on August 31, 1975 for the benefit of developing members that were members on that date, provided, however, that the part of any profits or surplus value of the gold that corresponds to the proportion of such a member’s quota on August 31, 1975 to the total of the quotas of all members on that date shall be transferred directly to each such member. The requirements under Article V, Section 12(c) that the Fund consult a member, obtain a member’s concurrence, or exchange a member’s currency for the currencies of other members in certain circumstances shall apply with respect to currency received by the Fund as a result of sales of gold under this provision, other than sales to a member in return for its own currency, and placed in the General Resources Account.

Upon the sale of gold under this paragraph 7, an amount of the proceeds in the currencies received equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold shall be placed in the General Resources Account and other assets held by the Fund under arrangements pursuant to (b) above shall be held separately from the general resources of the Fund. Assets that remain subject to disposition by the Fund upon termination of arrangements pursuant to (b) above shall be transferred to the Special Disbursement Account.

Schedule C

Par Values
1. The Fund shall notify members that par values may be established for the currency of a member in accordance with Article IV, Sections 1, 3, 4, and 5 and this Schedule, in terms of the special drawing right, or in terms of such other common denominator as is prescribed by the Fund. The common denominator shall not be gold or a currency given under Article I.

2. Any member that intends to establish a par value for its currency shall propose a par value to the Fund within a reasonable time after notice is given under 1 above.

3. Any member that does not intend to establish a par value for its currency under 1 above shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.

4. The Fund shall, within a reasonable period after receipt of the proposal, concur in or object to the proposed par value. A proposed par value shall not take effect for the purposes of this Agreement in any currency unless the Fund has either concurred in it or not objected to it within the period of time specified above. The Fund may object to a proposed par value because of the domestic social or political policies of the member proposing the par value.

5. Each member that has a par value for its currency undertakes to apply appropriate measures consistent with this Agreement to ensure that its currency is adequately represented in the international monetary system.

6. A member shall not propose a change in the par value of its currency except to correct, or prevent the emergence of, a fundamental disequilibrium. A change may be made only on the proposal of the member and only after consultation with the Fund.

7. When a change is proposed, the Fund shall, within a reasonable time, concur in or object to the proposed change. A proposed change in the par value shall not take effect for the purposes of this Agreement in any member's currency unless the Fund has either concurred in it or not objected to it within the period of time specified above. The Fund may object to a proposed change in the par value because of the domestic social or political policies of the member proposing the change.

8. If a member has ceased to exist under Article XVIII, Section 8, the member shall consult with the Fund and ensure that its exchange arrangements are consistent with the purposes of the Fund and are adequate to fulfill its obligations under Article IV, Section 1.

Schedule D
Council
1. (a) Each member that appoints an Executive Director or a group of members that has the number of votes allotted to it cast by an elected Executive Director shall appoint to the Council one Councillor, who shall be a Governor, Minister in the government of a member, or a public official, representative of the private sector, or an economist. The Councillor shall be elected for a term of three years, or until a new appointment is made or until the next regular election of Executive Directors, whichever occurs sooner.

2. (a) The Council shall consider proposals pursuant to Article XXVIII, Sections 1 and 2, to amend the Articles of Agreement.

3. (a) The Board of Governors may delegate to the Council authority to exercise any powers of the Board of Governors except the powers conferred directly by this Agreement on the Board of Governors.

(b) Each Councillor shall be entitled to cast the number of votes allotted under Article XII, Section 5 to the member or group of members appointing him. A Councillor appointed by a group of members may cast separately the votes allotted to each member in the group.

4. (a) The Council shall consider proposals pursuant to Article XXVIII, Section 1 to amend the Articles of Agreement.

(b) The Council shall consider proposals pursuant to Article XXVIII, Section 2, to amend the Articles of Agreement.

5. (a) The Board of Governors may delegate to the Council authority to exercise any powers of the Board of Governors except the powers conferred directly by this Agreement on the Board of Governors.

(b) Each Councillor shall be entitled to cast the number of votes allotted under Article XII, Section 5 to the member or group of members appointing him. A Councillor appointed by a group of members may cast separately the votes allotted to each member in the group.
The Council shall not take any action pursuant to powers delegated it by the Board of Governors that is inconsistent with any action taken by the Board of Governors or the Executive Board shall be deemed to have been taken by all such votes.

Schedule E

Election of Executive Directors

1. The election of the elective Executive Directors shall be by ballot of the Governors eligible to vote.

2. In balloting for the elective Executive Directors, for one person all of the votes to which he is entitled under Article XII, Section 5(a) shall be considered to have been cast by him, and no other person shall be entitled to vote for or cast any other person for such position.

3. The Executive Board shall select a Councillor as chairman, shall adopt regulations as may be necessary or appropriate to perform its functions, and shall determine any aspect of its procedure. The Executive Board shall hold such meetings as may be provided for by the Council or called by the Executive Board.

5. (a) The Executive Board shall have the following provisions: Article XII, Section 2(c), (f), (g), and (j); Article XVIII, Section 4(a) and Section 4(c)(iv); Article XXIII, Section 1; and Article XXVII, Section 1(a).

(b) For decisions by the Executive Board on matters pertaining exclusively to the Special Drawing Rights Department only shall be entitled to vote and cast the number of votes allotted to a participant with which arrangements have been made pursuant to the last sentence of 3(b) above.

(c) The Executive Board may by regulations establish a procedure whereby the Governors of the Councillors on a specific question without a meeting of the Council when in the judgment of the Executive Board such action is necessary or appropriate to perform its functions, and shall determine any aspect of its procedure. The Executive Board shall hold such meetings as may be provided for by the Council or called by the Executive Board.

6. The first sentence of Article XII, Section 2(a) shall be deemed to include a reference to this paragraph.

Schedule F

Designation During the first basic period the rules for designation shall be as follows:

(a) Participants subject to designation under Article XIX, Section 5(a)(i) shall be designated for such amounts as will provide a gold and foreign exchange. The number of such transactions may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

(b) The formula to give effect to (a) above shall be such that participants exchange when the ratios described in (a) above are equal, and...
Schedule I

1. In the event of liquidation of the Special Drawing Rights Department, participants shall discharge their obligations to the Special Drawing Rights Department by paying to the Special Drawing Rights Department an amount equal to the net difference between the special drawing rights held by the participants and the amount required to liquidate the Special Drawing Rights Department. The amount required to liquidate the Special Drawing Rights Department shall be determined as follows:

(a) The Fund shall make calculations to determine whether or not the circumstances justify the liquidation of the Special Drawing Rights Department. If the Fund determines that the circumstances justify the liquidation, it shall make the liquidation in accordance with Schedule K.

(b) The Fund shall determine the amount required to liquidate the Special Drawing Rights Department by calculating the present value of the future obligations of the special drawing rights department. The present value shall be calculated using a discount rate determined by the Fund.

2. If the obligation remaining after the liquidation of the Special Drawing Rights Department is to the terminating participants and agreement on settlement is not reached within six months of the date of termination, the Fund shall redeem the balance as it may determine, either (a) by the payment to the terminating participants of the amounts provided by the law of the Fund or from any other holder, or (b) by obtaining special drawing rights for the Fund, at the same time as the liquidation of the Special Drawing Rights Department.

3. Installments under either 1 or 2 above shall fall due on the first anniversary of the date of termination and at intervals of six months thereafter.

4. In the event of the liquidation of the Special Drawing Rights Department, the Fund shall determine whether or not the circumstances justify the liquidation of the Special Drawing Rights Department. If the Fund determines that the circumstances justify the liquidation, it shall make the liquidation in accordance with Schedule K.

Schedule J

1. If the obligation remaining after the liquidation of the Special Drawing Rights Department is to the Fund and agreement on settlement is not reached within six months of the date of termination, the Fund shall redeem the balance as it may determine, either (a) by the payment to the terminating participants of the amounts provided by the law of the Fund or from any other holder, or (b) by obtaining special drawing rights for the Fund, at the same time as the liquidation of the Special Drawing Rights Department.

2. If it is decided to liquidate the Fund within six months of the date of termination, the Fund shall determine whether or not the circumstances justify the liquidation of the Fund. If the Fund determines that the circumstances justify the liquidation, it shall make the liquidation in accordance with Schedule K.

Schedule K

1. If the obligation remaining after the liquidation of the Special Drawing Rights Department is to the terminating participants and agreement on settlement is not reached within six months of the date of termination, the Fund shall redeem the balance as it may determine, either (a) by the payment to the terminating participants of the amounts provided by the law of the Fund or from any other holder, or (b) by obtaining special drawing rights for the Fund, at the same time as the liquidation of the Special Drawing Rights Department.

2. If it is decided to liquidate the Fund within six months of the date of termination, the Fund shall redeem the balance as it may determine, either (a) by the payment to the terminating participants of the amounts provided by the law of the Fund or from any other holder, or (b) by obtaining special drawing rights for the Fund, at the same time as the liquidation of the Fund.
(a) Special drawing rights held by governments that have terminated their participation more than six months before the date the Board of Governors decides to liquidate the Special Drawing Rights Department shall be redeemed in accordance with the terms of any agreement under Article XXIV or Schedule F.

(b) Special drawing rights held by holders that are not participants shall be redeemed before those held by participants, and shall be redeemed in proportion to the amount held by each holder.

(c) The Fund shall determine the proportion of special drawing rights held by each participant in relation to its net cumulative allocation. The Fund shall first redeem special drawing rights from the participants with the highest proportion until this proportion is reduced to that of the second highest proportion; the Fund shall then redeem the special drawing rights held by these participants in accordance with their net cumulative allocations until the proportions are reduced to that of the third highest proportion; and this process shall be continued until the amount available for redemption is exhausted.

4. Any amount that a participant will be entitled to receive in redemption under 3 above shall be set off against any amount to be paid under 1 above.

5. During liquidation the Fund shall pay interest on the amount of special drawing rights held by holders, and each participant shall pay charges on the net cumulative allocation of special drawing rights to it less the amount of any payments made in accordance with 1 above. The rates of interest and charges and the time of payment shall be determined by the Fund. Payments of interest and charges shall be made in special drawing rights to the extent possible. A participant that does not hold sufficient special drawing rights to meet any charges shall make the payment with a currency specified by the Fund. Special drawing rights received as charges in amounts needed for administrative expenses shall not be used for the payment of interest, but shall be transferred to the Fund and shall be redeemed first and with the currencies used by the Fund to meet its expenses.

6. While a participant is in default with respect to any payment required by 1 or 5 above, no amounts shall be paid to it in accordance with 3 or 5 above.

7. If after the final payments have been made to participants each participant in default does not hold special drawing rights in the same proportion to its net cumulative allocation, those participants holding a lower proportion shall purchase from those holding a higher proportion such amounts in accordance with arrangements made by the Fund as will make the proportion of their holdings of special drawing rights the same. Each participant in default shall pay to the Fund its own currency in an amount equal to its default. The Fund shall apportion this currency and residual claims among participants in proportion to the amount of special drawing rights held by each and these special drawing rights shall be cancelled. The Fund shall then close the books of the Special Drawing Rights Department and all of the Fund’s liabilities arising from the liquidation of special drawing rights and the administration of the Special Drawing Rights Department shall cease.

8. Each participant whose currency is distributed to other participants under this Schedule guarantees the unrestricted use of such currency at all times for the purchase of goods or for payments of sums due to it or to persons in its territories. Each participant so obligated agrees to compensate other participants for any loss resulting from the difference between the value at which the Fund distributed its currency under this Schedule and the value realized by such participants on disposal of its currency.

Schedule J

Settlement of Accounts with Members Withdrawing

1. The settlement of accounts with respect to the General Resources Account shall be made according to 1 to 6 of this Schedule. The Fund shall be obligated to pay to a member withdrawing an amount equal to its quota, plus any other amounts due to it from the Fund, less any amounts due to the Fund, including charges accruing after the date of its withdrawal; but no payments shall be made until six months after the date of withdrawal. Payments shall be made in the currency of the withdrawing member, and for this purpose the Fund may transfer to the General Resources Account holdings of the member’s currency in the Special Disbursement Account or in the Investment Account in exchange for an equivalent amount of the currencies of other members in the General Resources Account selected by the Fund with their concurrence.

2. If the Fund’s holdings of the currency of the withdrawing member are not sufficient to pay the net amount due from the Fund, the balance shall be paid in a freely usable currency, or in such other manner as may be agreed. If the Fund and the withdrawing member do not reach agreement within six months of the date of withdrawal, the currency in question held by the Fund shall be transferred to the withdrawing member. Any balance due shall be paid in ten half-yearly installments during the ensuing five years. Each such installment shall be paid, at the option of the Fund, either in the currency of the withdrawing member acquired after its withdrawal or in a freely usable currency.

3. If the Fund fails to meet any installment which is due in accordance with the preceding paragraphs, the withdrawing member shall be entitled to require the Fund to pay the installment in any currency held by the Fund with the exception of any currency which has been declared scarce under Article VII, Section 3.

4. If the Fund’s holdings of the currency of a withdrawing member exceed the amount due to it, and if agreement on the method of settling accounts is not reached within six months of the date of withdrawal, the former member shall be obligated to redeem such excess currency in a freely usable currency. Redemption shall be made at the rates at which the Fund would sell such currencies at the time of withdrawal from the Fund. The withdrawing member shall complete redemption within five years of the date of withdrawal, or within such longer period as may be fixed by the Fund, but shall not be required to redeem in any half-yearly period more than one-tenth of the Fund’s excess holdings of its currency at the date of withdrawal plus further acquisitions of the currency during such half-yearly period. If the withdrawing member does not fulfill this obligation, the Fund may in an orderly manner liquidate in any market the amount of currency which should have been redeemed.

5. Any member desiring to obtain the currency of a member which has withdrawn shall acquire it by purchase from the Fund, to the extent that such member has access to the general resources of the Fund and that such currency is available under 4 above.
6. The withdrawing member guarantees the unrestricted use at all times of the currency disposed of under 4 and 5 above for the purchase of goods or for payment of sums due to it or to persons within its territories. It shall compensate the Fund for any loss resulting from the difference between the value of its currency in terms of the special drawing right on the date of withdrawal and the value realized in terms of the special drawing right by the Fund on disposal under 4 and 5 above.

7. If the withdrawing member is indebted to the Fund as the result of transactions conducted through the Special Disbursement Account under Article V, Section 12(f)(ii), the indebtedness shall be discharged in accordance with the terms of the indebtedness.

8. If the Fund holds the withdrawing member’s currency in the Special Disbursement Account or in the Investment Account, the Fund may sell it in any market for the currencies of members the amount of the currency of the withdrawing member remaining in each account after use under 1 above, and the proceeds of the exchange of the amount in each such account shall be kept in that account. Paragraph 5 above and the first sentence of 6 above shall apply to the withdrawing member’s currency.

9. If the Fund holds obligations of the withdrawing member in the Special Disbursement Account pursuant to Article V, Section 12(h), or in the Investment Account, the Fund may sell them in any market for the currencies of members whose currencies are held by the Fund in amounts less than their quotas. Paragraph 8 above shall apply to the proceeds of such disinvestment.

10. In the event of the Fund going into liquidation under Article XXVII, Section 2 within six months of the date on which the member withdraws, the accounts between the Fund and that government shall be settled in accordance with Article XXVII, Section 2 and Schedule K.

Schedule K
Administration of Liquidation

1. In the event of liquidation the liabilities of the Fund other than the repayment of subscriptions shall have priority in the distribution of the assets of the Fund. In meeting each such liability the Fund shall use its assets in the following order:

   (a) the currency in which the liability is payable;
   (b) gold;
   (c) all other currencies in proportion, so far as may be practicable, to the quotas of the members.

2. After the discharge of the Fund’s liabilities in accordance with 1 above, the balance of the Fund’s assets shall be distributed and apportioned as follows:

   (a) (i) The Fund shall calculate the value of gold held on August 31, 1975 that it continues to hold on the date of the decision to liquidate. The calculation shall be made in accordance with 9 below and also on the basis of one special drawing right per 0.886 671 gram of fine gold on the date of liquidation. Gold equivalent to the excess of the former value over the latter shall be distributed to those members that were members on August 31, 1975 in proportion to their quotas on that date.

   (ii) The Fund shall distribute any assets held in the Special Disbursement Account on the date of the decision to liquidate to those members that were members on August 31, 1975 in proportion to their quotas on that date. Each type of asset shall be distributed proportionately to members.

   (b) The Fund shall distribute its remaining holdings of gold among the members whose currencies are held by the Fund in amounts less than their quotas in the proportions, but not in excess of, the amounts by which their quotas exceed the Fund’s holdings of their currencies:

   (c) The Fund shall distribute to each member one-half the Fund’s holdings of its currency but such distribution shall not exceed fifty percent of its quota.

   (d) The Fund shall apportion the remainder of its holdings of gold and each currency

      (i) among all members in proportion to, but not in excess of, the amounts due to each member after the distributions under (b) and (c) above, provided that distribution under 2(a) above shall not be taken into account for determining the amounts due, and

      (ii) any excess holdings of gold and currency among all the members in proportion to their quotas.

3. Each member shall redeem the holdings of its currency apportioned to other members under 2(d) above, and shall agree with the Fund within three months after a decision to liquidate an orderly procedure for such redemption.

4. If a member has not reached agreement with the Fund within the three-month period referred to in 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members. Each currency apportioned to a member which has not reached agreement shall be used, so far as possible, to redeem its currency apportioned to the members which have made agreements with the Fund under 3 above.

5. If a member has reached agreement with the Fund in accordance with 3 above, the Fund shall use the currencies of other members apportioned to that member under 2(d) above to redeem the currency of that member apportioned to other members which have made agreements with the Fund under 3 above. Each amount so redeemed shall be redeemed in the currency of the member to which it was apportioned.

6. After carrying out the steps in the preceding paragraphs, the Fund shall pay to each member the remaining currencies held for its account.

7. Each member whose currency has been distributed to other members under 6 above shall redeem such currency in the currency of the member requesting redemption, or in such other manner as may be agreed between them. If the members involved do not otherwise agree, the member obligated to redeem shall complete redemption within five years of the date of distribution, but shall not be required to redeem in any half-yearly period more than one-seventh of the amount distributed to each other member. If the member does not fulfill this obligation, the amount of currency which should have been redeemed may be liquidated in an orderly manner in any market.
8. Each member whose currency has been distributed to other members under
6 above guarantees the unrestricted use of such currency at all times for
the purchase of goods or for payment of sums due to it or to persons in its
territories. Each member so obligated agrees to compensate other members
for any loss resulting from the difference between the value of its currency
in terms of the special drawing right on the date of the decision to
liquidate the Fund and the value in terms of the special drawing right
realized by such members on disposal of its currency.

9. The Fund shall determine the value of gold under this Schedule on the
basis of prices in the market.

10. For the purposes of this Schedule, quotas shall be deemed to have
been increased to the full extent to which they could have been increased
in accordance with Article III, Section 2(b) of this Agreement.

Schedule L
Suspension of Voting Rights

In the case of a suspension of voting rights of a member under Article
XXVI, Section 2(b), the following provisions shall apply:

1. The member shall not:

(a) participate in the adoption of a proposed amendment of this
    Agreement, or be counted in the total number of members for that purpose,
    except in the case of an amendment requiring acceptance by all members
    under Article XXVIII(b) or pertaining exclusively to the Special Drawing
    Rights Department;

(b) appoint a Governor or Alternate Governor, appoint or participate
    in the appointment of a Councillor or Alternate Councillor, or appoint,
    elect, or participate in the election of an Executive Director.

2. The number of votes allotted to the member shall not be cast in any
organ of the Fund. They shall not be included in the calculation of the
total voting power, except for purposes of the acceptance of a proposed
amendment pertaining exclusively to the Special Drawing Rights Department.

3. (a) The Governor and Alternate Governor appointed by the member shall
    cease to hold office.

(b) The Councillor and Alternate Councillor appointed by the member,
or in whose appointment the member has participated, shall cease to hold
office, provided that, if such Councillor was entitled to cast the number of
votes allotted to other members whose voting rights have not been sus-
pended, another Councillor and Alternate Councillor shall be appointed by
such other members under Schedule D, and, pending such appointment, the
Councillor and Alternate Councillor shall continue to hold office, but for
a maximum of thirty days from the date of suspension.

(c) The Executive Director appointed or elected by the member, or in
whose election the member has participated, shall cease to hold office,
unless such Executive Director was entitled to cast the number of votes
allotted to other members whose voting rights have not been suspended. In
the latter case:

(i) if more than ninety days remain before the next regular election

of Executive Directors, another Executive Director shall be elected for the
remainder of the term by such other members by a majority of the votes
cast; pending such election, the Executive Director shall continue to hold
office, but for a maximum of thirty days from the date of suspension;

(ii) if not more than ninety days remain before the next regular elec-
tion of Executive Directors, the Executive Director shall continue to hold
office for the remainder of the term.

4. The member shall be entitled to send a representative to attend any
meeting of the Board of Governors, the Council, or the Executive Board, but
not any meeting of their committees, when a request made by, or a matter
particularly affecting, the member is under consideration.
Articles of Agreement of the International Bank for Reconstruction and Development, 1944
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ARTICLE I

Purposes

The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above

ARTICLE II

Membership in and Capital of the Bank

SECTION 1. Membership

(a) The original members of the Bank shall be those members of the International Monetary Fund which accept membership in the Bank before the date specified in Article XI, Section 2 (e).

(b) Membership shall be open to other members of the Fund, at such times and in accordance with such terms as may be prescribed by the Bank.

SECTION 2. Authorized Capital

(a) The authorized capital stock of the Bank shall be $10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares (1) having a par value of $100,000 each, which shall be available for subscription only by members.

(b) The capital stock may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power.

SECTION 3. Subscription of Shares

(a) Each member shall subscribe shares of the capital stock of the Bank. The minimum number of shares to be subscribed by the original members shall be those set forth in Schedule A. The minimum number of shares to be subscribed by other members shall be determined by the Bank, which shall reserve a sufficient portion of its capital stock for subscription by such members.

(b) The Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.

1. As of April 27, 1988, the authorized capital stock of the Bank had been increased to 1,420,500 shares.

(c) If the authorized capital stock of the Bank is increased, each member shall have a reasonable opportunity to subscribe, under such conditions as the Bank shall decide, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank, but no member shall be obligated to subscribe any part of the increased capital.

SECTION 4. Issue Price of Shares

Shares included in the minimum subscriptions of original members shall be issued at par. Other shares shall be issued at par unless the Bank by a majority of the total voting power decides in special circumstances to issue them on other terms.

SECTION 5. Division and Calls of Subscribed Capital

The subscription of each member shall be divided into two parts as follows:

(i) twenty percent shall be paid or subject to call under Section 7 (i) of this Article as needed by the Bank for its operations;

(ii) the remaining eighty percent shall be subject to call by the Bank only when required to meet obligations of the Bank created under Article IV, Sections 1 (a) (ii) and (iii).

Calls on unpaid subscriptions shall be uniform on all shares.

SECTION 6. Limitation on Liability

Liability on shares shall be limited to the unpaid portion of the issue price of the shares.

SECTION 7. Method of Payment of Subscriptions for Shares

Payment of subscriptions for shares shall be made in gold or United States dollars and in the currencies of the members as follows:
SECTION 10. Restriction on Disposal of Shares

(i) under Section 5 (i) of this Article, two percent of the price of each share shall be payable in gold or United States dollars, and when calls are made, the remaining eighteen percent shall be payable in the currency of the member, either in gold, in United States dollars or in the currency required to discharge the obligations of the member which is acceptable to the Bank. Each member shall deal with the Bank only through its Treasury, central bank, stabilization fund or other special financial agency, and the Bank shall deal with members only by or through the same agencies.

 Shares shall not be pledged or encumbered in any manner whatever, and they shall be transferable only to the Bank.

(b) The remainder of the price of each share payable under Section 7 (i) of this Article shall be paid within sixty days of the date on which the Bank begins operations, provided that:

(i) any original member who cannot make such payment because it has not recovered possession of its gold reserves which are still seized or immobilized as a result of the war may postpone an payment until such date as the Bank shall decide.

(ii) the Bank shall, within one year of its beginning operations, call not less than eight percent of the price of the share in addition to the payment of two percent referred to in (a) above.

(iii) not more than five percent of the price of the share shall be called in any period of three months.

(iv) the Bank shall, within one year of its beginning operations, call not less than two percent of the price of the share in addition to the payment of two percent referred to in (a) above.

(v) in the opinion of the Bank, the rate of interest and other charges are reasonable and such rate, charges and the schedule for repayment of the loan are appropriate to the project.

(vi) the loan is approved by the Bank's board of directors.

SECTION 11. Use of Resources

(a) The resources and facilities of the Bank shall be used exclusively for the benefit of members with equitable considerations to projects for development and projects for reconstruction.

(b) In making or guaranteeing a loan, the Bank shall return to the member within a reasonable time an amount of such currency as the member has received under the provisions of the present paragraph, and which has not been repurchased by the member.
and the Bank shall act prudently in the interests both of the particular member in whose territories the project is located and of the members as a whole.

(vi) In guaranteeing a loan made by other investors, the Bank receives suitable compensation for its risk.

(vii) Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.

SECTION 5. Use of Loans Guaranteed, Participated in or Made by the Bank

(a) The Bank shall impose no conditions that the proceeds of a loan shall be spent in the territories of any particular member or members.

(b) The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

(c) In the case of loans made by the Bank, it shall open an account in the name of the borrower and the amount of the loan shall be credited to this account in the currency or currencies in which the loan is made. The borrower shall be permitted by the Bank to draw on this account only to meet expenses in connection with the project as they are actually incurred.

SECTION 6. Loans to the International Finance Corporation

(a) The Bank may make, participate in, or guarantee loans to the International Finance Corporation, an affiliate of the Bank, for use in its lending operations. The total amount outstanding of such loans, participations and guarantees shall not be increased if, at the time or as a result thereof, the aggregate amount of debt (including the guarantee of any debt) incurred by the said Corporation from any source and then outstanding shall exceed an amount equal to four times its unimpaired subscribed capital and surplus.

(b) The provisions of Article III, Sections 4 and 5 (c) and of Article IV, Section 3 shall not apply to loans, participations and guarantees authorized by this Section.

IBRD Article IV

Operations

SECTION 1. Methods of Making or Facilitating Loans

(a) The Bank may make or facilitate loans which satisfy the general conditions of Article III in any of the following ways:

(i) By making or participating in direct loans out of its own funds corresponding to its unimpaired paid-up capital and surplus and, subject to Section 6 of this Article, to its reserves.

2. Section added by amendment effective December 17, 1965.

(ii) By making or participating in direct loans out of funds raised in the market of a member, or otherwise borrowed by the Bank.

(iii) By guaranteeing in whole or in part loans made by private investors through the usual investment channels.

(b) The Bank may borrow funds under (a) (ii) above or guarantee loans under (a) (iii) above only with the approval of the member in whose territory the funds are raised and the member in whose currency the loan is denominated, and only if those members agree that the proceeds may be exchanged for the currency of any other member without restriction.

SECTION 2. Availability and Transferability of Currencies

(a) Currencies paid into the Bank under Article II, Section 7 (i), shall be loaned only with the approval in each case of the member whose currency is involved; provided, however, that if necessary, the Bank may, in exceptional circumstances, when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

(b) The Bank may, in exceptional circumstances, when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of gold or foreign exchange not in excess of the borrower's local expenditure in connection with the purposes of the loan.

(c) The Bank, if the project gives rise indirectly to an increased need for foreign exchange by the member in whose territories the project is located, may in exceptional circumstances provide the borrower as part of the loan with an appropriate amount of gold or foreign exchange not in excess of the borrower's local expenditure in connection with the purposes of the loan.

(d) The Bank may, in exceptional circumstances, at the request of a member in whose territories a portion of the loan is spent, repurchase with gold or foreign exchange a part of that member's currency thus spent but in no case shall the part so repurchased exceed the amount by which the expenditure of the loan in those territories gives rise to an increased need for foreign exchange.
SECTION 4. Payment Provisions for Direct Loans

Loan contracts under Section 1 (a) (i) or (ii) of this Article shall be made in accordance with the following payment provisions:

(a) The terms and conditions of interest and amortization payments, maturity and dates of payment of each loan shall be determined by the Bank. The Bank shall also determine the rate and any other terms and conditions of commission to be charged in connection with such loan.

In the case of loans made under Section 1 (a) (ii) of this Article during the first ten years of the Bank's operations, this rate of commission shall be not less than one percent per annum and not greater than one and one-half percent per annum, and shall be charged on the outstanding portion of any such loan. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already made and to future loans, if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction.

In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) All loan contracts shall stipulate the currency or currencies in which payments under the contract shall be made to the Bank. At the option of the borrowers however, such payments may be made in gold, or subject to the agreement of the Bank, in the currency of a member other than that prescribed in the contract.

(i) In the case of loans made under Section 1 (a) (i) of this Article, the loan contracts shall provide that payments to the Bank of interest, other charges and amortization shall be made in the currency loaned, unless the member whose currency is loaned agrees that such payments shall be made in some other specified currency or currencies. These payments, subject to the provisions of Article II, Section 9 (c), shall be equivalent to the value of such contractual payments at the time the loans were made, in terms of a currency specified for the purpose by the Bank by a three-fourths majority of the total voting power.

(ii) In the case of loans made under Section 1 (a) (ii) of this Article, the total amount outstanding and payable to the Bank in any one currency shall at no time exceed the total amount of the outstanding borrowings made by the Bank under Section 1 (a) (ii) and payable in the same currency.

(c) If a member suffers from an acute exchange stringency, so that the service of any loan contracted by that member or guaranteed by it or by one of its agencies cannot be provided in the stipulated manner, the member concerned may apply to the Bank for a relaxation of the conditions of payment. If the Bank is satisfied that some relaxation is in the interests of the particular member and of the operations of the Bank and of its members as a whole, it may take action under either, or both, of the following paragraphs with respect to the whole, or part, of the annual service:

(i) The Bank may, in its discretion, make arrangements with the member concerned to accept service payments on the loan in the member's currency for periods not to exceed three years upon appropriate terms regarding the use of such currency and the maintenance of its foreign exchange value; and for the repurchase of such currency on appropriate terms.

(ii) The Bank may modify the terms of amortization or extend the life of the loan, or both.

SECTION 5. Guarantees

In guaranteeing a loan placed through the usual investment channels, the Bank shall charge a guarantee commission payable periodically on the amount of the loan outstanding at a rate determined by the Bank. During the first ten years of the Bank's operations, this rate shall be not less than one percent per annum and not greater than one and one-half percent per annum. At the end of this period of ten years, the rate of commission may be reduced by the Bank with respect both to the outstanding portions of loans already guaranteed and to future loans if the reserves accumulated by the Bank under Section 6 of this Article and out of other earnings are considered by it sufficient to justify a reduction. In the case of future loans the Bank shall also have discretion to increase the rate of commission beyond the above limit, if experience indicates that an increase is advisable.

(b) Guarantee commissions shall be paid directly to the Bank by the borrower.

(c) Guarantees by the Bank shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and by the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

(d) The Bank shall have power to determine any other terms and conditions of the guarantee.

SECTION 6. Special Reserve

The amount of commissions received by the Bank under Sections 4 and 5 of this Article shall be set aside as a special reserve, which shall be kept available for meeting liabilities of the Bank in accordance with Section 7 of this Article. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Executive Directors may decide.

SECTION 7. Methods of Meeting Liabilities of the Bank in Case of Defaults

In cases of default on loans made, participated in, or guaranteed by the Bank:

(a) The Bank shall make such arrangements as may be feasible to adjust the obligations under the loans, including arrangements under or analogous to those provided in Section 4 (c) of this Article.

(b) The payments in discharge of the Bank's liabilities on borrowings or guarantees under Section 1 (a) (ii) and (iii) of this Article shall be charged:

(i) first, against the special reserve provided in Section 6 of this Article;

(ii) then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.

(c) Whenever necessary to meet contractual payments of interest, other charges or amortization on the Bank's own borrowings, or to meet the Bank's liabilities with respect to similar payments on loans guaranteed by it, the Bank may call an appropriate amount of the unpaid subscriptions of members in accordance with Article II, Sections 5 and 7. Moreover, if it believes that a default may be of long duration, the Bank may call an additional amount of such unpaid subscriptions not to exceed in any one year one percent of the total subscriptions of the members for the following purposes:

(i) To redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default.

(ii) To repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

SECTION 8. Miscellaneous Operations

In addition to the operations specified elsewhere in this Agreement, the Bank shall have the power:

(i) To buy and sell securities it has issued and to buy and sell securities which it has guaranteed or in which it has invested, provided that the Bank shall obtain the approval of the member in whose territories the securities are to be bought or sold.
Determine the distribution of the net income of the Bank.

The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Members, at which a majority of the Members present shall be entitled to vote.

Meetings of the Board shall be called by the Directors whenever requested by five members or by members having one quarter of the total voting power.

To guarantee securities in which it has invested for the purpose of facilitating their sale.

A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

To borrow the currency of any member with the approval of that member. To buy and sell such other securities as the Directors by a three-fourths majority of the total voting power may deem proper for the investment of all or part of the special reserve under Section 6 of this Article.

The Board of Governors may by regulation establish a procedure whereby the Executive Directors, when they deem such action to be in the best interests of the Bank, may obtain a vote of the Governors on a specific question without calling a meeting of the Board.

The Board of Governors shall determine the remuneration to be paid to the Executive Directors and the salary and terms of the service of the President.

Each member shall have two hundred fifty votes plus one additional vote for each share of stock held.

A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

A quorum for any meeting of the Board of Governors shall be a majority of the Governors, exercising not less than two-thirds of the total voting power.

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

The Bank shall have a Board of Governors, Executive Directors, a President and such other officers and staff to perform such duties as the Bank may determine.

SECTION 4. Executive Directors

The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose shall exercise all the powers delegated to them by the Board of Governors.

The Board of Governors may delegate to the Executive Directors authority to exercise any powers of the Board, except the power to:

- Admit new members and determine the conditions of their admission;
- Suspend a member;
- Decide appeals from interpretations of this agreement given by the Executive Directors;
- Make arrangements to cooperate with other international organizations (other than informal arrangements of a temporary and administrative character);
- Decide to suspend permanently any member.

The Executive Directors shall be appointed according to Schedule B by all the Governors other than those appointed by the five members referred to in Section I (b).

Seven shall be appointed, one by each of the five members having the largest number of shares.

Executive Directors shall be appointed or elected every two years. Each executive director shall appoint an alternate with full authority for the term of the director. An alternate may vote except in the absence of this principal. When the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected to fill the vacancy.

The Executive Directors shall continue in office until their successors are appointed or elected. If the office of an elected director becomes vacant more than ninety days before the end of his term, another director shall be elected to fill the vacancy.

The Board shall select one of the Executive Directors to be the President.

The President may be appointed or elected every two years.

For the purpose of this paragraph, "members" means governments of countries whose names are set forth in Schedule A, whether they are original members or become members in accordance with Article 11, Section I (b). When governments of other countries become members, the Board of Governors shall increase the total number of directors to be elected.

Executive Directors shall be appointed or elected every two years.
(e) The Executive Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.

(f) A quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.

(g) Each appointed director shall be entitled to cast the number of votes allotted under Section 3 of this Article to the member appointing him. Each elected director shall be entitled to cast the number of votes which counted toward his election. All the votes which a director is entitled to cast shall be cast as a unit.

(h) The Board of Governors shall adopt regulations under which a member not entitled to appoint a director under (b) above may send a representative to attend any meeting of the Executive Directors when a request made by, or a matter particularly affecting, that member is under consideration.

(i) The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates.

SECTION 5. President and Staff

(a) The Executive Directors shall select a President who shall not be a governor or an executive director or an alternate for either. The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors, but shall not vote at such meetings. The President shall cease to hold office when the Executive Directors so decide.

(b) The President shall be chief of the operating staff of the Bank and shall conduct, under the direction of the Executive Directors, the ordinary business of the Bank. Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff.

(c) The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

(d) In appointing the officers and staff the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

SECTION 6. Advisory Council

(a) There shall be an Advisory Council of not less than seven persons selected by the Board of Governors including representatives of banking, commercial, industrial, labor, and agricultural interests, and with as wide a national representation as possible. In those fields where specialized international organizations exist, the members of the Council representative of those fields shall be selected in agreement with such organizations. The Council shall advise the Bank on matters of general policy. The Council shall meet annually and on such other occasions as the Bank may request.

(b) Councillors shall serve for two years and may be reappointed. They shall be paid their reasonable expenses incurred on behalf of the Bank.

SECTION 7. Loan Committees

The committees required to report on loans under Article II, Section 4, shall be appointed by the Bank. Each such committee shall include an expert selected by the governor representing the member in whose territories the project is located and one or more members of the technical staff of the Bank.

SECTION 8. Relationship to Other International Organizations

(a) The Bank, within the terms of this Agreement, shall cooperate with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article VIII.

(b) In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization.

SECTION 9. Location of Offices

(a) The principal office of the Bank shall be located in the territory of the member holding the greatest number of shares.

(b) The Bank may establish agencies or branch offices in the territories of any member of the Bank.

SECTION 10. Regional Offices and Councils

(a) The Bank may establish regional offices and determine the location of, and the areas to be covered by, each regional office.

(b) Each regional office shall be advised by a regional council representative of the entire area and selected in such manner as the Bank may decide.

SECTION 11. Depositories

(a) Each member shall designate its central bank as a depository for all the Bank’s holdings of its currency or, if it has no central bank, it shall designate such other institution as may be acceptable to the Bank.

(b) The Bank may hold other assets, including gold, in depositories designated by the five members having the largest number of shares and in such other designated depositories as the Bank may select. Initially, at least one-half of the gold holdings of the Bank shall be held in the depository designated by the member in whose territory the Bank has its principal office, and at least forty percent shall be held in the depositories designated by the remaining four members referred to above, each of such depositories to hold, initially, not less than the amount of gold paid on the shares of the member designating it. However, all transfers of gold by the Bank shall be made with due regard to the costs of transport and anticipated requirements of the Bank. In an emergency the Executive Directors may transfer all or any part of the Bank’s gold holdings to any place where they can be adequately protected.

SECTION 12. Form of Holdings of Currency

The Bank shall accept from any member, in place of any part of the member’s currency, paid in to the Bank under Article 11, Section 7 (i), or to meet amortization payments on loans made with such currency, and not needed by the Bank in its operations, notes or similar obligations issued by the Government of the member or the depository designated by such member, which shall be non-negotiable, non-interest-bearing and payable at their par value on demand by credit to the account of the Bank in the designated depository.

SECTION 13. Publication of Reports and Provision of Information

(a) The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations.
(b) The Bank may publish such other reports as it deems desirable to carry out its purposes.

(c) Copies of all reports, statements and publications made under this section shall be distributed to members.

SECTION 14. Allocation of Net Income

(a) The Board of Governors shall determine annually what part of the Bank's net income, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed.

(b) If any part is distributed, up to two percent non-cumulative shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of the loans outstanding during the year made under Article IV, Section 1 (a) (i), out of currency corresponding to its subscription. If two percent is paid as a first charge, any balance remaining to be distributed shall be paid to all members in proportion to their shares. Payments to each member shall be made in its own currency, or at the option of the Bank in gold.

SECTION 2. Suspension of Membership

If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of the Governors, exercising a majority of the total voting power. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by the same majority to restore the member to good standing.

While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

SECTION 3. Cessation of Membership in International Monetary Fund

Any member which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member.

SECTION 4. Settlement of Accounts with Governments Ceasing to be Members

(a) When a government ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.

(b) At the time a government ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with such government in accordance with the provisions of (c) and (d) below. For this purpose the repurchase price of the shares shall be the value shown by the books of the Bank on the day the government ceases to be a member.

(c) The payment for shares repurchased by the Bank under this section shall be governed by the following conditions:

(i) Any amount due to the government for its shares shall be withheld so long as the government, its central bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the government resulting from its subscription for shares under Article H, Section 5 (ii). In any event, no amount due to a member for its shares shall be paid until six months after the date upon which the government ceases to be a member.

(ii) Payments for shares may be made from time to time, upon their surrender by the government, to the Bank...
members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4. Immunity of Assets from Seizure

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. Immunity of Archives

The archives of the Bank shall be inviolable.

SECTION 6. Freedom of Assets from Restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. Privilege for Communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8. Immunities and Privileges of Officers and Employees

All governors, executive directors, alternates, officers and employees of the Bank

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. Immunities from Taxation

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or
(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

SECTION 10. Application of Article

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

IBRD Article VIII

Amendments

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent (1) of the total voting power, have accepted the proposed amendments, the Bank shall certify the fact by formal communication addressed to an members.

(b) Notwithstanding (a) above, acceptance by an members is required in the case of any amendment modifying:

(i) the right to withdraw from the Bank provided in Article VI, Section 1;

(ii) the right secured by Article U, Section 3 (c);

(iii) the limitation on liability provided in Article II, Section 6.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.

IBRD Article IX

Interpretation

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an Executive Director, it shall be entitled to representation in accordance with Article V, Section 4 (h).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board, the Bank may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

3. ‘Eighty-five percent’ was substituted to “four-fifths’ by amendment effective February 16, 1989.

(c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle any questions of procedure in any case where the parties are in disagreement with respect thereto.

IBRD Article X

Approval Deemed Given

Whenever the approval of any member is required before any act may be done by the Bank, except in Article VIII, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

IBRD Article XI

Final Provisions

SECTION 1. Entry into Force

This Agreement shall enter into force when it has been signed on behalf of governments whose minimum subscriptions comprise not less than sixty-five percent of the total subscriptions set forth in Schedule A and when the instruments referred to in Section 2 (a) of this Article have been deposited on their behalf, but in no event shall this Agreement enter into force before May 1, 1945.

SECTION 2. Signature

(a) Each government on whose behalf this Agreement is signed shall deposit with the Government of the United States of America an instrument setting forth that it has accepted this Agreement in accordance with its law and has taken all steps necessary to enable it to carry out all of its obligations under this Agreement.

(b) Each government shall become a member of the Bank as from the date of the deposit on its behalf of the instrument referred to in (a) above, except that no government shall become a member before this Agreement enters into force under Section 1 of this Article.

(c) The Government of the United States of America shall inform the governments of all countries whose names are set forth in Schedule A, and all governments whose membership is approved in accordance with Article II, Section 1 (b), of all signatures of this Agreement and of the deposit of all instruments referred to in (a) above.

(d) At the time this Agreement is signed on its behalf, each government shall transmit to the Government of the United States of America one one-hundredth of one percent of the price of each share in gold or United States dollars for the purpose of meeting administrative expenses of the Bank. This payment shall be credited on account of the payment to be made in accordance with Article II Section 8 (a). The Government of the United States of America shall hold such funds in a special deposit account and shall transmit them to the Board of Governors of the Bank when the initial meeting has been called under Section 3 of this Article.
If this Agreement has not come into force by December 31, 1945, the Government of the United States of America shall return such funds to the governments that transmitted them.

(e) This Agreement shall remain open for signature at Washington on behalf of the governments of the countries whose names are set forth in Schedule A until December 31, 1945.

(f) After December 31, 1945, this Agreement shall be open for signature on behalf of the government of any country whose membership has been approved in accordance with Article II, Section 1 (b).

By their signature of this Agreement, all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate.

In the case of governments whose metropolitan territories have been under enemy occupation, the deposit of the instrument referred to in (a) above may be delayed until one hundred and eighty days after the date on which these territories have been liberated. If, however, it is not deposited by any such government before the expiration of this period, the signature affixed on behalf of that government shall become void and the portion of its subscription paid under (d) above shall be returned to it.

Paragraphs (d) and (h) shall come into force with regard to each signatory government as from the date of its signature.

SECTION 3. Inauguration of the Bank

(a) As soon as this Agreement enters into force under Section 1 of this Article, each member shall appoint a governor and the member to whom the largest number of shares is allocated in Schedule A shall call the first meeting of the Board of Governors.

(b) At the first meeting of the Board of Governors, arrangements shall be made for the selection of provisional executive directors. The governments of the five countries, to which the largest number of shares are allocated in Schedule A, shall appoint provisional executive directors. If one or more of such governments have not become members, the executive directorships which they would be entitled to fill shall remain vacant until they become members, or until January 1, 1946, whichever is the earlier. Seven provisional executive directors shall be elected in accordance with the provisions of Schedule B and shall remain in office until the date of the first regular election of executive directors which shall be held as soon as practicable after January 1, 1946.

(c) The Board of Governors may delegate to the provisional executive directors any powers except those which may not be delegated to the Executive Directors.

(d) The Bank shall notify members when it is ready to commence operations.

DONE at Washington, in a single copy which shall remain deposited in the archives of the Government of the United States of America, which shall transmit certified copies to all governments whose names are set forth in Schedule A and to all governments whose membership is approved in accordance with Article II, Section 1 (b).

IBRD Schedule A

<table>
<thead>
<tr>
<th>Subscriptions (millions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia 200.0</td>
</tr>
<tr>
<td>Belgium 225.0</td>
</tr>
<tr>
<td>Bolivia 7.0</td>
</tr>
<tr>
<td>Brazil 105.0</td>
</tr>
<tr>
<td>Canada 325.0</td>
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<tr>
<td>Chile 35.0</td>
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<tr>
<td>China 600.0</td>
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<tr>
<td>Colombia 35.0</td>
</tr>
<tr>
<td>Costa Rica 2.0</td>
</tr>
<tr>
<td>Cuba 35.0</td>
</tr>
<tr>
<td>Czechoslovakia 125.0 Paraguay 0.8</td>
</tr>
<tr>
<td>Denmark (a) Peru 17.5</td>
</tr>
<tr>
<td>Dominican Republic 2.0 Philippine Commonwealth 15.0</td>
</tr>
<tr>
<td>Ecuador 3.2</td>
</tr>
<tr>
<td>Egypt 40.0</td>
</tr>
<tr>
<td>El Salvador 1.0 Union of Sovet Socialist</td>
</tr>
<tr>
<td>Ethiopia 3.0 Republics 1200.0</td>
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<tr>
<td>France 450.0 United Kingdom 1300.0</td>
</tr>
<tr>
<td>Greece 25.0 United States 3175.0</td>
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<tr>
<td>Guatemala 2.0 Uruguay 10.5</td>
</tr>
<tr>
<td>Haiti 2.0 Venezuela 10.5</td>
</tr>
<tr>
<td>Honduras 1.0 Yugoslavia 40.0</td>
</tr>
<tr>
<td>Iceland 1.0</td>
</tr>
</tbody>
</table>

(a) The quota of Denmark shall be determined by the Bank after Denmark accepts membership in accordance with these Articles of Agreement.

IBRD Schedule B

Election of Executive Directors

1. The election of the elective executive directors shall be by ballot of the Governors eligible to vote under Article V, Section 4 (b).

2. In balloting for the elective executive directors, each governor eligible to vote shall cast for one person all of the votes to which the member appointing him is entitled under Section 3 of Article V. The seven persons receiving the greatest number of votes shall be executive directors, except that no person who receives less than fourteen percent of the total of the votes which can be cast (eligible votes) shall be considered elected.

3. When seven persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (a) those governors who voted in the first ballot for a person not elected and (b) those governors whose votes for a person elected are deemed under 4 below to have raised the votes cast for that person above fifteen percent of the eligible votes.

4. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above fifteen percent of the eligible votes, the fifteen percent shall be deemed to include, first, the
votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until fifteen percent is reached.

5. Any governor, part of whose votes must be counted in order to raise the total of any person above fourteen percent shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed fifteen percent.

6. If, after the second ballot, seven persons have not been elected, further ballots shall be held on the same principles until seven persons have been elected, provided that after six persons are elected, the seventh may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.
Convention on International Civil Aviation, 1944
CONVENTION
ON INTERNATIONAL
CIVIL AVIATION
Signed at Chicago,
on 7 December 1944

PREAMBLE

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention so that end.

PART I
AIR NAVIGATION

CHAPTER I
GENERAL PRINCIPLES
AND APPLICATION OF THE CONVENTION

Article 1
Sovereignty
The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 2
Territory
For the purposes of this Convention, the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3
Civil and state aircraft
a) This Convention shall be applicable only to civil aircraft and shall not be applicable to state aircraft.

b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

c) No state aircraft of a contracting State shall fly over the territory of another State without authority by special agreement or otherwise, and in accordance with the terms thereof.

d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

Article 3 bis*
a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.

c) Every civil aircraft shall comply with an order given in conformity with paragraph b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations.

Article 4
Missile of civil aviation
Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.

CHAPTER II
FLIGHT OVER TERRITORY OF
CONTRACTING STATES

Article 5
Right of non-scheduled flight
Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire or other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

1. Came into force on 4 April 1947; the thirtieth day after deposit with the Government of the United States of America of the twenty-sixth instrument of ratification thereof or notification of adherence thereto, in accordance with Article 91 (b).

* The 25th Extraordinary Session of the Assembly on 10 May 1994 amended the Convention by adopting the Protocol introducing Article 3 bis. This amendment came into force on 1 October 1998.
Article 6
Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

Article 7
Cabotage

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Article 8
Pilotless aircraft

No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

Article 9
Prohibited areas

a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.

b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.

c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

Article 10
Landing at customs airport

Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States.

Article 11
Applicability of air regulations

Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Article 12
Rules of the air

Each contracting State undertakes to adopt measures to ensure that every aircraft flying over or maneuvering within its territory and that every aircraft, carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Article 13
Entry and clearance regulations

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, as such regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

Article 14
Prevention of spread of disease

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

Article 15
Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and

b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization, provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the States concerned. No fees, dues or other charges shall be
imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

Article 20
Display of marks
Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

Article 21
Report of registrations
Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

Aircraft in distress
Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention.

Article 26
Investigation of accidents
In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

Article 27
Exemption from seizure on patent claims
a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.

b) The provisions of paragraph a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally.
in or exported commercially from the contracting State entered by the aircraft.

c) The benefits of this Article shall apply only to such States, parties to this Convention, as either 1) are parties to the International Convention for the Protection of International Property and to any amendments thereof; or 2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

Article 28

Air navigation facilities and standard systems

Each contracting State undertakes, so far as it may find practicable, to:

a) Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;

b) Adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established from time to time, pursuant to this Convention;

c) Collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention.

Chapter V

Conditions to be fulfilled with respect to aircraft

Article 29

Documents carried in aircraft

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:

a) Its certificate of registration;

b) Its certificate of airworthiness;

c) The appropriate licenses for each member of the crew;

d) Its journey log book;

e) If it is equipped with radio apparatus, the aircraft radio station license;

f) If it carries passengers, a list of their names and places of embarkation and destination;

g) If it carries cargo, a manifest and detailed declarations of the cargo.

Article 30

Aircraft radio equipment

a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.

b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special license for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Article 31

Certificates of airworthiness

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Article 32

Licenses of personnel

a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.

b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

Article 33

Recognition of certificates and licenses

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Article 34

Journey log books

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention.

Article 35

Cargo restrictions

a) No munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.

b) Each contracting State shall reserve the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a); provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use of aircraft apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

Article 36

Photographic apparatus

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

Chapter VI

International Standards and Recommended Practices

Article 37

Adoption of international standards and procedures

Each contracting State enters into international standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary,
international standards and recommended practices and procedures dealing with:

a) Communications systems and air navigation aids, including ground marking;

b) Characteristics of airports and landing areas;

c) Rules of the air and air traffic control practices;

d) Licensing of operating and mechanical personnel;

e) Airworthiness of aircraft;

f) Registration and identification of aircraft;

g) Collection and exchange of meteorological information;

h) Log books;

i) Aeronautical maps and charts;

j) Customs and immigration procedures;

k) Aircraft in distress and investigation of accidents; and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Article 38

Departures from international standards and procedures

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

Article 39

Endorsement of certificates and licenses

a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.

b) Any person holding a license who does not satisfy in full the conditions laid down in the international standard relating to the class of license or certificate which he holds shall have endorsed on or attached to his license a complete enumeration of the particulars in which he does not satisfy such conditions.

Article 40

Validity of endorsed certificates and licenses

No aircraft or personnel having certificates or licenses so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

Article 41

Recognition of existing standards of airworthiness

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment.

Article 42

Recognition of existing standards of competency of personnel

The provisions of this Chapter shall not apply to personnel whose licenses are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licenses remain valid five years after the date of adoption of such standard.

PART II

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

CHAPTER VII

THE ORGANIZATION

Article 43

Name and composition

An organization to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

Article 44

Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

a) Insure the safe and orderly growth of international civil aviation throughout the world;

b) Encourage the arts of aircraft design and operation for peaceful purposes;

c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;

d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

e) Prevent economic waste caused by unreasonable competition;

f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
g) Avoid discrimination between contracting States;

h) Promote safety of flight in international air navigation;

i) Promote generally the development of all aspects of international civil aeronautics.

Article 45*

Permanent seat

The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944. The seat may be temporarily transferred elsewhere by decision of the Council, and otherwise than temporarily by decision of the Assembly, such decision to be taken by the number of votes specified by the Assembly. The number of votes so specified will not be less than three-fifths of the total number of contracting States.

Article 46

First meeting of Assembly

The first meeting of the Assembly shall be summoned by the Interim Council of the above-mentioned Provisional Organization as soon as the Convention has come into force, to meet at a time and place to be decided by the Interim Council.

Article 47

Legal capacity

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full judicial personality shall be granted wherever compatible with the constitution and laws of the State concerned.

CHAPTER VIII

THE ASSEMBLY

Article 48

Meetings of Assembly and voting

a) The Assembly shall meet not less than once in three years and shall be convened by the Council at a suitable time and place. An extraordinary meeting of the Assembly may be held at any time upon the call of the Council or at the request of not less than one-fifth of the total number of contracting States addressed to the Secretary General.*

b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Article 49

Powers and duties of Assembly

The powers and duties of the Assembly shall be to:

a) Elect at each meeting its President and other officers;

b) Elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;

c) Examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;

d) Determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;

e) Vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII,*

f) Review expenditures and approve the accounts of the Organization;

g) Refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action;

h) Delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;

i) Carry out the appropriate provisions of Chapter XIII;

j) Consider proposals for the modification or amendment of the provisions of this Convention and, if it approves the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;

k) Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

CHAPTER IX

THE COUNCIL

Article 50

Composition and election of Council

a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of thirty-six contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next following election.*

b) In electing the members of the Council, the Assembly shall give adequate representation to: 1) the States of chief importance in air transport; 2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and 3) the States not otherwise included whose designation will insure that all

* This is the text of the Article as amended by the 8th Session of the Assembly on 14 June 1954; it entered into force on 16 May 1958. The original text read as follows:

"The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944. The seat may be temporarily transferred elsewhere by decision of the Council."
the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.

c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

Article 51

President of Council

The Council shall elect its President for a term of three years. He may be re-elected. He shall have no vote. The Council shall elect from among its members one or more Vice Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to:

a) Convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;

b) Serve as representative of the Council; and

c) Carry out on behalf of the Council the functions which the Council assigns to him.

Article 52

Voting in Council

Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

Article 53

Participation without a vote

Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party.

Article 54

Mandatory functions of Council

The Council shall:

a) Submit annual reports to the Assembly;

b) Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;

c) Determine its organization and rules of procedure;

d) Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;

e) Establish an Air Navigation Commission, in accordance with the provisions of Chapter X;

f) Administer the finances of the Organization in accordance with the provisions of Chapters XI and XV;

g) Determine the emoluments of the President of the Council;

h) Appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;

i) Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;

j) Report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;

k) Report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;

l) Adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;

m) Consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;

n) Consider any matter relating to the Convention which any contracting State refers to it.

Article 55

Permissive functions of Council

The Council may:

a) Where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention;

b) Delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;

c) Conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;

d) Study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;

e) Investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable.

CHAPTER X

THE AIR NAVIGATION COMMISSION

Article 56

Nomination and appointment of Commission

The Air Navigation Commission shall be composed of nineteen members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.*

Article 57

Duties of Commission

The Air Navigation Commission shall:

a) Consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;

b) Establish technical subcommissions on which any contracting State may be represented, if so desires;

c) Advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation.

* This is the text of the Article as amended by the 27th Session of the Assembly on 6 October 1989; it entered into force on 18 April 2005. The original text of the Convention provided for twelve members of the Air Navigation Commission. That text was subsequently amended by the 18th Session of the Assembly on 7 July 1971; this amendment entered into force on 19 December 1974 and provided for fifteen members of the Air Navigation Commission.
CHAPTER XI
PERSONNEL

Article 58
Appointment of personnel

Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State.

Article 59
International character of personnel

The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting State undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities.

Article 60
Immunities and privileges of personnel

Each contracting State undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement.

* This is the text of the Article as amended by the 8th Session of the Assembly on 14 June 1954; it entered into force on 12 December 1956. The original text read as follows:

"The Council shall submit to the Assembly an annual budget, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budget with whatever modification it sees fit to prescribe, and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine."

CHAPTER XII
FINANCE

Article 61
Budget and apportionment of expenses:

The Council shall submit to the Assembly annual budgets, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budgets with whatever modification it sees fit to prescribe, and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine.

Article 62
Suspension of voting power

The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.

Article 63
Expenses of delegations and other representatives

Each contracting State shall bear the expenses of its own delegation to the Assembly and the remuneration, travel, and other expenses of any person whom it appoints to serve on the Council, and of its nominees or representatives on any subsidiary committees or commissions of the Organization.

CHAPTER XIII
OTHER INTERNATIONAL ARRANGEMENTS

Article 64
Security arrangements

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.

Article 65
Arrangements with other international bodies

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization.

Article 66
Functions relating to other agreements

a) The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.

b) Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement of the International Air Transport Agreement drawn up at Chicago on December 7, 1944 shall not have the right to vote on any questions referred to the Assembly or Council under the provisions of the relevant Agreement.

PART III
INTERNATIONAL AIR TRANSPORT

CHAPTER XIV
INFORMATION AND REPORTS

Article 67
File reports with Council

Each contracting State undertakes that its international airlines shall, in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof.

CHAPTER XV
AIRPORTS AND OTHER AIR NAVIGATION FACILITIES

Article 68
Designation of routes and airports

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use.

Article 69
Improvement of air navigation facilities

If the Council is of the opinion that the airports or other air navigation facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned, and other States
affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose. No contracting State shall be guilty of an infraction of this Convention if it fails to carry out these recommendations.

Article 70

Financing of air navigation facilities

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs.

Article 71

Provision and maintenance of facilities by Council

If a contracting State so requests, the Council may agree to provide, maintain, and administer any or all of the airports and other air navigation facilities including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided.

Article 72

Acquisition or use of land

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State shall either provide the land itself, retaining title if it wishes, or facilitate the use of the land by the Council on just and reasonable terms and in accordance with the laws of the State concerned.

Article 73

Expenditure and assessment of funds

Within the limit of the funds which may be made available to it by the Assembly under Chapter XII, the Council may make current expenditures for the purposes of this Chapter from the general funds of the Organization. The Council shall assess the capital funds required for the purposes of this Chapter in previously agreed proportions over a reasonable period of time to the contracting States consenting thereto whose airlines use the facilities. The Council may also assess to States that consent any working funds that are required.

Article 74

Technical assistance and utilization of revenues

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges.

Article 75

Taking over of facilities from Council

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities with which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council at amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or overrule the decision of the Council.

Article 76

Return of funds

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments, as determined by the Council.

Chapter XVI

Joint Operating Organizations and Pooled Services

Article 77

Joint operating organizations permitted

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

Article 78

Function of Council

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

Article 79

Participation in operating organizations

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

Part IV

Final Provisions

Chapter XVII

Other Aeronautical Agreements and Arrangements

Article 80

Paris and Habana Conventions

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to.

Article 81

Registration of existing agreements

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council.

Article 82

Abrogation of inconsistent arrangements

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall
use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention.

Article 83
Registration of new arrangements

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

Article 83 bis*
Transfer of certain functions and duties

a) Notwithstanding the provisions of Articles 12, 30, 31 and 32 a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 a).

b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 13 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.

c) The provisions of paragraphs a) and b) above shall also be applicable to cases covered by Article 77.

CHAPTER XVIII
DISPUTES AND DEFAULT

Article 84
Settlement of disputes

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an ad hoc arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council.

Article 85
Arbitration procedure

If any contracting State party to a dispute in which the decision of the Council is under appeal has not accepted the Statute of the Permanent Court of International Justice and the contracting States parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the contracting States parties to the dispute shall name a single arbitrator who shall name an umpire. If either contracting State party to the dispute fails to name an arbitrator within a period of three months from the date of the appeal, an arbitrator shall be named on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its own procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.

CHAPTER XIX
WAR

Article 86
Appeals

Unless the Council decides otherwise any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed with appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

Article 87
Penalty for non-conformity of airline

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

Article 88
Penalty for non-conformity by State

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

CHAPTER XX
ANNEXES

Article 90
Adoption and amendment of Annexes

a) The adoption by the Council of the Annexes described in Article 54, subparagraph i), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.

b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.

CHAPTER XXI
RATIFICATIONS, ADHERENCES, AMENDMENTS, AND DENUNCIATIONS

Article 91
Ratification of Convention

a) This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United
Articles of the Convention

States of America, which shall give notice of the date of the deposit to each of the signatory and adhering States.

b) As soon as this Convention has been ratified or adhered to by twenty-six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.

c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force.

Article 92
Adherence to Convention

a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict.

b) Adherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.

Article 93
Admission of other States

States other than those provided for in Articles 91 and 92 a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: provided that in each case the consent of any State invaded or attacked during the present war by the State seeking admission shall be necessary.

Article 94
Amendment of Convention

a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.

b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommend- ing adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

Article 95
Denunciation of Convention

a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.

b) Denunciation shall take effect one year from the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation.

Chapter XXII
Definitions

Article 96

For the purpose of this Convention the expression:

a) "Air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

b) "International air service" means an air service which passes through the air space over the territory of more than one State.

c) "Airport" means any air transport enterprise offering or operating an international air service.

d) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

* This is the text of the final paragraph as amended by the 22nd Session of the Assembly on 30 September 1977; it entered into force on 17 August 1999. The original text read as follows:

"DONE at Chicago the seventh day of December 1944 in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be open for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or adhere to this Convention."
PROTOCOL
ON THE AUTHENTIC TRILINGUAL TEXT OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION (CHICAGO, 1944)
Signed at Buenos Aires on 24 September 1968

THE UNDERSIGNED GOVERNMENTS

CONSIDERING that the last paragraph of the Convention on International Civil Aviation, hereinafter called "the Convention", provides that a text of the Convention, drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be open for signature;

CONSIDERING that the Convention was opened for signature, at Chicago, on the seventh day of December, 1944, in a text in the English language;

CONSIDERING, accordingly, that it is appropriate to make the necessary provision for the text to exist in three languages as contemplated in the Convention;

CONSIDERING that in making such provision, it should be taken into account that there exist amendments to the Convention in the English, French and Spanish languages, and that the text of the Convention in the French and Spanish languages should not incorporate those amendments because, in accordance with Article 94 a) of the Convention, each such amendment can come into force only in respect of any State which has ratified it;

HAVE AGREED as follows:

Article I

The text of the Convention in the French and Spanish languages annexed to this Protocol, together with the text of the Convention in the English language, constitutes the text equally authentic in the three languages as specifically referred to in the last paragraph of the Convention.


2. The text of the Convention in the French and Spanish languages mentioned in this Article will be found in the second and third columns at pages 1 to 44 of this document, subject to what is stated in the second paragraph of the Foreword at page ii.

Article II

If a State party to this Protocol has ratified or in the future ratifies any amendment made to the Convention in accordance with Article 94 a) thereof, then the text of such amendment in the English, French and Spanish languages shall be deemed to refer to the text, equally authentic in the three languages, which results from this Protocol.

Article III

1) The States members of the International Civil Aviation Organization may become parties to this Protocol either by:

a) signature without reservation as to acceptance, or

b) signature with reservation as to acceptance followed by acceptance, or

c) acceptance.

2) This Protocol shall remain open for signature at Buenos Aires until the twenty-seventh day of September 1968 and thereafter at Washington, D.C.

3) Acceptance shall be effected by the deposit of an instrument of acceptance with the Government of the United States of America.

4) Adherence to or ratification or approval of this Protocol shall be deemed to be acceptance thereof.

Article IV

1) This Protocol shall come into force on the thirtieth day after twelve States shall, in accordance with the provisions of Article III, have signed it without reservation as to acceptance or accepted it.

2) As regards any State which shall subsequently become a party to this Protocol, in accordance with Article III, the Protocol shall come into force on the date of its signature without reservation as to acceptance or of its acceptance.

Article V

Any future adherence of a State to the Convention shall be deemed to be acceptance of this Protocol.

Article VI

As soon as this Protocol comes into force, it shall be registered with the United Nations and with the International Civil Aviation Organization by the Government of the United States of America.

Article VII

1) This Protocol shall remain in force so long as the Convention is in force.

2) This Protocol shall cease to be in force for a State only when that State ceases to be a party to the Convention.

Article VIII

The Government of the United States of America shall give notice to all States members of the International Civil Aviation Organization and to the Organization itself:

a) of any signature of this Protocol and the date thereof, with an indication whether the signature is with or without reservation as to acceptance;

b) of the deposit of any instrument of acceptance and the date thereof;

c) of the date on which this Protocol comes into force in accordance with the provisions of Article IV, paragraph 1).

Article IX

This Protocol, drawn up in the English, French and Spanish languages, each text being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Government of the States members of the International Civil Aviation Organization.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized, have signed this Protocol.

DONE at Buenos Aires this twenty-fourth day of September, one thousand nine hundred and sixty-eight.
No. 4. CONVENTION \(^1\) ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

**Article I**

**JURIDICAL PERSONALITY**

**Section 1.** The United Nations shall possess juridical personality. It shall have the capacity:

(a) To contract;

(b) To acquire and dispose of immovable and movable property;

(c) To institute legal proceedings.

**Article II**

**PROPERTY, FUNDS AND ASSETS**

**Section 2.** The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

**Section 3.** The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

**Section 4.** The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

**Section 5.** Without being restricted by financial controls, regulations or moratoria of any kind,

(a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

**Section 6.** In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

**Section 7.** The United Nations, its assets, income and other property shall be:

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

(b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

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\(^1\) Came into force (see page 263 of this volume) on 17 September 1946 as regards United Kingdom of Great Britain and Northern Ireland by the deposit of the instrument of accession.
(c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III
Facilities In Respect of Communications

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV
The Representatives of Members

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure, for the representatives of Members, the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.
SECTION 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

OFFICIALS

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

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

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(c) Be immune from national service obligations;

(d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

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

(g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

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

(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) Inviolability for all papers and documents;

(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(e) The Same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

**Article VII**

**United Nations Laissez-Passer**

SECTION 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 69 of the Charter so provide.

**Article VIII**

**Settlements of Disputes**

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

SECTION 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

**Final Article**

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations.
Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.
Constitution of the World Health Organization, 1946
CONSTITUTION

OF THE WORLD HEALTH ORGANIZATION

The States Parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.

The achievement of any State in the promotion and protection of health is of value to all.

Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.

The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.

Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

Accepting these principles, and for the purpose of co-operation among themselves and with others to promote and protect the health of all peoples, the Contracting Parties agree to the present Constitution and hereby establish the World Health Organization as a specialized agency within the terms of Article 57 of the Charter of the United Nations.

CHAPTER I – OBJECTIVE

Article 1

The objective of the World Health Organization (hereinafter called the Organization) shall be the attainment by all peoples of the highest possible level of health.

CHAPTER II – FUNCTIONS

Article 2

In order to achieve its objective, the functions of the Organization shall be:

(a) to act as the directing and co-ordinating authority on international health work;

(b) to establish and maintain effective collaboration with the United Nations, specialized agencies, governmental health administrations, professional groups and such other organizations as may be deemed appropriate;

(c) to assist Governments, upon request, in strengthening health services;

(d) to furnish appropriate technical assistance and, in emergencies, necessary aid upon the request or acceptance of Governments;

(e) to provide or assist in providing, upon the request of the United Nations, health services and facilities to special groups, such as the peoples of trust territories;

(f) to establish and maintain such administrative and technical services as may be required, including epidemiological and statistical services;

(g) to stimulate and advance work to eradicate epidemic, endemic and other diseases;

(h) to promote, in co-operation with other specialized agencies where necessary, the prevention of accidental injuries;

(i) to promote, in co-operation with other specialized agencies where necessary, the improvement of nutrition, housing, sanitation, recreation, economic or working conditions and other aspects of environmental hygiene;

(j) to promote co-operation among scientific and professional groups which contribute to the advancement of health;

(k) to propose conventions, agreements and regulations, and make recommendations with respect to international health matters and to perform...
such duties as may be assigned thereby to the Organization and are consistent with its objective;

(l) to promote maternal and child health and welfare and to foster the ability to live harmoniously in a changing total environment;

(m) to foster activities in the field of mental health, especially those affecting the harmony of human relations;

(n) to promote and conduct research in the field of health;

(o) to promote improved standards of teaching and training in the health, medical and related professions;

(p) to study and report on, in co-operation with other specialized agencies where necessary, administrative and social techniques affecting public health and medical care from preventive and curative points of view, including hospital services and social security;

(q) to provide information, counsel and assistance in the field of health;

(r) to assist in developing an informed public opinion among all peoples on matters of health;

(s) to establish and revise as necessary international nomenclatures of diseases, of causes of death and of public health practices;

(t) to standardize diagnostic procedures as necessary;

(u) to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products;

(v) generally to take all necessary action to attain the objective of the Organization.

CHAPTER III – MEMBERSHIP AND ASSOCIATE MEMBERSHIP

Article 3

Membership in the Organization shall be open to all States.

Article 4

Members of the United Nations may become Members of the Organization by signing or otherwise accepting this Constitution in accordance with the provisions of Chapter XIX and in accordance with their constitutional processes.

Article 5

The States whose Governments have been invited to send observers to the International Health Conference held in New York, 1946, may become Members by signing or otherwise accepting this Constitution in accordance with the provisions of Chapter XIX and in accordance with their constitutional processes provided that such signature or acceptance shall be completed before the first session of the Health Assembly.

Article 6

Subject to the conditions of any agreement between the United Nations and the Organization, approved pursuant to Chapter XVI, States which do not become Members in accordance with Articles 4 and 5 may apply to become Members and shall be admitted as Members when their application has been approved by a simple majority vote of the Health Assembly.

Article 7

If a Member fails to meet its financial obligations to the Organization or in other exceptional circumstances, the Health Assembly may, on such conditions as it thinks proper, suspend the voting privileges and services to which a Member is entitled. The Health Assembly shall have the authority to restore such voting privileges and services.

Article 8

Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associate Members by the Health Assembly upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. Representatives of Associate Members to the Health Assembly should be qualified by their technical competence in the field of health and should be chosen from the native population. The nature and extent of the rights and obligations of Associate Members shall be determined by the Health Assembly.

CHAPTER IV – ORGANS

Article 9

The work of the Organization shall be carried out by:

(a) The World Health Assembly (herein called the Health Assembly);

(b) The Executive Board (hereinafter called the Board);

(c) The Secretariat.

1 The amendment to this Article adopted by the Eighteenth World Health Assembly (resolution WHA18.48) has not yet come into force.
CHAPTER V – THE WORLD HEALTH ASSEMBLY

Article 10

The Health Assembly shall be composed of delegates representing Members.

Article 11

Each Member shall be represented by not more than three delegates, one of whom shall be designated by the Member as chief delegate. These delegates should be chosen from among persons most qualified by their technical competence in the field of health, preferably representing the national health administration of the Member.

Article 12

Alternates and advisers may accompany delegates.

Article 13

The Health Assembly shall meet in regular annual session and in such special sessions as may be necessary. Special sessions shall be convened at the request of the Board or of a majority of the Members.

Article 14

The Health Assembly, at each annual session, shall select the country or region in which the next annual session shall be held, the Board subsequently fixing the place. The Board shall determine the place where a special session shall be held.

Article 15

The Board, after consultation with the Secretary-General of the United Nations, shall determine the date of each annual and special session.

Article 16

The Health Assembly shall elect its President and other officers at the beginning of each annual session. They shall hold office until their successors are elected.

Article 17

The Health Assembly shall adopt its own rules of procedure.

Article 18

The functions of the Health Assembly shall be:

(a) to determine the policies of the Organization;

(b) to name the Members entitled to designate a person to serve on the Board;

(c) to appoint the Director-General;

(d) to review and approve reports and activities of the Board and of the Director-General and to instruct the Board in regard to matters upon which action, study, investigation or report may be considered desirable;

(e) to establish such committees as may be considered necessary for the work of the Organization;

(f) to supervise the financial policies of the Organization and to review and approve the budget;

(g) to instruct the Board and the Director-General to bring to the attention of Members and of international organizations, governmental or non-governmental, any matter with regard to health which the Health Assembly may consider appropriate;

(h) to invite any organization, international or national, governmental or non-governmental, which has responsibilities related to those of the Organization, to appoint representatives to participate, without right of vote, in its meetings or in those of the committees and conferences convened under its authority, on conditions prescribed by the Health Assembly; but in the case of national organizations, invitations shall be issued only with the consent of the Government concerned;

(i) to consider recommendations bearing on health made by the General Assembly, the Economic and Social Council, the Security Council or Trusteeship Council of the United Nations, and to report to them on the steps taken by the Organization to give effect to such recommendations;

(j) to report to the Economic and Social Council in accordance with any agreement between the Organization and the United Nations;

(k) to promote and conduct research in the field of health by the personnel of the Organization, by the establishment of its own institutions or by co-operation with official or non-official institutions of any Member with the consent of its Government;

(l) to establish such other institutions as it may consider desirable;

(m) to take any other appropriate action to further the objective of the Organization.
Article 19

The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization. A two-thirds vote of the Health Assembly shall be required for the adoption of such conventions or agreements, which shall come into force for each Member when accepted by it in accordance with its constitutional processes.

Article 20

Each Member undertakes that it will, within eighteen months after the adoption by the Health Assembly of a convention or agreement, take action relative to the acceptance of such convention or agreement. Each Member shall notify the Director-General of the action taken, and if it does not accept such convention or agreement within the time limit, it will furnish a statement of the reasons for non-acceptance. In case of acceptance, each Member agrees to make an annual report to the Director-General in accordance with Chapter XIV.

Article 21

The Health Assembly shall have authority to adopt regulations concerning:

(a) sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;

(b) nomenclatures with respect to diseases, causes of death and public health practices;

(c) standards with respect to diagnostic procedures for international use;

(d) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;

(e) advertising and labelling of biological, pharmaceutical and similar products moving in international commerce.

Article 22

Regulations adopted pursuant to Article 21 shall come into force for all Members after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director-General of rejection or reservations within the period stated in the notice.

Article 23

The Health Assembly shall have authority to make recommendations to Members with respect to any matter within the competence of the Organization.

CHAPTER VI – THE EXECUTIVE BOARD

Article 24

The Board shall consist of thirty-four persons designated by as many Members. The Health Assembly, taking into account an equitable geographical distribution, shall elect the Members entitled to designate a person to serve on the Board, provided that, of such Members, not less than three shall be elected from each of the regional organizations established pursuant to Article 44. Each of these Members should appoint to the Board a person technically qualified in the field of health, who may be accompanied by alternates and advisers.

Article 25

These Members shall be elected for three years and may be re-elected, provided that of the Members elected at the first session of the Health Assembly held after the coming into force of the amendment to this Constitution increasing the membership of the Board from thirty-two to thirty-four the term of office of the additional Members elected shall, insofar as may be necessary, be of such lesser duration as shall facilitate the election of at least one Member from each regional organization in each year.

Article 26

The Board shall meet at least twice a year and shall determine the place of each meeting.

Article 27

The Board shall elect its Chairman from among its members and shall adopt its own rules of procedure.

Article 28

The functions of the Board shall be:

(a) to give effect to the decisions and policies of the Health Assembly;

(b) to act as the executive organ of the Health Assembly;
(c) to perform any other functions entrusted to it by the Health Assembly;

(d) to advise the Health Assembly on questions referred to it by that body and on matters assigned to the Organization by conventions, agreements and regulations;

(e) to submit advice or proposals to the Health Assembly on its own initiative;

(f) to prepare the agenda of meetings of the Health Assembly;

(g) to submit to the Health Assembly for consideration and approval a general programme of work covering a specific period;

(h) to study all questions within its competence;

(i) to take emergency measures within the functions and financial resources of the Organization to deal with events requiring immediate action. In particular it may authorize the Director-General to take the necessary steps to combat epidemics, to participate in the organization of health relief to victims of a calamity and to undertake studies and research the urgency of which has been drawn to the attention of the Board by any Member or by the Director-General.

Article 29

The Board shall exercise on behalf of the whole Health Assembly the powers delegated to it by that body.

CHAPTER VII – THE SECRETARIAT

Article 30

The Secretariat shall comprise the Director-General and such technical and administrative staff as the Organization may require.

Article 31

The Director-General shall be appointed by the Health Assembly on the nomination of the Board on such terms as the Health Assembly may determine. The Director-General, subject to the authority of the Board, shall be the chief technical and administrative officer of the Organization.

Article 32

The Director-General shall be ex-officio Secretary of the Health Assembly, of the Board, of all commissions and committees of the Organization and of conferences convened by it. He may delegate these functions.

Article 33

The Director-General or his representative may establish a procedure by agreement with Members, permitting him, for the purpose of discharging his duties, to have direct access to their various departments, especially to their health administrations and to national health organizations, governmental or non-governmental. He may also establish direct relations with international organizations whose activities come within the competence of the Organization. He shall keep regional offices informed on all matters involving their respective areas.

Article 34

The Director-General shall prepare and submit to the Board the financial statements and budget estimates of the Organization.

Article 35

The Director-General shall appoint the staff of the Secretariat in accordance with staff regulations established by the Health Assembly. The paramount consideration in the employment of the staff shall be to assure that the efficiency, integrity and internationally representative character of the Secretariat shall be maintained at the highest level. Due regard shall be paid also to the importance of recruiting the staff on as wide a geographical basis as possible.

Article 36

The conditions of service of the staff of the Organization shall conform as far as possible with those of other United Nations organizations.

Article 37

In the performance of their duties the Director-General and the staff shall not seek or receive instructions from any government or from any authority external to the Organization. They shall refrain from any action which might reflect on their position as international officers. Each Member of the Organization on its part undertakes to respect the exclusively international character of the Director-General and the staff and not to seek to influence them.

CHAPTER VIII – COMMITTEES

Article 38

The Board shall establish such committees as the Health Assembly may direct and, on its own initiative or on the proposal of the Director-General, may establish any other committees considered desirable to serve any purpose within the competence of the Organization.
Article 39

The Board, from time to time and in any event annually, shall review the necessity for continuing each committee.

Article 40

The Board may provide for the creation of or the participation by the Organization in joint or mixed committees with other organizations and for the representation of the Organization in committees established by such other organizations.

CHAPTER IX – CONFERENCES

Article 41

The Health Assembly or the Board may convene local, general, technical or other special conferences to consider any matter within the competence of the Organization and may provide for the representation at such conferences of international organizations and, with the consent of the Government concerned, of national organizations, governmental or non-governmental. The manner of such representation shall be determined by the Health Assembly or the Board.

Article 42

The Board may provide for representation of the Organization at conferences in which the Board considers that the Organization has an interest.

CHAPTER X – HEADQUARTERS

Article 43

The location of the headquarters of the Organization shall be determined by the Health Assembly after consultation with the United Nations.

CHAPTER XI – REGIONAL ARRANGEMENTS

Article 44

(a) The Health Assembly shall from time to time define the geographical areas in which it is desirable to establish a regional organization.

(b) The Health Assembly may, with the consent of a majority of the Members situated within each area so defined, establish a regional organization to meet the special needs of such area. There shall not be more than one regional organization in each area.

Article 45

Each regional organization shall be an integral part of the Organization in accordance with this Constitution.

Article 46

Each regional organization shall consist of a regional committee and a regional office.

Article 47

Regional committees shall be composed of representatives of the Member States and Associate Members in the region concerned. Territories or groups of territories within the region, which are not responsible for the conduct of their international relations and which are not Associate Members, shall have the right to be represented and to participate in regional committees. The manner and extent of the rights and obligations of these territories or groups of territories in regional committees shall be determined by the Health Assembly in consultation with the Member or other authority having responsibility for the international relations of these territories and with the Member States in the region.

Article 48

Regional committees shall meet as often as necessary and shall determine the place of each meeting.

Article 49

Regional committees shall adopt their own rules of procedure.

Article 50

The functions of the regional committee shall be:

(a) to formulate policies governing matters of an exclusively regional character;

(b) to supervise the activities of the regional office;

(c) to suggest to the regional office the calling of technical conferences and such additional work or investigation in health matters as in the opinion of the regional committee would promote the objective of the Organization within the region;

(d) to co-operate with the respective regional committees of the United Nations and with those of other specialized agencies and with other regional international organizations having interests in common with the Organization;
(e) to tender advice, through the Director-General, to the Organization on international health matters which have wider than regional significance;

(f) to recommend additional regional appropriations by the Governments of the respective regions if the proportion of the central budget of the Organization allotted to that region is insufficient for the carrying-out of the regional functions;

(g) such other functions as may be delegated to the regional committee by the Health Assembly, the Board or the Director-General.

Article 51

Subject to the general authority of the Director-General of the Organization, the regional office shall be the administrative organ of the regional committee. It shall, in addition, carry out within the region the decisions of the Health Assembly and of the Board.

Article 52

The head of the regional office shall be the Regional Director appointed by the Board in agreement with the regional committee.

Article 53

The staff of the regional office shall be appointed in a manner to be determined by agreement between the Director-General and the Regional Director.

Article 54

The Pan American Sanitary Organization¹ represented by the Pan American Sanitary Bureau and the Pan American Sanitary Conferences, and all other inter-governmental regional health organizations in existence prior to the date of signature of this Constitution, shall in due course be integrated with the Organization. This integration shall be effected as soon as practicable through common action based on mutual consent of the competent authorities expressed through the organizations concerned.

Chapter XII – Budget and Expenses

Article 55

The Director-General shall prepare and submit to the Board the budget estimates of the Organization. The Board shall consider and submit to the Health Assembly such budget estimates, together with any recommendations the Board may deem advisable.

Article 56

Subject to any agreement between the Organization and the United Nations, the Health Assembly shall review and approve the budget estimates and shall apportion the expenses among the Members in accordance with a scale to be fixed by the Health Assembly.

Article 57

The Health Assembly or the Board acting on behalf of the Health Assembly may accept and administer gifts and bequests made to the Organization provided that the conditions attached to such gifts or bequests are acceptable to the Health Assembly or the Board and are consistent with the objective and policies of the Organization.

Article 58

A special fund to be used at the discretion of the Board shall be established to meet emergencies and unforeseen contingencies.

Chapter XIII – Voting

Article 59

Each Member shall have one vote in the Health Assembly.

Article 60

(a) Decisions of the Health Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include: the adoption of conventions or agreements; the approval of agreements bringing the Organization into relation with the United Nations and inter-governmental organizations and agencies in accordance with Articles 69, 70 and 72; amendments to this Constitution.

(b) Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting.

(c) Voting on analogous matters in the Board and in committees of the Organization shall be made in accordance with paragraphs (a) and (b) of this Article.

Chapter XIV – Reports Submitted by States

Article 61

Each Member shall report annually to the Organization on the action taken and progress achieved in improving the health of its people.

¹ Renamed “Pan American Health Organization” by decision of the XV Pan American Sanitary Conference, September-October 1958.
Article 62

Each Member shall report annually on the action taken with respect to recommendations made to it by the Organization and with respect to conventions, agreements and regulations.

Article 63

Each Member shall communicate promptly to the Organization important laws, regulations, official reports and statistics pertaining to health which have been published in the State concerned.

Article 64

Each Member shall provide statistical and epidemiological reports in a manner to be determined by the Health Assembly.

Article 65

Each Member shall transmit upon the request of the Board such additional information pertaining to health as may be practicable.

Chapter XV – Legal Capacity, Privileges and Immunities

Article 66

The Organization shall enjoy in the territory of each Member such legal capacity as may be necessary for the fulfilment of its objective and for the exercise of its functions.

Article 67

(a) The Organization shall enjoy in the territory of each Member such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions.

(b) Representatives of Members, persons designated to serve on the Board and technical and administrative personnel of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

Article 68

Such legal capacity, privileges and immunities shall be defined in a separate agreement to be prepared by the Organization in consultation with the Secretary-General of the United Nations and concluded between the Members.

Chapter XVI – Relations with Other Organizations

Article 69

The Organization shall be brought into relation with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. The agreement or agreements bringing the Organization into relation with the United Nations shall be subject to approval by a two-thirds vote of the Health Assembly.

Article 70

The Organization shall establish effective relations and co-operate closely with such other inter-governmental organizations as may be desirable. Any formal agreement entered into with such organizations shall be subject to approval by a two-thirds vote of the Health Assembly.

Article 71

The Organization may, on matters within its competence, make suitable arrangements for consultation and co-operation with non-governmental international organizations and, with the consent of the Government concerned, with national organizations, governmental or non-governmental.

Article 72

Subject to the approval by a two-thirds vote of the Health Assembly, the Organization may take over from any other international organization or agency whose purpose and activities lie within the field of competence of the Organization such functions, resources and obligations as may be conferred upon the Organization by international agreement or by mutually acceptable arrangements entered into between the competent authorities of the respective organizations.

Chapter XVII – Amendments

Article 73

Texts of proposed amendments to this Constitution shall be communicated by the Director-General to Members at least six months in advance of their consideration by the Health Assembly. Amendments shall come into force for all Members when adopted by a two-thirds vote of the Health Assembly and accepted by two-thirds of the Members in accordance with their respective constitutional processes.
CHAPTER XVIII – INTERPRETATION

Article 74

The Chinese, English, French, Russian and Spanish texts of this Constitution shall be regarded as equally authentic.

Article 75

Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement.

Article 76

Upon authorization by the General Assembly of the United Nations or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization.

Article 77

The Director-General may appear before the Court on behalf of the Organization in connexion with any proceedings arising out of any such request for an advisory opinion. He shall make arrangements for the presentation of the case before the Court, including arrangements for the argument of different views on the question.

CHAPTER XIX – ENTRY-INTO-FORCE

Article 78

Subject to the provisions of Chapter III, this Constitution shall remain open to all States for signature or acceptance.

Article 79

(a) States may become parties to this Constitution by:
(i) signature without reservation as to approval;
(ii) signature subject to approval followed by acceptance; or
(iii) acceptance.

(b) Acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

Article 80

This Constitution shall come into force when twenty-six Members of the United Nations have become parties to it in accordance with the provisions of Article 79.

Article 81

In accordance with Article 102 of the Charter of the United Nations, the Secretary-General of the United Nations will register this Constitution when it has been signed without reservation as to approval on behalf of one State or upon deposit of the first instrument of acceptance.

Article 82

The Secretary-General of the United Nations will inform States parties to this Constitution of the date when it has come into force. He will also inform them of the dates when other States have become parties to this Constitution.

IN FAITH WHEREOF the undersigned representatives, having been duly authorized for that purpose, sign this Constitution.

DONE in the City of New York this twenty-second day of July 1946, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations. The Secretary-General of the United Nations will send certified copies to each of the Governments represented at the Conference.
No. 147. AGREEMENT\(^4\) BETWEEN THE UNITED NATIONS AND THE UNITED STATES OF AMERICA REGARDING THE HEADQUARTERS OF THE UNITED NATIONS. SIGNED AT LAKE SUCCESS, ON 26 JUNE 1947

THE UNITED NATIONS AND THE UNITED STATES OF AMERICA,

Desiring to conclude an agreement for the purpose of carrying out the Resolution adopted by the General Assembly on 14 December 1946\(^3\) to establish the seat of the United Nations in the City of New York and to regulate questions arising as a result thereof;

Have appointed as their representatives for this purpose:
The United Nations: Trygve Lie, Secretary-General, and
The United States of America: George C. MARSHALL, Secretary of State,

Who have agreed as follows:

Article I
DEFINITIONS

Section 1

In this agreement:

(a) The expression "headquarters district" means: (1) the area defined as such in Annex 1; (2) any other lands or buildings which may from time to time be included therein by supplemental agreement with the appropriate American authorities;

(b) the expression "appropriate American authorities" means such federal, state, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the state and local government involved;

(c) the expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946, as acceded to by the United States;

\(^4\) Came into force on 21 November 1947 by an Exchange of Notes, in accordance with section 28.

\(^3\) United Nations, resolution 99 (I), document A/64/Add.1, page 195.

(d) the expression "United Nations" means the international organization established by the Charter of the United Nations, hereinafter referred to as the "Charter";

(e) the expression "Secretary-General" means the Secretary-General of the United Nations.

Article II
THE HEADQUARTERS DISTRICT

Section 2

The seat of the United Nations shall be the headquarters district.

Section 3

The appropriate American authorities shall take whatever action may be necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district, except as provided in section 22 in the event that the United Nations ceases to use the same, provided that the United Nations shall reimburse the appropriate American authorities for any costs incurred, after consultation with the United Nations, in liquidating by eminent domain proceedings or otherwise any adverse claims.

Section 4

(a) The United Nations may establish and operate in the headquarters district:

(1) its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radiotelegraph, radioteletyp, radiotelephone, radiotelephoto, and similar services;

(2) one point-to-point circuit between the headquarters district and the office of the United Nations in Geneva (using single sideband equipment) to be used exclusively for the exchange of broadcasting programs and interoffice communications;
(3) low power, micro-wave, low or medium frequency facilities for communication within headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communications to the same extent and subject to the same conditions as permitted under applicable rules and regulations for amateur operators in the United States, except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the headquarters district provided by section 9 (a);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

(b) The United Nations shall make arrangements for the operation of the services referred to in this section with the International Telecommunication Union, the appropriate agencies of the Government of the United States and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters.

(c) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the headquarters district. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the United Nations of appropriate premises for such purposes and the inclusion of such premises in the headquarters district.

Section 5

In the event that the United Nations should find it necessary and desirable to establish and operate an aerodrome, the conditions for the location, use and operation of such an aerodrome and the conditions under which there shall be entry into and exit therefrom shall be the subject of a supplemental agreement.

Section 6

In the event that the United Nations should propose to organize its own postal service, the conditions under which such service shall be set up shall be the subject of a supplemental agreement.

Article III

LAW AND AUTHORITY IN THE HEADQUARTERS DISTRICT

Section 7

(a) The headquarters district shall be under the control and authority of the United Nations as provided in this agreement.

(b) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district.

(c) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws.

(d) The federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the headquarters district, shall take into account the regulations enacted by the United Nations under section 8.

Section 8

The United Nations shall have the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this section, shall be promptly settled as provided in Section 21. Pending such settlement, the regulation of the United Nations shall apply, and the federal, state or local law or regulation shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities.
Section 9

(a) The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General.

(b) Without prejudice to the provisions of the General Convention or Article IV of this agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavoring to avoid service of legal process.

Section 10

The United Nations may expel or exclude persons from the headquarters district for violation of its regulations adopted under Section 8 or for other cause. Persons who violate such regulations shall be subject to other penalties or to detention only in accordance with the provisions of such laws or regulations as may be adopted by the appropriate American authorities.

Article IV

Communications and Transit

Section 11

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of: (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials, (2) experts performing missions for the United Nations or for such specialized agencies, (3) representatives of the press or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

Section 12

The provisions of Section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.

Section 13

(a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that section, they shall be granted without charge and as promptly as possible.

(b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11 and, specifically, shall not be applied in such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in Section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(1) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General or the principal executive officer of the appropriate specialized agency in the case of any other person referred to in Section 11;
(2) A representative of the Member concerned, the Secretary-General or
the principal executive officer of the appropriate specialized agency, as the case
may be, shall have the right to appear in any such proceedings on behalf of
the person against whom they are instituted;

(3) Persons who are entitled to diplomatic privileges and immunities under
Section 15 or under the General Convention shall not be required to leave the
United States otherwise than in accordance with the customary procedure
applicable to diplomatic envoys accredited to the United States.

(c) This section does not prevent the requirement of reasonable evidence
to establish that persons claiming the rights granted by Section 11 come within
the classes described in that section, or the reasonable application of quarantine
and public health regulations.

(d) Except as provided above in this section and in the General Conven-
tion, the United States retains full control and authority over the entry of
persons or property into the territory of the United States and the conditions
under which persons may remain or reside there.

(e) The Secretary-General shall, at the request of the appropriate Ameri-
can authorities, enter into discussions with such authorities, with a view to
making arrangements for registering the arrival and departure of persons who
have been granted visas valid only for transit to and from the headquarters
district and sojourn therein and in its immediate vicinity.

(f) The United Nations shall, subject to the foregoing provisions of this
section, have the exclusive right to authorize or prohibit entry of persons and
property into the headquarters district and to prescribe the conditions under
which persons may remain or reside there.

Section 14

The Secretary-General and the appropriate American authorities shall, at
the request of either of them, consult, as to methods of facilitating entrance into
the United States, and the use of available means of transportation, by persons
coming from abroad who wish to visit the headquarters district and do not
enjoy the rights referred to in this Article.

Article V

Resident Representatives to the United Nations

Section 15

(1) Every person designated by a Member as the principal resident rep-
resentative to the United Nations of such Member or as a resident representative
with the rank of ambassador or minister plenipotentiary,

(2) such resident members of their staffs as may be agreed upon between
the Secretary-General, the Government of the United States and the Govern-
ment of the Member concerned;

(3) every person designated by a member of a specialized agency, as
defined in Article 57, paragraph 2 of the Charter, as its principal permanent
representative, with the rank of ambassador or minister plenipotentiary at the
headquarters of such agency in the United States, and

(4) such other principal resident representatives of members of a spe-
cialized agency and such resident members of the staffs of representatives of a
specialized agency as may be agreed upon between the principal executive officer
of the specialized agency, the Government of the United States and the Govern-
ment of the Member concerned,

shall, whether residing inside or outside the headquarters district, be entitled
in the territory of the United States to the same privileges and immunities,
subject to corresponding conditions and obligations, as it accords to diplomatic
envoys accredited to it. In the case of Members whose governments are not
recognized by the United States, such privileges and immunities need be extended
to such representatives, or persons on the staffs of such representatives, only
within the headquarters district, at their residences and offices outside the
district, in transit between the district and such residences and offices, and in
transit on official business to or from foreign countries.

Article VI

Police Protection of the Headquarters District

Section 16

(a) The appropriate American authorities shall exercise due diligence to
ensure that the tranquility of the headquarters district is not disturbed by the
unauthorized entry of groups of persons from outside or by disturbances in its
immediate vicinity and shall cause to be provided on the boundaries of the headquarters district such police protection as is required for these purposes.

(b) If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons as requested under the authority of the United Nations. The United Nations shall, if requested, enter into arrangements with the appropriate American authorities to reimburse them for the reasonable cost of such services.

Article VII

Public Services and Protection of the Headquarters District

Section 17

(a) The appropriate American authorities will exercise, to the extent requested by the Secretary-General, the powers which they possess to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, et cetera. In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly to ensure that the work of the United Nations is not prejudiced.

(b) Special provision with reference to maintenance of utilities and underground construction are contained in Annex 2.

Section 18

The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district. The United Nations shall on its part take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters district are not prejudiced by any use made of the land in the headquarters district by the United Nations.

Section 19

It is agreed that no form of racial or religious discrimination shall be permitted within the headquarters district.

Article VIII

Matters Relating to the Operation of this Agreement

Section 20

The Secretary-General and the appropriate American authorities shall settle by agreement the channels through which they will communicate regarding the application of the provisions of this agreement and other questions affecting the headquarters district, and may enter into such supplemental agreements as may be necessary to fulfill the purposes of this agreement. In making supplemental agreements with the Secretary-General, the United States shall consult with the appropriate state and local authorities. If the Secretary-General so requests, the Secretary of State of the United States shall appoint a special representative for the purpose of liaison with the Secretary-General.

Section 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Article IX

Miscellaneous Provisions

Section 22

(a) The United Nations shall not dispose of all or any part of the land owned by it in the headquarters district without the consent of the United States.
If the United States is unwilling to consent it shall buy the land in question from the United Nations at a price to be determined as provided in paragraph (d) of this section.

(b) If the seat of the United Nations is removed from the headquarters district, all right, title and interest of the United Nations in and to real property in the headquarters district or any part of it shall, on request of either the United Nations or the United States, be assigned and conveyed to the United States. In the absence of such request, the same shall be assigned and conveyed to the sub-division of a state in which it is located or, if such sub-division shall not desire it, then to the state in which it is located. If none of the foregoing desire the same, it may be disposed of as provided in paragraph (a) of this section.

(c) If the United Nations disposes of all or any part of the headquarters district, the provisions of other sections of this agreement which apply to the headquarters district shall immediately cease to apply to the land and buildings so disposed of.

(d) The price to be paid for any conveyance under this section shall, in default of agreement, be the then fair value of the land, buildings and installations, to be determined under the procedure provided in Section 21.

Section 23

The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.

Section 24

This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein.

Section 25

Wherever this agreement imposes obligations on the appropriate American authorities, the Government of the United States shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate American authorities.

Section 26

The provisions of this agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this agreement and any provisions of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this agreement shall prevail.

Section 27

This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently, to discharge its responsibilities and fulfill its purposes.

Section 28

This agreement shall be brought into effect by an exchange of notes between the Secretary-General, duly authorized pursuant to a resolution of the General Assembly of the United Nations, and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of the Congress.

In witness whereof the respective representatives have signed this agreement and have affixed their seals hereto.

Done in duplicate, in the English and French languages, both authentic, at Lake Success, this twenty-sixth day of June 1947.

For the United Nations:

Trygve Lie
Secretary-General

For the Government of the United States of America:

G. C. Marshall
Secretary of State

See page 38 of this volume.

No. 147
ANNEX 1

The area referred to in Section 1, (a) (1) consists of:

(a) the premises bounded on the East by the westerly side of Franklin D. Roosevelt Drive, on the West by the easterly side of First Avenue, on the North by the southerly side of East Forty-Eighth Street, and on the South by the northerly side of East Forty-Second Street, all as proposed to be widened, in the borough of Manhattan, City and State of New York, and (b) an easement over Franklin D. Roosevelt Drive, above a lower limiting plane to be fixed for the construction and maintenance of an esplanade, together with the structures thereon and foundations and columns to support the same in locations below such limiting plane, the entire area to be more definitely defined by supplemental agreement between the United Nations and the United States of America.

ANNEX 2

MAINTENANCE OF UTILITIES AND UNDERGROUND CONSTRUCTION

Section 1

The Secretary-General agrees to provide passes to duly authorized employees of the City of New York, the State of New York, or any of their agencies or subdivisions, for the purpose of enabling them to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters district.

Section 2

Underground constructions may be undertaken by the City of New York, or the State of New York, or any of their agencies or subdivisions, within the headquarters district only after consultation with the Secretary-General, and under conditions which shall not disturb the carrying out of the functions of the United Nations.

EXCHANGE OF NOTES

I

Lake Success, New York, 21 November 1947

Sir,

I have the honour to refer to the resolution adopted by the General Assembly on 31 October 1947, at its one hundred and first meeting, relative to the Agreement between the United States of America and the United Nations regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947.

By this resolution the General Assembly, after having studied the report of its Sixth Committee and endorsed the opinions expressed therein, has approved the above-mentioned Agreement, which states and defines the mutual obligations of the United Nations and the United States in connexion with the establishment of the permanent Headquarters of the United Nations in the United States. The resolution, consequently, has authorized me to bring that Agreement into force in the manner provided in section 28 of the Agreement.

Pursuant to the resolution and in conformity with section 28 of the Agreement, I have the honour to propose that the present note and your note of this day be considered as bringing the Headquarters Agreement into effect under date hereof.

I have the honour to be, Sir, your obedient servant,

(Signed) Trygve Lie
Secretary-General

The Honorable Warren R. Austin
Permanent Representative
of the United States of America
at the Seat of the United Nations


No. 147
II

November 21, 1947

Excellency:

I have the honor to refer to section 28 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, which provides for bringing that Agreement into effect by an exchange of notes. Reference is made also to the provisions of United States Public Law 357, 80th Congress, entitled "Joint Resolution Authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes", which was approved by the President of the United States of America on August 4, 1947.

Pursuant to instructions from my Government, I have the honor to inform you that the Government of the United States of America is prepared to apply the above-mentioned Headquarters Agreement subject to the provisions of Public Law 357.

I have been instructed by my Government to propose that the present note and your note of this date be considered as bringing the Headquarters Agreement into effect on the date hereof.

Accept, Excellency the renewed assurances of my highest consideration.

(Signed) Warren R. Austin
United States Representative
to the United Nations

His Excellency Trygve Lie
Secretary-General
of the United Nations
Agreement Relating to the International Telecommunications Satellite Organization, 1971
AGREEMENT RELATING TO THE
INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

CONSIDERING the principle set forth in Resolution 1721 (XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Taking into account that the 24th Assembly of Parties of the International Telecommunications Satellite Organization decided to restructure and privatize by establishing a private company supervised by an intergovernmental organization,

Recognizing that the International Telecommunications Satellite Organization has, in accordance with its original purpose, established a global satellite system for providing telecommunications services to all areas of the world, which has contributed to world peace and understanding,

For the purposes of this Agreement:

(a) “Agreement” means the present Agreement, including its Annex, and any amendments thereto, but excluding all titles of Articles, opened for signature by Governments at Washington on August 20, 1964, by Governments of which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles on a continuing basis.

(b) “Space segment” means the telecommunications satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of these satellites;

(c) “Telecommunications” means any transmission, emission or reception of signs, signals, instructions, writings, images and sounds or intelligence of any nature, by wire, radio, optical or other electromagnetic systems;

(d) “Company” means the private entity or entities established under the law of one or more States to which the international telecommunications satellite organization’s space system is transferred and includes their successors-in-interest;

(e) “Commercial Basis” means in accordance with usual and customary commercial practice in the telecommunications industry;

(f) “Interim Agreement” means the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System signed by Governments at Washington on August 20, 1964;

(g) “Core Principles” means those principles set forth in Article III;

(h) “Lifeline Connectivity Obligation” or “LCO” means the obligation assumed by the Company as set out in the LCO contract to provide continued telecommunications services to the LCO customer;

(i) “Special Agreement” means the agreement signed on August 20, 1964, by Governments which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles;

(j) “Global coverage” means the maximum geographic coverage of the earth towards the northernmost and southernmost parallels visible from satellites deployed in geostationary orbital locations;

(k) “Global connectivity” means the interconnection capabilities available to the Company’s customers through the global coverage the Company provides in order to make communication possible within and between the five International Telecommunication Union regions defined by the plenipotentiary conference of the ITU, held in Montreux in 1965;

(l) “Common Heritage” means those frequency assignments associated with orbital locations in the process of advanced publication, coordination or registered on behalf of the Parties with the International Telecommunications Union which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles;

(m) “Interim Agreement” means the agreement signed on August 20, 1964, by Governments which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles;

(n) “Public Services Agreement” means the legally binding instrument through which ITSO may become a Party, to ensure that the Company fulfills the Core Principles.

Intending that the Company will honor the Core Principles set forth in Article III of this Agreement and will provide, on a commercial basis, the space segment required for international public telecommunications services of high quality and reliability;

Agree as follows:

ARTICLE I

Definitions

...
(o) "Non-discriminatory access" means fair and equal opportunity to access the Company’s system;

(p) "Party" means a State for which the Agreement has entered into force or has been provisionally applied;

(q) "Property" includes every subject of whatever nature to which a right of ownership can attach, as well as contractual rights;

(r) "LCO customers" means all customers qualifying for and entering into LCO contracts; and

(s) "Administration" means any governmental department or agency responsible for compliance with the obligations derived from the Constitution of the International Telecommunication Union, the Convention of the International Telecommunication Union, and its Administrative Regulations.

Establishment of ITSO

ARTICLE II

The Parties, with full regard for the principles set forth in the Preamble to this Agreement, establish the International Telecommunications Satellite Organization, herein referred to as "ITSO".

Main Purpose and Core Principles of ITSO

ARTICLE III

(a) Taking into account the establishment of the Company, the main purpose of ITSO is to ensure, through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles.

(b) The Core Principles are:

(i) maintain global connectivity and global coverage;

(ii) serve its lifeline connectivity customers; and

(iii) provide non-discriminatory access to the Company’s system.

Covered Domestic Public Telecommunications Services

ARTICLE IV

The following shall be considered for purposes of applying Article III on the same basis as international public telecommunications services:

(a) domestic public telecommunications services between areas separated by areas not under the jurisdiction of the State concerned, or between areas separated by the high seas;

(b) domestic public telecommunications services between areas which are not linked by any terrestrial wideband facilities and which are separated by natural barriers of such an exceptional nature that they impede the viable establishment of terrestrial wideband facilities between such areas, provided that the appropriate approval has been given.

Supervision

ARTICLE V

ITSO shall take all appropriate actions, including entering into the Public Services Agreement, to supervise the performance by the Company of the Core Principles, in particular, the principle of non-discriminatory access to the Company’s system for existing and future public telecommunications services offered by the Company when space segment capacity is available on a commercial basis.

Juridical Personality

ARTICLE VI

(a) ITSO shall possess juridical personality. It shall enjoy the full capacity necessary for the exercise of its functions and the achievement of its purposes, including the capacity to:

(i) conclude agreements with States or international organizations;

(ii) contract;

(iii) acquire and dispose of property; and

(iv) be a party to legal proceedings.

(b) Each Party shall take such action as is necessary within its jurisdiction for the purpose of making effective in terms of its own law the provisions of this Article.

Financial Principles

ARTICLE VII

(a) ITSO will be financed for the twelve year period established in Article XXI by the retention of certain financial assets at the time of transfer of ITSO’s space system to the Company.

(b) In the event ITSO continues beyond twelve years, ITSO shall obtain funding through the Public Services Agreement.

Structure of ITSO

ARTICLE VIII
ITSO shall have the following organs:

(a) the Assembly of Parties; and

(b) an executive organ, headed by the Director General, responsible to the Assembly of Parties.

### Assembly of Parties

#### ARTICLE IX

(a) The Assembly of Parties shall be composed of all the Parties and shall be the principal organ of ITSO.

(b) The Assembly of Parties shall give consideration to general policy and long-term objectives of ITSO.

(c) The Assembly of Parties shall give consideration to matters which are primarily of interest to the Parties as sovereign States, and in particular ensure that the Company provides, on a commercial basis, international public telecommunications services, in order to:

(i) maintain global connectivity and global coverage;

(ii) serve its lifeline connectivity customers; and

(iii) provide non-discriminatory access to the Company's system.

(d) The Assembly of Parties shall have the following functions and powers:

(i) to direct the executive organ of ITSO as it deems appropriate, in particular regarding the executive organ's review of the activities of the Company that directly relate to the Core Principles;

(ii) to consider and take decisions on proposals for amending this Agreement in accordance with Article XV of this Agreement;

(iii) to appoint and remove the Director General in accordance with Article X;

(iv) to consider and decide on reports submitted by the Director General that relate to the Company's observance of the Core Principles;

(v) to consider and, in its discretion, take decisions on recommendations from the Director General;

(vi) to take decisions, pursuant to paragraph (b) of Article XIV of this Agreement, in connection with the withdrawal of a Party from ITSO;

(vii) to decide upon questions concerning formal relationships between ITSO and States, whether Parties or not, or international organizations;

(viii) to consider complaints submitted to it by Parties;

(ix) to consider issues pertaining to the Parties' Common Heritage;

(x) to take decisions concerning the approval referred to in paragraph (b) of Article IV of this Agreement;

(xi) to consider and approve the budget of ITSO for such period as agreed to by the Assembly of Parties;

(xii) to take any necessary decisions with respect to contingencies that may arise outside of the approved budget;

(xiii) to appoint an auditor to review the expenditures and accounts of ITSO;

(xiv) to select the legal experts referred to in Article 3 of Annex A to this Agreement;

(xv) to determine the conditions under which the Director General may commence an arbitration proceeding against the Company pursuant to the Public Services Agreement;

(xvi) to decide upon amendments proposed to the Public Services Agreement; and

(xvii) to exercise any other functions conferred upon it under any other Article of this Agreement.

(e) The Assembly of Parties shall meet in ordinary session every two years beginning no later than twelve months after the transfer of ITSO's space system to the Company. In addition to the ordinary meetings of the Parties, the Assembly of Parties may meet in extraordinary meetings, which may be convened upon request of the executive organ acting pursuant to the provisions of paragraph (k) of Article X, or upon the written request of one or more Parties to the Director General that sets forth the purpose of the meeting and which receives the support of at least one-third of the Parties including the requesting Parties. The Assembly of Parties shall establish the conditions under which the Director General may convene an extraordinary meeting of the Assembly of Parties.

(f) A quorum for any meeting of the Assembly of Parties shall consist of representatives of a majority of the Parties. Decisions on procedural matters shall be taken by an affirmative vote cast by a simple majority of the Parties whose representatives are present and voting. Disputes whether a specific matter is procedural or substantive shall be decided by a vote cast by a simple majority of the Parties whose representatives are present and voting. Parties shall be afforded an opportunity to vote by proxy or other means as deemed appropriate by the Assembly of Parties and shall be provided with necessary information sufficiently in advance of the meeting of the Assembly of Parties.

(g) For any meeting of the Assembly of Parties, each Party shall have one vote.

(h) The Assembly of Parties shall adopt its own rules of procedure, which shall include provision for the election of a Chairman and other officers as well as provisions for participation and voting.

(i) Each Party shall meet its own costs of representation at a meeting of the Assembly of Parties. Expenses of meetings of the Assembly of Parties shall be regarded as an administrative cost of ITSO.

### Director General
ARTICLE X

(a) The executive organ shall be headed by the Director General who shall be directly responsible to the Assembly of Parties.

(b) The Director General shall

(i) be the chief executive and the legal representative of ITSO and shall be responsible for the performance of all management functions, including the exercise of rights under contract;

(ii) act in accordance with the policies and directives of the Assembly of Parties; and

(iii) be appointed by the Assembly of Parties for a term of four years or such other period as the Assembly of Parties decides. The Director General may be removed from office for cause by the Assembly of Parties. No person shall be appointed as Director General for more than eight years.

(c) The paramount consideration in the appointment of the Director General and in the selection of other personnel of the executive organ shall be the necessity of ensuring the highest standards of integrity, competency and efficiency, with consideration given to the possible advantages of recruitment and deployment on a regionally and geographically diverse basis. The Director General and the personnel of the executive organ shall refrain from any action incompatible with their responsibilities to ITSO.

(d) The Director General shall, subject to the guidance and instructions of the Assembly of Parties, determine the structure, staff levels and standard terms of employment of officials and employees, and shall appoint the personnel of the executive organ. The Director General may select consultants and other advisers to the executive organ.

(e) The Director General shall supervise the Company’s adherence to the Core Principles.

(f) The Director General shall

(i) monitor the Company’s adherence to the Core Principle to serve LCO customers by honoring LCO contracts;

(ii) consider the decisions taken by the Company with respect to petitions for eligibility to enter into an LCO contract;

(iii) assist LCO customers in resolving their disputes with the Company by providing conciliation services; and

(iv) in the event an LCO customer decides to initiate an arbitration proceeding against the Company, provide advice on the selection of consultants and arbiters.

(g) The Director General shall report to the Parties on the matters referred to in paragraphs (d) through (f).

(h) Pursuant to the terms to be established by the Assembly of Parties, the Director General may commence arbitration proceedings against the Company pursuant to the Public Services Agreement.

(i) The Director General shall deal with the Company in accordance with the Public Services Agreement.

(j) The Director General, on behalf of ITSO, shall consider all issues arising from the Parties’ Common Heritage and shall communicate the views of the Parties to the Notifying Administration(s).

(k) When the Director General is of the view that a Party’s failure to take action pursuant to Article X(c) has impaired the Company’s ability to comply with the Core Principles, the Director General shall contact that Party to seek a resolution of the situation and may, consistent with the conditions established by the Assembly of Parties pursuant to Article IX(e), convene an extraordinary meeting of the Assembly of Parties.

(l) The Assembly of Parties shall designate a senior officer of the executive organ to serve as the Acting Director General whenever the Director General is absent or is unable to discharge his duties, or if the office of Director General should become vacant. The Acting Director General shall have the capacity to exercise all the powers of the Director General pursuant to this Agreement. In the event of a vacancy, the Acting Director General shall serve in that capacity until the assumption of office by a Director General appointed and confirmed, as expeditiously as possible, in accordance with subparagraph (b) (iii) of this Article.

ARTICLE XI

Rights and Obligations of Parties

ARTICLE XII

Frequency Assignments
ITSO retain such assignments.

(b) The Party selected pursuant to paragraph (a) to represent all Parties during the period in which ITSO retains the assignments shall, upon the receipt of the notification by the Depositary of the approval, acceptance or ratification of the present Agreement by a Party selected by the Assembly of Parties to act as a Notifying Administration for the Company, transfer such assignments to the selected Notifying Administration(s).

(c) Any Party selected to act as the Company’s Notifying Administration shall, under applicable domestic procedure:

(i) authorize the use of such frequency assignment by the Company so that the Core Principles may be fulfilled; and

(ii) in the event that such use is no longer authorized, or the Company no longer requires such frequency assignment(s), cancel such frequency assignment under the procedures of the ITU.

(d) Notwithstanding any other provision of this Agreement, in the event a Party selected to act as a Notifying Administration for the Company ceases to be a member of ITSO pursuant to Article XIV, such Party shall be bound and subject to all relevant provisions set forth in this Agreement and in the ITU’s Radio Regulations until the frequency assignments are transferred to another Party in accordance with ITU procedures.

(e) Each Party selected to act as a Notifying Administration pursuant to paragraph (c) shall:

(i) report at least on an annual basis to the Director General on the treatment afforded by such Notifying Administration to the Company, with particular regard to such Party’s adherence to its obligations under Article XI(c);

(ii) seek the views of the Director General, on behalf of ITSO, regarding actions required to implement the Company’s fulfillment of the Core Principles;

(iii) work with the Director General, on behalf of ITSO, on potential activities of the Notifying Administration(s) to expand access to lifeline countries;

(iv) notify and consult with the Director General on ITU satellite system coordinations that are undertaken on behalf of the Company to assure that global connectivity and service to lifeline users are maintained; and

(v) consult with the ITU regarding the satellite communications needs of lifeline users.

### ITSO Headquarters, Privileges, Exemptions, Immunities

#### ARTICLE XIII

(a) The headquarters of ITSO shall be in Washington, D.C. unless otherwise determined by the Assembly of Parties.

(b) Within the scope of activities authorized by this Agreement, ITSO and its property shall be exempt in all States Party to this Agreement from all national income and direct national property taxation. Each Party undertakes to use its best endeavors to bring about, in accordance with the applicable domestic procedure, such further exemption of ITSO and its property from income and direct property taxation, and customs duties, as is desirable, bearing in mind the particular nature of ITSO.

(c) Each Party other than the Party in whose territory the headquarters of ITSO is located shall grant in accordance with the Protocol referred to in this paragraph, and the Party in whose territory the headquarters of ITSO is located shall, as soon as possible, conclude a Headquarters Agreement with ITSO covering privileges, exemptions and immunities. The other Parties shall, also as soon as possible, conclude a Protocol covering privileges, exemptions and immunities. The Headquarters Agreement and the Protocol shall be independent of this Agreement and each shall prescribe the conditions of its termination.

#### Withdrawal

##### ARTICLE XIV

(a) (i) Any Party may withdraw voluntarily from ITSO. A Party shall give written notice to the Depositary of its decision to withdraw.

(ii) Notification of the decision of a Party to withdraw pursuant to subparagraph (a)(i) of this Article shall be transmitted by the Depositary to all Parties and to the executive organ.

(iii) Subject to Article XII(d), voluntary withdrawal shall become effective and this Agreement shall cease to be in force, for a Party three months after the date of receipt of the notice referred to in subparagraph (a)(i) of this Article.

(b) (i) If a Party appears to have failed to comply with any obligation under this Agreement, the Assembly of Parties, having received notice to that effect or acting on its own initiative, and having considered any representations made by the Party, may decide, if it finds that the failure to comply has in fact occurred, that the Party be deemed to have withdrawn from ITSO. This Agreement shall cease to be in force for the Party as of the date of such decision. An extraordinary meeting of the Assembly of Parties may be convened for this purpose.

(ii) If the Assembly of Parties decides that a Party shall be deemed to have withdrawn from ITSO pursuant to subparagraph (i) of this Article, the executive organ shall notify the Depositary, which shall transmit the notification to all Parties.

(c) Upon the receipt by the Depositary or the executive organ, as the case may be, of notice of decision to withdraw pursuant to subparagraph (a)(i) of this Article, the Party giving notice shall cease to have any rights of representation and any voting rights in the Assembly of Parties, and shall incur no obligation or liability after the receipt of the notice.

(d) If the Assembly of Parties, pursuant to paragraph (b) of this Article, deems a Party to have withdrawn from ITSO, that Party shall incur no obligation or liability after such decision.

(e) No Party shall be required to withdraw from ITSO as a direct result of any change in the status of that Party with regard to the United Nations or the International Telecommunication Union.
**Amendment**

<table>
<thead>
<tr>
<th>ARTICLE XV</th>
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<tr>
<td>(a) Any Party may propose amendments to this Agreement. Proposed amendments shall be submitted to the executive organ, which shall distribute them promptly to all Parties.</td>
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<tr>
<td>(b) The Assembly of Parties shall consider each proposed amendment at its first ordinary meeting following its distribution by the executive organ, or at an earlier extraordinary meeting convened in accordance with the procedures of Article IX of this Agreement, provided that the proposed amendment has been distributed by the executive organ at least ninety days before the opening date of the meeting.</td>
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<tr>
<td>(c) The Assembly of Parties shall take decisions on each proposed amendment in accordance with the provisions relating to quorum and voting contained in Article IX of this Agreement. It may modify any proposed amendment, distributed in accordance with paragraph (b) of this Article, and may also take decisions on any amendment not so distributed but directly consequential to a proposed or modified amendment.</td>
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<tr>
<td>(d) An amendment which has been approved by the Assembly of Parties shall enter into force in accordance with paragraph (e) of this Article after the Depositary has received notice of approval, acceptance or ratification of the amendment from two-thirds of the States which were Parties as of the date upon which the amendment was approved by the Assembly of Parties.</td>
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<td>(e) The Depositary shall notify all the Parties as soon as it has received the acceptances, approvals or ratifications required by paragraph (d) of this Article for the entry into force of an amendment. Ninety days after the date of issue of this notification, the amendment shall enter into force for all Parties, including those that have not yet accepted, approved, or ratified it and have not withdrawn from ITSO.</td>
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<td>(f) Notwithstanding the provisions of paragraphs (d) and (e) of this Article, an amendment shall not enter into force less than eight months after the date it has been approved by the Assembly of Parties.</td>
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**Settlement of Disputes**

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<tr>
<th>ARTICLE XVI</th>
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<tr>
<td>(a) All legal disputes arising in connection with the rights and obligations under this Agreement between Parties with respect to each other, or between ITSO and one or more Parties, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex A to this Agreement.</td>
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<tr>
<td>(b) All legal disputes arising in connection with the rights and obligations under this Agreement between a Party and a State which has ceased to be a Party or between ITSO and a State which has ceased to be a Party, and which arise after the State ceased to be a Party, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex A to this Agreement, provided that the State which has ceased to be a Party so agrees. If a State ceases to be a Party, after a dispute in which it is a disputant has been submitted to arbitration pursuant to paragraph (a) of this Article, the arbitration shall be continued and concluded.</td>
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<tr>
<td>(c) All legal disputes arising as a result of agreements between ITSO and any Party shall be subject to the provisions on settlement of disputes contained in such agreements. In the absence of such provisions, such disputes, if not otherwise settled, may be submitted to arbitration in accordance with the provisions of Annex A to this Agreement if the disputants so agree.</td>
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**Signature**

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<tr>
<th>ARTICLE XVII</th>
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<tr>
<td>(a) This Agreement shall be open for signature at Washington from August 20, 1971 until it enters into force, or until a period of nine months has elapsed, whichever occurs first:</td>
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<tr>
<td>(b) Any Government signing this Agreement may do so without its signature being subject to ratification, acceptance or approval or with a declaration accompanying its signature that it is subject to ratification, acceptance or approval.</td>
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<tr>
<td>(c) Any State referred to in paragraph (a) of this Article may accede to this Agreement after it is closed for signature.</td>
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<td>(d) No reservation may be made to this Agreement.</td>
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**Entry Into Force**

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<th>ARTICLE XVIII</th>
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<tr>
<td>(a) This Agreement shall enter into force sixty days after the date on which it has been signed not subject to ratification, acceptance or approval, or has been ratified, accepted, approved or acceded to, by two-thirds of the States which were parties to the Interim Agreement as of the date upon which this Agreement is opened for signature, provided that such two-thirds include parties to the Interim Agreement which then held at least two-thirds of the quotas under the Special Agreement. Notwithstanding the foregoing provisions, this Agreement shall not enter into force less than eight months or more than eighteen months after the date it is opened for signature.</td>
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<td>(b) For a State whose instrument of ratification, acceptance, approval or accession is deposited after the date this Agreement enters into force pursuant to paragraph (a) of this Article, this Agreement shall enter into force on the date of such deposit.</td>
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<tr>
<td>(c) Upon entry into force of this Agreement pursuant to paragraph (a) of this Article, it may be applied provisionally with respect to any State whose Government signed it subject to ratification, acceptance or approval if that Government so requests at the time of signature or at any time thereafter prior to the entry into force of this Agreement. Provisional application shall terminate:</td>
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<tr>
<td>(i) upon deposit of an instrument of ratification, acceptance or approval of this Agreement by that Government;</td>
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<td>(ii) upon expiration of two years from the date on which this Agreement enters into force</td>
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without having been ratified, accepted or approved by that Government; or

(iii) upon notification by that Government, before expiration of the period mentioned in subparagraph (ii) of this paragraph, of its decision not to ratify, accept or approve this Agreement.

If provisional application terminates pursuant to subparagraph (ii) or (iii) of this paragraph, the provisions of paragraph (c) of Article XIV of this Agreement shall govern the rights and obligations of the Party.

(d) Upon entry into force, this Agreement shall replace and terminate the Interim Agreement.

**Miscellaneous Provisions**

**ARTICLE XIX**

(a) The official and working languages of ITSO shall be English, French and Spanish.

(b) Internal regulations for the executive organ shall provide for the prompt distribution to all Parties of copies of any ITSO document in accordance with their requests.

(c) Consistent with the provisions of Resolution 1721 (XVI) of the General Assembly of the United Nations, the executive organ shall send to the Secretary General of the United Nations, and to the Specialized Agencies concerned, for their information, an annual report on the activities of ITSO.

**Depositary**

**ARTICLE XX**

(a) The Government of the United States of America shall be the Depositary for this Agreement, with which shall be deposited declarations made pursuant to paragraph (b) of Article XVII of this Agreement, instruments of ratification, acceptance, approval or accession, requests for provisional application, and notifications of ratification, acceptance or approval of amendments, of decisions to withdraw from ITSO, or of termination of the provisional application of this Agreement.

(b) This Agreement, of which the English, French and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary. The Depositary shall transmit certified copies of the text of this Agreement to all Governments that have signed it or deposited instruments of accession to it, and to the International Telecommunication Union, and shall notify those Governments, and the International Telecommunication Union, of signatures, of the deposit of instruments of ratification, acceptance, approval or accession, of requests for provisional application, of commencement of the sixty-day period referred to in paragraph (a) of Article XVIII of this Agreement, of the entry into force of this Agreement, of notifications of ratification, acceptance or approval of amendments, of the entry into force of amendments, of decisions to withdraw from ITSO, of withdrawals and of terminations of provisional application of this Agreement. Notice of the commencement of the sixty-day period shall be issued on the first day of that period.

(c) Upon entry into force of this Agreement, the Depositary shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

**Duration**

**ARTICLE XXI**

This Agreement shall be in effect for at least twelve years from the date of transfer of ITSO's space system to the Company. The Assembly of Parties may terminate this Agreement effective upon the twelfth anniversary of the date of transfer of ITSO's space system to the Company by a vote pursuant to Article IX(f) of the Parties. Such decision shall be deemed to be a matter of substance.

IN WITNESS WHEREOF the Plenipotentiaries gathered together in the city of Washington, who have submitted their full powers, found to be in good and due form, have signed this Agreement.

DONE at Washington, on the 20th day of August, one thousand nine hundred and seventy one.

**Provisions on Procedures Relating to Settlement of Disputes**

**ANNEX A**

**ARTICLE 1**

The only disputants in arbitration proceedings instituted in accordance with this Annex shall be those referred to in Article XVI of this Agreement.

**ARTICLE 2**

An arbitral tribunal of three members duly constituted in accordance with the provisions of this Annex shall be competent to give a decision in any dispute cognizable pursuant to Article XVI of this Agreement.

**ARTICLE 3**

(a) Not later than sixty days before the opening date of the first and each subsequent ordinary meeting of the Assembly of Parties, each Party may submit to the executive organ the names of not more than two legal experts who will be available for the period from the end of such meeting until the end of the second subsequent ordinary meeting of the Assembly of Parties to serve as presidents or members of tribunals constituted in accordance with this Annex. From such nominees the executive organ shall prepare a list of all the persons thus nominated and shall attach to this list any biographical particulars submitted by the nominating Party, and shall distribute such list to all Parties not later than thirty days before the opening date of the meeting in question. If for any reason a nominee becomes unavailable for selection to the panel during the sixty-day period before the opening date of the meeting of the Assembly of Parties, the nominating Party may, not later than fourteen days before the opening date of the meeting of the Assembly of Parties, substitute the name of another legal expert.

(b) From the list mentioned in paragraph (a) of this Article, the Assembly of Parties shall select eleven persons to be members of a panel from which presidents of tribunals shall be selected, and shall select an alternate for each such member. Members and alternates shall serve for the period prescribed in paragraph (a) of this Article. If a member becomes unavailable to serve on the panel, he shall be replaced by his alternate.

(c) For the purpose of designating a chairman, the panel shall be convened to meet by the
executive organ as soon as possible after the panel has been selected. Members of the panel may participate in this meeting in person, or through electronic means. The quorum for a meeting of the panel shall be nine of the eleven members. The panel shall designate one of its members as its chairman by a decision taken by the affirmative votes of at least six members, cast in one or, if necessary, more than one secret ballot. The chairman so designated shall hold office as chairman for the rest of his period of office as a member of the panel. The cost of the meeting of the panel shall be regarded as an administrative cost of ITSO.

(d) If both a member of the panel and the alternate for that member become unavailable to serve, the Assembly of Parties shall fill the vacancies thus created from the list referred to in paragraph (a) of this Article. A person selected to replace a member or alternate whose term of office has not expired shall hold office for the remainder of the term of his predecessor. Vacancies in the office of the chairman of the panel shall be filled by the panel by designation of one of its members in accordance with the procedure prescribed in paragraph (c) of this Article.

(e) In selecting the members of the panel and the alternates in accordance with paragraph (b) or (d) of this Article, the Assembly of Parties shall seek to ensure that the composition of the panel will always be able to reflect an adequate geographical representation, as well as the principal legal systems as they are represented among the Parties.

(f) Any panel member or alternate serving on an arbitral tribunal at the expiration of his term shall continue to serve until the conclusion of any arbitral proceeding pending before such tribunal.

ARTICLE 4

(a) Any petitioner wishing to submit a legal dispute to arbitration shall provide each respondent and the executive organ with a document which contains:

(i) a statement which fully describes the dispute being submitted for arbitration, the reasons why each respondent is required to participate in the arbitration, and the relief being requested;

(ii) a statement which sets forth why the subject matter of the dispute comes within the competence of a tribunal to be constituted in accordance with this Annex, and why the relief being requested can be granted by such tribunal if it finds in favor of the petitioner;

(iii) a statement explaining why the petitioner has been unable to achieve a settlement of the dispute within a reasonable time by negotiation or other means short of arbitration;

(iv) in the case of any dispute for which, pursuant to Article XVI of this Agreement, the agreement of the disputants is a condition for arbitration in accordance with this Annex, evidence of such agreement; and

(v) the name of the person designated by the petitioner to serve as a member of the tribunal.

(b) The executive organ shall promptly distribute to each Party, and to the chairman of the panel, a copy of the document provided pursuant to paragraph (a) of this Article.

ARTICLE 5

(a) Within sixty days from the date copies of the document described in paragraph (a) of Article 4 of this Annex have been received by all the respondents, the side of the respondents shall designate an individual to serve as a member of the tribunal. Within that period, the respondents may, jointly or individually, provide each disputant and the executive organ with a document stating their responses to the document referred to in paragraph (a) of Article 4 of this Annex and including any counter-claims arising out of the subject matter of the dispute. The executive organ shall promptly furnish the chairman of the panel with a copy of any such document.

(b) In the event of a failure by the side of the respondents to make such a designation within the period allowed, the chairman of the panel shall make a designation from among the experts whose names were submitted to the executive organ pursuant to paragraph (a) of Article 3 of this Annex.

(c) Within thirty days after the designation of the two members of the tribunal, they shall agree on a third person selected from the panel constituted in accordance with Article 3 of this Annex, who shall serve as the president of the tribunal. In the event of failure to reach agreement within such period of time, either of the two members designated may inform the chairman of the panel, who, within ten days, shall designate a member of the panel other than himself to serve as president of the tribunal.

(d) The tribunal is constituted as soon as the president is selected.

ARTICLE 6

(a) If a vacancy occurs in the tribunal for reasons which the president or the remaining members of the tribunal decide are beyond the control of the disputants, or are compatible with the proper conduct of the arbitration proceedings, the vacancy shall be filled in accordance with the following provisions:

(i) if the vacancy occurs as a result of the withdrawal of a member appointed by a side to the dispute, then that side shall select a replacement within ten days after the vacancy occurs;

(ii) if the vacancy occurs as a result of the withdrawal of the president of the tribunal or of another member of the tribunal appointed by the chairman, a replacement shall be selected from the panel in the manner described in paragraph (c) or (b) respectively of Article 5 of this Annex.

(b) If a vacancy occurs in the tribunal for any reason other than as described in paragraph (a) of this Article, or if a vacancy occurring pursuant to that paragraph is not filled, the remainder of the tribunal shall have the power, notwithstanding the provisions of Article 2 of this Annex, upon the request of one side, to continue the proceedings and give the final decision of the tribunal.

ARTICLE 7

(a) The tribunal shall decide the date and place of its sittings.

(b) The proceedings shall be held in private and all material presented to the tribunal shall be confidential, except that ITSO and the Parties who are disputants in the proceedings shall have the right to be present and shall have access to the material presented. When ITSO is a disputant in the proceedings, all Parties shall have the right to be present and shall have access to the material presented.

(c) In the event of a dispute over the competence of the tribunal, the tribunal shall deal with this question first, and shall give its decision as soon as possible.

(d) The proceedings shall be conducted in writing, and each side shall have the right to submit written evidence in support of its allegations of fact and law. However, oral arguments
(e) The proceedings shall commence with the presentation of the case of the petitioner containing its arguments, related facts supported by evidence and the principles of law relied upon. The case of the petitioner shall be followed by the counter-case of the respondent. The petitioner may submit a reply to the counter-case of the respondent. Additional pleadings shall be submitted only if the tribunal determines they are necessary.

(f) The tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute, provided the counter-claims are within its competence as defined in Article XVI of this Agreement.

(g) If the disputants reach an agreement during the proceedings, the agreement shall be recorded in the form of a decision of the tribunal given by consent of the disputants.

(h) At any time during the proceedings, the tribunal may terminate the proceedings if it decides the dispute is beyond its competence as defined in Article XVI of the Agreement.

(i) The deliberations of the tribunal shall be secret.

(j) The decisions of the tribunal shall be presented in writing and shall be supported by a written opinion. Its rulings and decisions must be supported by at least two members. A member dissenting from the decision may submit a separate written opinion.

(k) The tribunal shall forward its decision to the executive organ, which shall distribute it to all Parties.

(l) The tribunal may adopt additional rules of procedure, consistent with those established by this Annex, which are necessary for the proceedings.

**ARTICLE 8**

If one side fails to present its case, the other side may call upon the tribunal to give a decision in its favor. Before giving its decision, the tribunal shall satisfy itself that it has competence and that the case is well-founded in fact and in law.

**ARTICLE 9**

Any Party not a disputant in a case, or ITSO, if it considers that it has a substantial interest in the decision of the case, may petition the tribunal for permission to intervene and become an additional disputant in the case. If the tribunal determines that the petitioner has a substantial interest in the decision of the case, it shall grant the petition.

**ARTICLE 10**

Either at the request of a disputant, or upon its own initiative, the tribunal may appoint such experts as it deems necessary to assist it.

**ARTICLE 11**

Each Party and ITSO shall provide all information determined by the tribunal, either at the request of a disputant or upon its own initiative, to be required for the handling and determination of the dispute.

**ARTICLE 12**

During the course of its consideration of the case, the tribunal may, pending the final decision, indicate any provisional measures which it considers would preserve the respective rights of the disputants.

**ARTICLE 13**

(a) The decision of the tribunal shall be based on

(i) this Agreement; and

(ii) generally accepted principles of law.

(b) The decision of the tribunal, including any reached by agreement of the disputants pursuant to paragraph (g) of Article 7 of this Annex, shall be binding on all the disputants and shall be carried out by them in good faith. In a case in which ITSO is a disputant, and the tribunal decides that a decision of one of its organs is null and void as not being authorized by or in compliance with this Agreement, the decision of the tribunal shall be binding on all Parties.

(c) In the event of a dispute as to the meaning or scope of its decision, the tribunal shall construe it at the request of any disputant.

**ARTICLE 14**

Unless the tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of the members of the tribunal, shall be borne in equal shares by each side. Where a side consists of more than one disputant, the share of that side shall be apportioned by the tribunal among the disputants on that side. Where ITSO is a disputant, its expenses associated with the arbitration shall be regarded as an administrative cost of ITSO.
Singapore Declaration of Commonwealth Principles,
1971
progress in the modern world. The association is based on consultation, discussion and co-operation.

13. In rejecting coercion as an instrument of policy, they recognise that the security of each member state from external aggression is a matter of concern to all members. It provides many channels for continuing exchanges of knowledge and views on professional, cultural, economic, legal and political issues among the member states.

14. These relationships we intend to foster and extend, for we believe that our multi-national association can expand human understanding and understanding among nations, assist in the elimination of discrimination based on differences of race, colour or creed, maintain and strengthen personal liberty, contribute to the enrichment of life for all, and provide a powerful influence for peace among nations.

SINGAPORE DECLARATION OF COMMONWEALTH PRINCIPLES 1971

When Commonwealth Heads of Government met in Singapore in January 1971, they agreed on a set of ideals which are embraced by all members and provide a basis for peace, understanding and goodwill among all nations and people.

The core beliefs of the Commonwealth are expressed in this Declaration, which embrace equal rights for all regardless of race, colour, creed or political belief, the association’s commitment to democratic self-determination and non-racialism, world peace and an end to gross inequity, and its commitment to practice international co-operation in pursuit of these goals.
SINGAPORE DECLARATION OF COMMONWEALTH PRINCIPLES, 1971
Issued at the Heads of Government Meeting in Singapore on 22 January 1971

1. The Commonwealth of Nations is a voluntary association of independent sovereign states, each responsible for its own policies, consulting and co-operating in the common interests of their peoples and in the promotion of international understanding and world peace.

2. Members of the Commonwealth come from territories in the six continents and five oceans, include peoples of different races, languages and religions, and display every stage of economic development from poor developing nations to wealthy industrialised nations. They encompass a rich variety of cultures, traditions and institutions.

3. Membership of the Commonwealth is compatible with the freedom of member governments to be non-aligned or to belong to any other grouping, association or alliance.

4. Within this diversity, all members of the Commonwealth hold certain principles in common. It is by pursuing these principles that the Commonwealth can continue to influence international society for the benefit of mankind.

5. We believe that international peace and order are essential to the security and prosperity of mankind; we therefore support the United Nations and seek to strengthen its influence for peace in the world, and its efforts to remove the causes of tension between nations.

6. We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.

7. We recognise racial prejudice as a dangerous sickness threatening the healthy development of the human race and racial discrimination as an unmitigated evil of society. Each of us will vigorously combat this evil within our own nation. No country will afford to regimes which practice racial discrimination assistance which in its own judgment directly contributes to the pursuit or consolidation of this evil policy.

8. We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore use all our efforts to foster human equality and dignity everywhere, and to further the principles of self-determination and non-racialism.

9. We believe that the wide disparities in wealth now existing between different sections of mankind are too great to be tolerated. They also create world tensions. Our aim is their progressive removal. We therefore seek to use our efforts to overcome poverty, ignorance and disease, in raising standards of life and achieving a more equitable international society.

10. To this end our aim is to achieve the freest possible flow of international trade on terms fair and equitable to all, taking into account the special requirements of the developing countries, and to encourage the flow of adequate resources, including governmental and private resources, to the developing countries, bearing in mind the importance of doing this in a true spirit of partnership and of establishing for this purpose in the developing countries conditions which are conducive to sustained investment and growth.

11. We believe that international co-operation is essential to remove the causes of war, promote tolerance, combat injustice, and secure development among the peoples of the world. We are convinced that the Commonwealth is one of the most fruitful associations for these purposes.

12. In pursuing these principles, the members of the Commonwealth believe that they can provide a constructive example of the multi-national approach which is vital to peace and
Montevideo Treaty, Instrument Establishing the
Latin American Integration Association
(ALADI), 1980
INTRODUCTORY NOTE

The 1980 Montevideo Treaty undertakes to further the process of economic integration started in the Latin American region two decades ago and provides for the creation of the Latin American Integration Association (LAIA), in place of the Latin American Free Trade Association (LAFTA) established by the Montevideo Treaty concluded in 1960.

This new juridical instrument was signed on 12 August 1980, at Montevideo (Uruguay), by the Ministers of Foreign Affairs of eleven Latin American states, namely: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

The Secretariat has prepared the following English version of the 1980 Montevideo Treaty and of the supplementary resolutions adopted by LAFTA Council of Ministers on August 1980 in order to meet information requests received from abroad. It should be emphasized, however, that the present translation has no legal authority whatsoever, only the Spanish and Portuguese texts being authentically valid.

1980 MONTEVIDEO TREATY

The Governments of the Argentine Republic, the Republic of Bolivia, the Federative Republic of Brazil, the Republic of Chile, the Republic of Colombia, the Republic of Ecuador, the United Mexican States, the Republic of Paraguay, the Republic of Peru, the Eastern Republic of Uruguay, and the Republic of Venezuela,

INSPIRED by the purpose of strengthening the friendship and solidarity links between their peoples,

PERSUADED that economic regional integration is one of the principal means for the Latin American countries to speed up their economic and social development process in order to ensure better standards of life for their peoples,

DECIDED to renew the Latin American integration process and establish objectives and mechanisms consistent with the region's real situation.

CERTAIN that the continuation of such process requires taking advantage of the positive experience obtained in the implementation of the Montevideo Treaty dated 18 February 1960.

AWARE that it is necessary to ensure a special treatment for countries at a relatively less advanced stage of economic development. WILLING to encourage the development of solidarity and cooperation ties with other countries and integration areas of Latin America in order to promote a process converging towards the establishment of a regional common market.

CONVINCED of the need to contribute towards obtaining a new scheme of horizontal cooperation between developing countries and their integration areas, inspired by the principles of international law regarding development.

BEARING IN MIND the decision adopted by the Contracting Parties to the General Agreement on Tariffs and Trade whereby regional or general agreements may be drawn up between developing countries in order to mutually reduce or eliminate obstacles to their reciprocal trade.

THEY HEREBY AGREE to sign the present Treaty which, concurrent with the provisions herein contained, shall substitute the Treaty instituting the Latin American Free Trade Association.

CHAPTER I: OBJECTIVES, DUTIES AND PRINCIPLES

Article 1

By the present Treaty the Contracting Parties pursue the integration process leading to promote the harmonious and balanced socio-economic development of the region, and to that effect they hereby institute the Latin American Integration Association (hereafter referred to as the "Association"), with headquarters in the city of Montevideo, Eastern Republic of Uruguay.

The long-term objective of such process shall be the gradual and progressive establishment of a Latin American common market.

Article 2

The rules and mechanisms of the present Treaty, as well as those which may be established within its framework by member countries, shall have as their purpose the performance of the following basic duties of the Association: promotion and regulation of reciprocal trade, economic complementation, and development of economic cooperation actions encouraging market expansion.

Article 3

In the implementation of the present Treaty and the evolution towards its final objective, member countries shall bear in mind the following principles:
a. Pluralism, sustained by the will of member countries to integrate themselves, over and above the diversity which might exist in political and economic matters in the region;

b. Convergence, meaning progressive multilateralization of partial scope agreements by means of periodical negotiations between member countries, with a view to establish the Latin American common market;

c. Flexibility, characterized by the capacity to allow the conclusion of partial scope agreements, ruled in a form consistent with the progressive attainment of their convergence and the strengthening of integration ties;

d. Differential treatments, as determined in each case, both in regional and partial scope mechanisms, on the basis of three categories of countries, which will be set up taking into account their economic-structural characteristics. Such treatments shall be applied in a determined scale to intermediate developed countries, and in a more favourable manner to countries at a relatively less advanced stage of economic development; and

e. Multiple, to make possible various forms of agreements between member countries, following the objectives and duties of the integration process, using all instruments capable of activating and expanding markets at regional level.

CHAPTER II: MECHANISMS

Article 4

In order to fulfill the basic duties of the Association set forth in article 2 of the present Treaty, member countries hereby establish an area of economic preferences, comprising a regional tariff preference, regional scope agreements, and partial scope agreements.

First section - Regional tariff preference

Article 5

Member countries shall reciprocally grant a regional tariff preference to be applied with reference to the level in force for third countries and be subject to the corresponding regulation.

Second section - Regional scope agreements

Article 6

Regional scope agreements are those in which all member countries participate. They shall be drawn up within in framework of the objectives and provisions of the present Treaty, and may refer to the same matters and include those instruments foreseen for the partial scope agreements provided for in the third section of the present chapter.

Third section - Partial scope agreements

Article 7

Partial scope agreements are those wherein all member countries do not participate. These agreements shall tend to create the conditions necessary to deepen the regional integration process by means of their progressive multilateralization.

Rights and obligations to be established in partial scope agreements shall exclusively bind the signatory member countries or those adhered thereto.

Article 8

Partial scope agreements may refer to trade, economic complementation, agriculture, trade promotion, or adopt other modalities concurring with article 14 of the present Treaty.

Article 9

Partial scope agreements shall be governed by the following general rules:

a. They shall be open for accession to the other member countries, prior negotiation;

b. They shall contain clauses promoting convergence in order that their benefits reach all member countries;

c. They may contain clauses promoting convergence with other Latin American countries, in concurrence with the mechanisms established in the present Treaty;

d. They shall include differential treatments depending on the three categories of countries recognized by the present Treaty. The implementation of such treatments as well as negotiation procedures for their periodical revision at the request of any member country which may consider itself at a disadvantage shall be determined in each agreement;

e. Tariff reductions may be applied to the same products or tariff sub-items and on the basis of a percentage rebate regarding the tariffs applied to imports originating from non-participating countries;

f. They shall be in force for a minimum term of one year; and

g. They may include, among others, specific rules regarding origin, safeguard clauses, non-tariff restrictions, withdrawal of concessions, renegotiation of concessions, denouncement, coordination and harmonization of policies. Should these specific rules not have been adopted, the general provisions to be established by member countries on the respective matters shall be taken into account.
Article 10

Trade agreements are exclusively aimed towards trade promotion among member countries, and shall be subject to the specific rules to be established for that purpose.

Article 11

Economic complementation agreements are aimed, among other objectives, to promote maximum utilization of production factors, stimulate economic complementation, ensure equitable conditions for competition, facilitate entry of products into the international market, and encourage the balanced and harmonious development of member countries. These agreements shall be subject to the specific rules to be established for that purpose.

Article 12

Agricultural agreements are aimed to promote and regulate intraregional trade of agricultural and livestock products. They shall contemplate flexibility elements bearing in mind the participating countries’ socio-economic characteristics of production.

These agreements may refer to specific products or groups of products, and may be based on temporary, seasonal, per quota or mixed concessions, or on contracts between State or para-State organizations. They shall be subject to the specific rules to be established for that purpose.

Article 13

Trade promotion agreements shall refer to non-tariff matters and tend to promote intraregional trade flows.

They shall be subject to the specific rules to be established for that purpose.

Article 14

Member countries may establish, through the corresponding regulations, specific rules to conclude other modalities of partial scope agreements.

For this purpose, they shall take into consideration, among other matters, scientific and technological cooperation, tourism promotion and preservation of the environment.

CHAPTER III: SYSTEM IN FAVOUR OF COUNTRIES AT A RELATIVELY LESS ADVANCED STAGE OF ECONOMIC DEVELOPMENT

Article 15

Member countries shall establish conditions favouring participation of countries at a relatively less advanced stage of economic development in the economic integration process, based on the principles of non-reciprocity and community cooperation.

Article 16

For the purpose of ensuring them an effective preferential treatment, member countries shall establish market opening as well as set up programs and other specific forms of cooperation.

Article 17

Actions favouring relatively less developed countries shall be concluded through regional scope and partial scope agreements.

In order to ensure the effectiveness of such agreements, member countries shall execute negotiated rules concerning preservation of preferences, elimination of nontariff restrictions and application of safeguard clauses in justified cases.

First section - Regional scope agreements

Article 18

For each relatively less developed country, member countries shall approve negotiated lists of preferably industrial products originating from each relatively less developed country, for which total elimination of customs duties and other restrictions shall be accorded, without reciprocity, by all other member countries of the Association.

Member countries shall set up the necessary procedures to achieve progressive extension of the respective liberalization lists. Corresponding negotiations may be carried out when deemed convenient.

At the same time, member countries shall endeavour to set up effective compensation mechanisms to take care of negative effects which might influence intraregional trade of the relatively less developed land-locked countries.

Second section - Partial scope agreements

Article 19

Partial scope agreements negotiated by the relatively less developed countries with other member countries shall conform, wherever pertinent, with the provisions contained in articles 8 and 9 of the present Treaty.

Article 20

In order to encourage effective and collective cooperation in favour of relatively less developed countries, member countries shall negotiate Special Cooperation Programs with each one of them.

Article 21

In order to facilitate utilization of tariff cuts, member countries may set up cooperation programs and actions in the fields of preinvestment, financing and technology, mainly directed towards supporting the relatively less developed countries, with special regard, among them, to land-locked countries.
Article 22

Notwithstanding the proceeding articles, treatments in favour of relatively less developed countries may include collective and partial cooperation actions calling for effective mechanisms meant to compensate the disadvantageous situation faced by Bolivia and Paraguay due to their land-locked location.

Provided that criteria referred to gradual timing are adopted within the regional tariff preference referred to in article 5 of the present Treaty, attempts shall be made to preserve the margins granted in favour of land-locked countries by means of cumulative tariff cuts.

At the same time, attempts shall be made to establish compensation formulae, both as regards the regional tariff preference when deepened, and regional and partial scope agreements.

Article 23

Member countries shall endeavour to grant land-locked countries facilities to establish free zones, warehouses or ports and other administrative international transit facilities in their territories.

CHAPTER IV

Convergence and cooperation with other Latin American countries and areas of economic integration

Article 24

Member countries may establish multilateral association or relationship systems encouraging convergence with other countries and areas of economic integration of Latin America, including the possibility of agreeing with these countries or areas the establishment of a Latin American tariff preference.

Member countries shall in due course regulate the characteristics of these systems.

Article 25

Likewise, member countries may draw up partial scope agreements with other Latin American countries and areas of economic integration, in accordance with the various modalities foreseen in the third section of chapter II of the present Treaty, and under the terms of the respective regulative provisions.

Notwithstanding the above, these agreements shall be subject to the following rules:

a. Concessions granted by participating member countries shall not be extensive to the others, excepting the relatively less developed countries;

b. When a member country includes products already negotiated in partial agreements with other member countries, concessions granted may be higher than those agreed with the former; in this case, consultation with the affected member countries shall be carried out in order to find mutually satisfactory solutions, unless the respective partial agreements include clauses concerning automatic extension or waiver of preferences contained in the partial agreements referred to in the present article; and

c. They shall be multilaterally assessed by the member countries within the Committee in order to acknowledge the scope of the agreements drawn up and facilitate participation of other member countries in same.

CHAPTER V: COOPERATION WITH OTHER AREAS OF ECONOMIC INTEGRATION

Article 26

Member countries shall undertake the actions necessary to establish and develop solidarity and cooperation links with other integration areas outside Latin America, through the Association's participation in horizontal cooperation programs carried out at international level, thus implementing the basic principles and commitments adopted within the context of the Declaration and Action Program on the establishment of a New International Economic Order and of the Charter of Economic Rights and Duties of States.

The Committee shall adopt adequate measures to facilitate compliance with the objectives set forth.

Article 27

At the same time, member countries may draw up partial scope agreements with other developing countries or respective economic integration areas outside Latin America, following the various modalities foreseen in the third section of chapter II of the present Treaty, and under the terms of the pertinent regulative provisions.

Notwithstanding the above, these agreements shall be subject to the following rules:

a. Concessions granted by member countries participating in them shall not be extended to other members, with the exception of the relatively less developed countries;

b. When products already negotiated with other member countries in partial scope agreements are included, concessions granted may not be higher than those agreed with the former, and in such case they shall be automatically extended to those countries; and

c. They shall be declared consistent with the commitments undertaken by member countries within the frame of the present Treaty, in accordance with captions a) and b) of the present article.
CHAPTER VI: INSTITUTIONAL ORGANIZATION

Article 28

The political bodies of the Association are:

a. The Council of Ministers of Foreign Affairs (referred to as the "Council" in this Treaty);

b. The Evaluation and Convergence Conference (referred to as the "Conference" in this Treaty); and

c. The Committee of Representatives (referred to as the "Committee" in this Treaty).

Article 29

The technical body of the Association is the General Secretariat (referred to as the "Secretariat" in this Treaty).

Article 30

The Council is the supreme body of the Association and shall adopt whatever decisions may correspond to the higher governing policy of the economic integration process.

The Council shall have the following powers:

a. To issue general rules aimed at a better compliance with the objectives of the Association, as well as at the harmonious development of the integration process;

b. To examine the results of the tasks carried out by the Association;

c. To adopt corrective measures of multilateral scope, following the recommendations adopted by the Conference as per terms of article 33, caption a) of the present Treaty;

d. To establish the guidelines to be followed by the other bodies of the Association in their tasks;

e. To set the basic rules to govern the relations of the Association with other regional associations, international organizations or agencies;

f. To review and update basic rules governing convergence and cooperation agreements with other developing countries and the respective areas of economic integration;

g. To take cognizance of questions submitted by the other political bodies and decide upon them;

h. To delegate upon the other political bodies the power to decide on specific matters aimed at a better compliance with the Association objectives;

y. To accept accession of new member countries;

j. To adopt amendments and additions to the Treaty as per precepts of article 61;

k. To appoint the Secretary-General; and

l. To adopt its own Rules of Procedure.

Article 31

The Council shall be composed of the Ministers of Foreign Affairs of the member countries. However, when in some countries the competence of integration matters is assigned to a Minister or Secretary of State other than the Minister of Foreign Affairs, member countries may be represented at the Council, with full powers, by the respective Minister or Secretary.

Article 32

The Council shall meet and take decisions with the presence of all member countries.

The Council shall meet when convened by the Committee.

Article 33

The Conference shall have the following powers:

a. To examine the operation of the integration process in all its aspects and the convergence of partial scope agreements through their progressive multilateralization, as well as to recommend the Council the adoption of multilateral scope corrective measures;

b. To promote actions of broader scope regarding economic integration;

c. To periodically review the implementation of differential treatments, taking into account not only the evolution of the economic structure of the countries and consequently their degree of development, but also the effective use made by beneficiary countries of the applied differential treatment, as well as of the procedures aimed to improve the implementation of such treatments;

d. To evaluate the results of the system in favour of countries at a relatively less advanced stage of economic development and adopt measures for its more effective application;

e. To carry out multilateral negotiations to determine and deepen the regional tariff preference;

f. To foster negotiation and conclusion of regional scope agreements, wherein all member countries participate, which refer to any matter pertaining to the present Treaty, as per precepts of article 6;

g. To comply with all the tasks entrusted to it by the Council;
Article 34

The Conference shall be composed of Plenipotentiaries of member countries. The Conference shall hold regular sessions every three years at the request of the Committee. It shall also meet at any other time in extraordinary session, when convened by the Committee. The Conference shall meet and take decisions with the presence of all member countries.

Article 35

The Committee is the permanent body of the Association and shall have the following powers and duties:

a. To promote the conclusion of regional scope agreements, under the terms of article 6 of the present Treaty and, for that purpose, to convene governmental meetings at least once a year with the following aims:
   i. Give continuity to the activities of the new integration process;
   ii. Evaluate and guide the operation of the process;
   iii. Analyze and promote measures to attain more advanced mechanisms of integration; and
   iv. Undertake sectoral and multisectoral negotiations with the participation of all member countries in order to reach regional scope agreements basically referred to tariff cuts;

b. To adopt the measures necessary to implement the present Treaty and all its supplementary rules;

c. To adopt, as proposed by the Secretary-General, the structure of the Secretariat;

d. To adopt, as proposed by the Secretary-General, the structure of technical and administrative staff.

e. To fix the contributions of member countries to the Association budget;

f. To adopt, as proposed by the Secretary-General, the structure of technical and administrative staff.

g. To adopt, as proposed by the Secretary-General, the structure of technical and administrative staff.

h. To convene the Council and the Conference;

i. To adopt its own Rules of Procedure;

j. To commit studies to the Secretariat;

k. To submit recommendations to the Council and the Conference;

l. To submit reports on its activities to the Council;

m. To propose, formulate, and solve issues brought forth by member countries claiming non-observance of some of the rules of the present Treaty;

n. To declare the compatibility of partial agreements to be drawn up by member countries under the terms of article 27 of the present Treaty;

o. To adopt, as proposed by the Secretary-General, the structure of the Secretariat;

p. To adopt its own Rules of Procedure; and

q. To commit studies to the Secretariat.

Article 36

The Committee shall be composed of a Permanent Representative of each member country with the right to one vote. Each Permanent Representative shall have a Deputy.

Article 37

The Committee shall meet and adopt resolutions with the presence of two thirds of the member countries' Representatives.

Article 38

The Secretariat shall be headed by a Secretary-General and composed of technical and administrative staff. The Secretariat shall have the following powers and duties:

a. To submit proposals to the corresponding Association bodies, through, the Committee, leading towards a better accomplishment of the objectives and duties of the Association;
b. To carry out the necessary studies to fulfill its technical duties and those entrusted to it by the Council, the Conference and the Committee, and to perform the other activities provided for in the annual work program;

c. To carry out studies and actions leading to proposals to member countries, through their Permanent Representatives, regarding conclusion of the agreements foreseen by the present Treaty, within the guidelines established by the Council and the Conference;

d. To represent the Association before international economic organization and institutions in order to deal with questions of common interest;

e. To administer the Association assets and represent it for such purposes in public and private law acts and contracts;

f. To request technical advice and cooperation of individuals and national and international organizations;

g. To propose the creation of auxiliary bodies to the Committee;

h. To process and furnish member countries, in a systematic and updated manner, statistical information and data on foreign trade regulation systems of member countries in order to facilitate the preparation and carrying out of negotiations within the various Association mechanisms, as well as the further utilization of the respective concessions;

j. To call meetings of non-governmental auxiliary bodies and coordinate their operation;

k. To periodically evaluate the progress of the integration process and permanently follow up the activities undertaken by the Association and the commitments resulting from the agreements achieved within in framework of same;

l. To organize and put into operation an Economic Promotion Unit for relatively less developed countries and carry out actions to obtain technical and financial resources, as well as studies and projects to comply with the promotion program. At the same time, to draw up an annual report on the advantages obtained from the system in favour of the relatively less developed countries;

m. To prepare the Association's expenditure budget, for approval by the Committee, as well as such subsequent reforms which might be necessary;

n. To prepare and present to the Committee the draft annual work programs;

ō. To comply with requests received from any of the political bodies of the Association; and

p. To present an annual report to the Committee on the results of the application of the present Treaty and the legal provisions derived therefrom.

Article 39

The Secretary-General shall be appointed by the Council.

Article 40

In the performance of their duties, the head of the technical body, as well as the technical and administrative staff, shall not seek or receive instructions from any Government or national or international organizations. They shall refrain from any attitude not consistent with their character as international officers.

Article 41

Member countries pledge themselves to respect the international nature of the duties of the Secretary-General and Secretariat staff or of its engaged experts and consultants, and to abstain from influencing them in the performance of their duties.

Article 42

Auxiliary bodies shall be established for consultation, assessment and technical support. In particular, one body shall be set up composed of officers responsible for the integration policy of member countries.

At the same time, consultative auxiliary bodies shall be set up composed of representatives of the various sectors of economic activity of each one of the member countries.

Article 43

The Council, the Conference and the Committee shall adopt their decisions by the affirmative vote of two thirds of the member countries.

Decisions on the following matters excepted from this general rule shall be adopted by a two-thirds affirmative vote, provided there is no negative vote:

a. Amendments or additions to the present Treaty;

b. Adoption of decisions corresponding to the higher governing policy of the integration process;

c. Adoption of decisions executing the results of multilateral negotiations to determine and deepen the regional tariff preference;

d. Adoption of decisions leading to give partial scope agreements a multilateral regional level;
e. Acceptance of accession of new member countries;

f. Regulation of the Treaty provisions;

g. Establishment of the percentages of member countries' contributions to the budget of the Association;

h. Adoption of corrective measures arising from the evaluations of the progress achieved within the integration process;

i. Authorization of a term of less than five years regarding obligations, in case of Treaty denouncement;

j. Adoption of guidelines to be followed by the Association bodies in their tasks; and

k. Establishment of basic rules governing the relations of the Association with other regional associations, international organizations or agencies.

Abstention shall not mean a negative vote. Absence at the time of voting shall be interpreted as abstention.

The Council may eliminate subjects from this list of exceptions by the affirmative vote of two thirds of the member countries, provided there is no negative vote.

CHAPTER VII: GENERAL PROVISIONS

Article 44

Any advantages, favourable treatments, franchises, immunities and privileges which member countries apply to products originating from or bound to any other member country or non-member country, pursuant to decisions or agreements not foreseen in the present Treaty or the Cartagena Agreement, shall be immediately and unconditionally extended to the other member countries.

Article 45

Any advantages, favourable treatments, franchises, immunities and privileges already granted or to be granted under agreements between member countries or between these and third countries to facilitate border traffic shall be exclusively applicable to the countries which sign or may have signed them.

Article 46

As regards taxes, charges and other internal duties, products originating from the territory of a member country shall be entitled within the territory of the other member countries to a treatment not less favourable than that applied to similar national products.

Member countries shall adopt such steps as may be required to comply with the preceding provision, in accordance with their respective National Constitutions.

Article 47

In the case of products included in the regional tariff preference or in regional or partial scope agreements which are not produced or will not be produced in substantial quantities in its territory, each member country shall endeavour to avoid that taxes or other internal measures applied result in annullment or reduction of any concession or advantage obtained by any member country as a result of the respective negotiations.

If a member country considers itself at a disadvantage by the measures contained in the preceding paragraph, it may resort to the Committee so that the situation raised may be examined and pertinent recommendations issued.

Article 48

Within the territory of other member countries, capitals originating from member countries shall have the right to a treatment not less favourable than that granted to capitals coming from any other non-member country, notwithstanding the provisions set out in agreements which might be concluded on this matter by member countries under the terms of the present Treaty.

Article 49

Member countries may establish supplementary rules on trade policy regulating, among other matters, the application of non-tariff restrictions, a system of origin, the adoption of safeguard clauses, export promotion systems and border traffic.

Article 50

No provision under the present Treaty shall be interpreted as precluding the adoption and observance of measures regarding:

a. Protection of public morality;

b. Implementation of security laws and regulations;

c. Regulation of imports and exports of arms, munitions, and other war materials and, under exceptional circumstances, all other military equipment;

d. Protection of human, animal and plant life and health;

e. Imports and exports of gold and silver in bullion form;

f. Protection of national treasures of artistic, historical or archeological value; and

g. Exportation, use and consumption of nuclear materials, radioactive products or any other material used for the development and exploitation of nuclear energy.
Article 51

Products imported and exported by any member country shall have the right to free transit throughout the territory of the other member countries, and be exclusively subject to payment of charges normally applicable for services rendered.

CHAPTER VIII: LEGAL STATUS, IMMUNITIES AND PRIVILEGES

Article 52

The Association shall be endowed of complete legal status and specially of the capacity:

a. To contract;
b. To acquire such movable and immovable property indispensable to carry out its objectives and to dispose of it;
c. To file suits; and
d. To keep funds in any currency and effect the necessary transfers.

Article 53

Representatives and other diplomatic officers of member countries accredited before the Association, as well as international officers and advisers of the Association, shall be endowed of diplomatic immunities and privileges and such other rights necessary for exercising their duties within the territory of member countries.

Member countries hereby pledge themselves to draw up within the shortest possible term an agreement aimed at regulating the contents of the proceeding paragraph, wherein such privileges and immunities shall be defined.

The Association shall draw up an agreement with the Government of the Eastern Republic of Uruguay in order to determine the privileges and immunities to which the Association, its bodies and its international officers and advisers shall be entitled.

Article 54

The legal status of the Latin American Free Trade Association established by the Montevideo Treaty signed on 18 February 1960 shall continue, in all its effects, within the Latin American Integration Association. Therefore, from the date when the present Treaty enters into force, the rights and obligations of the Latin American Free Trade Association shall correspond to the Latin American Integration Association.

CHAPTER IX: FINAL PROVISIONS

Article 55

The present Treaty may not be signed with reservations, neither may these be received on the occasion of its ratification or accession.

Article 56

The present Treaty shall be ratified by the signatory countries at the earliest possible term.

Article 57

The present Treaty shall enter into force thirty days after the deposit of the third instrument of ratification as regards the first three countries to ratify it.

Concerning the other signatories, it shall enter into force on the thirtieth day following the deposit of the respective instrument of ratification and in the order in which such ratifications are deposited.

Instruments of ratification shall be deposited with the Government of the Eastern Republic of Uruguay, which shall report the date of deposit to the Governments of the signatory States of the present Treaty, as well as to those which have adhered thereto.

The Government of the Eastern Republic of Uruguay shall notify the date of enforcement of the present Treaty to the Government of each one of the signatory States.

Article 58

Upon its entry into force, the present Treaty shall remain open for accession to those Latin American countries which may so request. Acceptance of such accessions shall be adopted by the Council.

The Treaty shall enter into force for the adherent country thirty days after the date of its admission.

Adherent countries shall on that date put in force the commitments resulting from the regional tariff preference as well as the regional scope agreements concluded prior to the date of their accession.

Article 59

The present Treaty provisions shall not affect the rights and obligations resulting from agreements signed by any of the signatory countries prior to the date of their enforcement.

Article 60

The present Treaty provisions shall not affect the rights and obligations resulting from agreements signed by any of the signatory countries in the term between its signature and the date...
of its ratification. For countries which later become members of the Association, the provisions of this article refer to agreements signed prior to their incorporation.

However, each member country shall take the measures necessary to harmonize the provisions of the agreements in force with the objectives of the present Treaty.

**Article 61**

Member countries may introduce amendments or additions to the present Treaty. These shall be executed in protocols to enter into force upon ratification by all member countries and deposit of the respective instruments, subject to other criteria established thereof.

**Article 62**

The present Treaty shall have an indefinite duration.

**Article 63**

Any member country wishing to withdraw from the present Treaty shall report such intention to the other member countries during one of the Committee sessions, formally delivering the denouncement document to the Committee one year after the date of advice referred to above. Once such denouncement has been executed, all rights and obligations corresponding to its condition as a member country shall automatically cease for the denouncing Government.

Notwithstanding the above, rights and obligations resulting from the regional tariff preference shall continue to be effective for a period of five more years, except if, at the time of denouncement, the member countries agree to the contrary. The above term shall start as from the date the denouncement is executed.

With reference to rights and obligations resulting from regional and partial scope agreements, the situation of the denouncing member country shall adjust to the specific rules which may have been established in each agreement. Should these rules not exist, the general provision contained in the previous paragraph of the present article shall apply.

**Article 64**

The present Treaty shall be known as the 1980 Montevideo Treaty.

**CHAPTER X: TRANSITIONAL PROVISIONAL**

**Article 65**

Pending ratification of the present Treaty by all signatory countries, as from the date of its enforcement by ratification of the first three countries, signatory countries which have not yet ratified shall be subject, both as regards their reciprocal relations and their relations with ratifying signatory countries, to the provisions of the legal structure of the Montevideo Treaty dated 18 February 1960, where appropriate, and specially to the resolutions adopted at the Meeting of the Council of Ministers of the Latin American Free Trade Association held on 12 August 1980.

These provisions shall no longer be applied to relations between signatory countries which have ratified the present Treaty and those which have not done so, as from one year following the date of its enforcement.

**Article 66**

The bodies of the Latin American Free Trade Association established by the Montevideo Treaty dated 18 February 1960 shall cease to exist as from the date of enforcement of the present Treaty.

**Article 67**

Non-ratifying signatory countries may participate in the Association bodies with the right to speak and vote whenever possible or of interest to them as long as ratification is pending, or until expire of the term established in the second paragraph of article 65.

**Article 68**

Signatory countries ratifying the present Treaty after its enforcement shall be subject to all provisions adopted prior to that moment by the Association bodies.

**Article 69**

The resolutions adopted by the Council of Ministers of the Latin American Free Trade Association at its Meeting of 12 August 1980 shall be incorporated to the legal framework of the present Treaty upon its entry into force.

DONE at the city of Montevideo, on the twelfth day of the month of August of the year nineteen hundred and eighty, in an original in the Spanish and Portuguese languages, both texts being equally valid. The Government of the Eastern Republic of Uruguay shall act as depository of the present Treaty and forward duly authenticated copy of same to the Governments of the other signatory and adherent countries.
Basic Documents of the European Bank of Reconstruction and Development, 1990
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Foreword

The Agreement Establishing the European Bank for Reconstruction and Development was signed in Paris on 29 May 1990 and entered into force on 28 March 1991.

An Amendment to Article 1 of the Agreement was approved by Resolution of the Board of Governors adopted on 30 January 2004, and entered into force on 15 October 2006.

The Inaugural Meeting of the Board of Governors was held in London from 15 to 17 April 1991.

At the Inaugural Meeting, the Board of Governors elected the President and Directors of the Bank and adopted Resolution No. 8 authorizing the Bank to commence operations on 15 April 1991.

The Board of Governors also adopted, effective as of 15 April 1991, the By-Laws of the Bank and the Rules of Procedure of the Board of Governors.

The Headquarters Agreement between the Government of the United Kingdom and the Bank was signed on 15 April 1991 and, in accordance with Article 24 thereof, entered into force upon signature.

Agreement Establishing the European Bank for Reconstruction and Development

The Contracting Parties,

Committing to the fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economies;

Recalling the Final Act of the Helsinki Conference on Security and Co-operation in Europe, and in particular its Declaration on Principles;

Welcoming the intent of Central and Eastern European countries to further the practical implementation of multiparty democracy, strengthening democratic institutions, the rule of law and respect for human rights and their willingness to implement reforms in order to evolve towards market-oriented economies;

Considering the importance of close and co-ordinated co-operation in order to promote the economic progress of Central and Eastern European countries to help their economies become more internationally competitive and assist them in their reconstruction and development and thus to reduce, where appropriate, any risks related to the financing of their economies;

Convinced that the establishment of a multilateral financial institution which is European in its basic character and broadly international in its membership would help serve these ends and would constitute a new and unique structure of co-operation in Europe;

Have agreed to establish hereby the European Bank for Reconstruction and Development (hereinafter called “the Bank”) which shall operate in accordance with the following:
Chapter I: Purpose, functions and membership

Article 1: Purpose

In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economies. The purpose of the Bank may also be carried out in Mongolia subject to the same conditions. Accordingly, any reference in this Agreement and its annexes to “Central and Eastern European countries”, “countries from Central and Eastern Europe”, “recipient country (or countries)” or “recipient member country (or countries)” shall refer to Mongolia as well.

Article 2: Functions

1. To fulfil on a long-term basis its purpose of fostering the transition of Central and Eastern European countries towards open market-oriented economies and the promotion of private and entrepreneurial initiative, the Bank shall assist the recipient member countries to implement structural and sectoral economic reforms, including monopolization, decentralization and privatization, to help their economies become fully integrated into the international economy by measures:

   (i) to promote, through private and other interested investors, the establishment, improvement and expansion of productive, competitive and private sector activity, in particular small and medium-sized enterprises;

   (ii) to mobilize domestic and foreign capital and experienced management to the end described in (i);

   (iii) to foster productive investment, including in the service and financial sectors, and in related infrastructure where that is necessary to support private and entrepreneurial initiatives, thereby assisting in making a competitive environment an raising productivity, the standard of living and conditions of labour;

   (iv) to provide technical assistance for the preparation, financing and implementation of relevant projects, whether individual or in the context of specific investment programmes;

   (v) to stimulate and encourage the development of capital markets;

   (vi) to give support to sound and economically viable projects involving more than one recipient member country;

   (vii) to promote in the full range of its activities environmentally sound and sustainable development; and

   (viii) to undertake such other activities and provide such other services as may further these functions.

2. In carrying out the functions referred to in paragraph 1 of this Article, the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the Organisation for Economic Co-operation and Development, and shall cooperate with the United Nations and its Specialized Agencies and other related bodies, and any entity, whether public or private, concerned with the economic development of, and investment in, Central and Eastern European countries.

Article 3: Membership

1. Membership in the Bank shall be open:

   (i) to (1) European countries and (2) non-European countries which are members of the International Monetary Fund; and

   (ii) to the European Economic Community and the European Investment Bank.

2. Countries eligible for membership under paragraph 1 of this Article, which do not become members in accordance with Article 61 of this Agreement, may be admitted, under such terms and conditions as the Bank may determine, to membership in the Bank upon the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.
Chapter II: Capital

Article 4: Authorized capital stock

1. The original authorized capital stock shall be ten thousand million (10,000,000,000) ECU. It shall be divided into one million (1,000,000) shares, having a par value of ten thousand (10,000) ECU each, which shall be available for subscription only by members in accordance with the provisions of Article 5 of this Agreement.

2. The original capital stock shall be divided into paid-in shares and callable shares. The initial total aggregate par value of paid-in shares shall be three thousand million (3,000,000,000) ECU.

3. The authorized capital stock may be increased at such time and under such terms as may seem advisable, by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

Article 5: Subscription of shares

1. Each member shall subscribe to shares of the capital stock of the Bank, subject to fulfillment of the member’s legal requirements. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in the proportion of three (3) to seven (7). The initial number of shares available to be subscribed to by Signatories to this Agreement which become members in accordance with Article 61 of this Agreement shall be that set forth in Annex A. No member shall have an initial subscription of less than one hundred (100) shares.

2. The initial number of shares to be subscribed to by countries which are admitted to membership in accordance with paragraph 2 of Article 3 of this Agreement shall be determined by the Board of Governors; provided, however, that no such subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by countries which are members of the European Economic Community, together with the European Economic Community and the European Investment Bank, below the majority of the total subscribed capital stock.

3. The Board of Governors shall at intervals of not more than five (5) years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase. No member shall be obliged to subscribe to any part of an increase of capital stock.

4. Subject to the provisions of paragraph 3 of this Article, the Board of Governors, may, at the request of a member, increase the subscription of that member, or allocate shares to that member within the authorized capital stock which are not taken up by other members; provided, however, that such increase shall not have the effect of reducing the percentage of capital stock held by countries which are members of the European Economic Community, together with the European Economic Community and the European Investment Bank, below the majority of the total subscribed capital stock.

5. Shares of stock initially subscribed to by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors, by a vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members, decides to issue them in special circumstances on other terms.

6. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.

7. The liability of the members on shares shall be limited to the unpaid portion of their issue price. No member shall be liable, by reason of its membership, for obligations of the Bank.

Article 6: Payment of subscriptions

1. Payment of the paid-in shares of the amount initially subscribed to by each Signatory to this Agreement, which becomes a member in accordance with Article 61 of this Agreement, shall be made in five (5) instalments of twenty (20) per cent each of such amount. The first instalment shall be paid by each member within sixty (60) days after the date of entry into force of this Agreement, or after the date of deposit of its instrument of ratification, acceptance or approval in accordance with Article 61, if this latter is later than the date of entry into force. The remaining four (4) instalments shall each become due successively one year from the date on which the preceding instalment became due and shall each, subject to the legislative requirement of each member, be paid.

2. Fifty (50) per cent of payment of each instalment pursuant to paragraph 1 of this Article, or by a member admitted in accordance with paragraph 2 of Article 3 of this Agreement, may be made in promissory notes or other obligations issued by such member and denominated in ECU, in United States dollars or in Japanese yen, to be drawn down as the Bank needs funds for disbursement as a result of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing and payable to the Bank at par value upon demand. Demands upon such notes or obligations shall, over reasonable periods of time, be made so that the value of such demands in ECU at the time of demand from each member is proportional to the number of paid-in shares subscribed to and held by each such member depositing such notes of obligations.
3. All payment obligations of a member in respect of subscription to shares in the initial capital stock shall be settled either in ECU, in United States dollars or in Japanese yen on the basis of the average exchange rate of the relevant currency in terms of the ECU for the period from 30 September 1989 to 31 March 1990 inclusive.

4. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call, taking account of Articles 17 and 42 of this Agreement, only as and when required by the Bank to meet its liabilities.

5. In the event of a call referred to in paragraph 4 of this Article, payment shall be made by the member in ECU, in United States dollars or in Japanese yen. Such calls shall be uniform in ECU value upon each callable share calculated at the time of the call.

6. The Bank shall determine the place for any payment under this Article not later than one month after the inaugural meeting of its Board of Governors, provided that, before such determination, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the European Investment Bank, as trustee for the Bank.

7. For subscriptions other than those described in paragraphs 1, 2 and 3 of this Article, payments by a member in respect of subscription to paid-in shares in the authorized capital stock shall be made in ECU, in United States dollars or in Japanese yen whether in cash or in promissory notes or in other obligations.

8. For the purpose of this Article, payment or denomination in ECU shall include payment or denomination in any fully convertible currency which is equivalent on the date of payment or encashment to the value of the relevant obligation in ECU.

Article 7: Ordinary capital resources

As used in this Agreement, the term "ordinary capital resources" of the Bank shall include the following:

(i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed to pursuant to Article 5 of this Agreement;

(ii) funds raised by borrowings of the Bank by virtue of powers conferred by subparagraph (i) of Article 20 of this Agreement, to which the commitment to calls provided for in paragraph 4 of Article 6 of this Agreement is applicable;

(iii) funds received in repayment of loans or guarantees and proceeds from the disposal of equity investment made with the resources indicated in subparagraphs (i) and (ii) of this Article;

(iv) income derived from loans and equity investment, made from the resources indicated in sub paragraphs (i) and (ii) of this Article, and income derived from guarantees and underwriting not forming part of the special operations of the Bank; and

(v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 19 of this Agreement.
Chapter III: Operations

Article 8: Recipient countries and use of resources

1. The resources and facilities of the Bank shall be used exclusively to implement the purpose and carry out the functions set forth, respectively, in Articles 1 and 2 of this Agreement.

2. The Bank may conduct its operations in countries from Central and Eastern Europe which are proceeding steadily in the transition towards market-oriented economies and the promotion of private and entrepreneurial initiative, and which apply, by concrete steps and otherwise, the principles set forth in Article 1 of this Agreement.

3. In cases where a member might be implementing policies which are inconsistent with Article 1 of this Agreement, or in exceptional circumstances, the Board of Directors shall consider whether access by a member to Bank resources should be suspended or otherwise modified and may make recommendations accordingly to the Board of Governors. Any decision on these matters shall be taken by the Board of Governors by a majority of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

4. (i) Any potential recipient country may request that the Bank provide access to its resources for limited purposes over a period of three (3) years beginning after the entry into force of this Agreement. Any such request shall be attached as an integral part of this Agreement as soon as it is made.

   (ii) During such a period:

      (a) the Bank shall provide to such a country, and to enterprises in its territory, upon their request, technical assistance and other types of assistance directed to finance its private sector, to facilitate the transition of state-owned enterprises to private ownership and control, and to help enterprises operating competitively and moving to participation in the market-oriented economy, subject to the proportion set forth in paragraph 3 of Article 11 of this Agreement.

      (b) the total amount of any assistance thus provided shall not exceed the total amount of cash disbursed and promissory notes issued by that country for its shares.

   (iii) At the end of this period, the decision to allow such a country access beyond the limits specified in sub paragraphs (a) and (b) shall be taken by the Board of Governors by a majority of not less than three-fourths of the Governors representing not less than eighty-five (85) per cent of the total voting power of the members.

Article 9: Ordinary and special operations

The operations of the Bank shall consist of ordinary operations financed from the ordinary capital resources of the Bank referred to in Article 7 of this Agreement and special operations financed from the Special Funds resources referred to in Article 19 of this Agreement. The two types of operations may be combined.

Article 10: Separation of operations

1. The ordinary capital resources and the Special Funds resources of the Bank shall at all times be held, used, committed, invested or otherwise disposed of entirely separately from each other. The financial statements of the Bank shall show the reserves of the Bank, together with its ordinary operations and, separately, its special operations.

2. The ordinary capital resources of the Bank shall, under no circumstances, by charged with, or used to discharge, losses or liabilities arising out of special operations or other activities for which Special Funds resources were originally used or committed.

3. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses appertaining directly to the special operations shall be charged to Special Funds resources. Any other expenses shall, subject to paragraph 1 of Article 18 of this Agreement, be charged as the Bank shall determine.

Article 11: Methods of operation

1. The Bank shall carry out its operations in furtherance of its purpose and functions as set out in Articles 1 and 2 of this Agreement in any or all of the following ways:

   (i) by making or co-financing together with multilateral institutions, commercial banks or other interested sources, or participating in, loans to private sector enterprises, loans to any state-owned enterprise operating competitively and moving to participation in the market-oriented economy, and loans to any state-owned enterprise to facilitate its transition to private ownership and control; in particular, to facilitate or enhance the participation of private and/or foreign capital in such enterprises;

   (ii) (a) by investment in the equity capital of private sector enterprises;

      (b) by investment in the equity capital of any state-owned enterprise operating competitively and moving to participation in the market-oriented economy, and investment in the equity capital of any state-owned enterprise to facilitate its transition to private ownership and control; in particular, to facilitate or enhance the participation of private and/or foreign capital in such enterprises; and
(c) by underwriting, where other means of financing are not appropriate, the equity issue of securities by both private sector enterprises and such state-owned enterprises referred to in (b) above for the ends mentioned in that sub paragraph;

(iii) by facilitating access to domestic and international capital markets by private sector enterprises or by other enterprises referred to in sub paragraph (i) of this paragraph for the ends mentioned in that sub paragraph, through the provision of guarantees, where other means of financing are not appropriate, and through financial advice and other forms of assistance;

(iv) by deploying Special Funds resources in accordance with the agreements determining their use; and

(v) by making or participating in loans and providing technical assistance for the reconstruction or development of infrastructure, including environmental programmes, necessary for private sector development and the transition to a market-oriented economy.

For the purposes of this paragraph, a state-owned enterprise shall not be regarded as operating competitively unless it operated autonomously in a competitive market environment and unless it is subject to bankruptcy laws.

2. (i) The Board of Directors shall review at least annually the Bank's operations and lending strategy in each recipient country to ensure that the purpose and functions of the Bank, as set out in Articles 1 and 2 of this Agreement, are fully served. Any decision pursuant to such a review shall be taken by a majority of not less than two-thirds of the Directors, representing not less than three-fourths of the total voting power of the members.

(ii) The said review shall involve the consideration of, inter alia, each recipient country's progress made on decentralization, demonopolization and privatization and the relative shares of the Bank's lending to private enterprises, to state-owned enterprises in the process of transition to participation in the market-oriented economy or privatization, for infrastructure, for technical assistance, and for other purposes.

3. (i) Not more than forty (40) per cent of the amount of the Bank's total committed loans, guarantees and equity investments, without prejudice to its other operations referred to in this Article, shall be provided to the state sector. Such percentage limit shall apply initially over a two (2) year period, from the date of commencement of the Bank’s operations, taking one year with another, and thereafter in respect of each subsequent financial year.

(ii) For any country, not more than forty (40) per cent of the amount of the Bank’s total committed loans, guarantees and equity investments over a period of five (5) years, taking one year with another, and without prejudice to the Bank’s other operations referred to in this Article, shall be provided to the state sector.

(iii) For the purposes of this paragraph,

(a) the state sector includes national and local Governments, their agencies, and enterprises owned or controlled by any of them;

(b) a loan or guarantee to, or equity investment in, a state-owned enterprise which is implementing a programme to achieve private ownership and control shall not be considered as made to the state sector;

(c) loans to a financial intermediary for on-lending to the private sector shall not be considered as made to the state sector.

Article 12: Limitations on ordinary operations

1. The total amount of outstanding loans, equity investments and guarantees made by the Bank on its ordinary operations shall not be increased at any time, if by such increase the total amount of its unimpaired subscribed capital, reserves and surpluses included in its ordinary capital resources would be exceeded.

2. The amount of any equity investment shall not normally exceed such percentage of the equity capital of the enterprise concerned as shall be determined, by a general rule, to be appropriate by the Board of Directors. The Bank shall not seek to obtain by such an investment a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize such investment, in which case the Bank may take such action and exercise such rights as it may deem necessary for the protection of its interests.

3. The amount of the Bank's disbursed equity investments shall not at any time exceed an amount corresponding to its total unimpaired paid-in subscribed capital, reserves and general reserve.

4. The Bank shall not issue guarantees for export credits nor undertake insurance activities.

Article 13: Operating principles

The Bank shall operate in accordance with the following principles:

(i) the Bank shall apply sound banking principles to all its operations;

(ii) the operations of the Bank shall provide for the financing of specific projects, whether individual or in the context of specific investment programmes, and for technical assistance, designed to fulfil its purpose and functions as set out in Articles 1 and 2 of this Agreement;
(iii) the Bank shall not finance any undertaking in the territory of a member if that member objects to such financing;

(iv) the Bank shall not allow a disproportionate amount of its resources to be used for the benefit of any member;

(v) the Bank shall seek to maintain reasonable diversification in all its investments;

(vi) before a loan, guarantee or equity investment is granted, the applicant shall have submitted an adequate proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal, together with recommendations, on the basis of a staff study;

(vii) the Bank shall not undertake any financing, or provide any facilities, when the applicant is able to obtain sufficient financing or facilities elsewhere on terms and conditions that the Bank considers reasonable;

(viii) in providing or guaranteeing financing, the Bank shall pay due regard to the prospect that the borrower and its guarantor, if any, will be in a position to meet their obligations under the financing contract;

(ix) in case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditure as it is actually incurred;

(x) the Bank shall seek to involve its funds by selling its investments to private investors whenever it can appropriately do so on satisfactory terms;

(xi) in its investments in individual enterprises, the Bank shall undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Bank, and the terms and conditions normally obtained by private investors for similar financing;

(xii) the Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged; and

(xiii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or the equity investment was granted and with due attention to considerations of economy and efficiency.

**Article 14: Terms and conditions for loans and guarantees**

1. In the case of loans made, participated in, or guaranteed by the Bank, the contract shall establish the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other fees, charges, maturities and dates of payment in respect of the loan or the guarantee, respectively. In setting such terms and conditions, the Bank shall take fully into account the need to safeguard its income.

2. Where the recipient of loans or guarantees of loans is not itself a member, but is a state-owned enterprise, the Bank may, when it appears desirable, bearing in mind the different approaches appropriate to public and state-owned enterprises in transition to private ownership and control, require the member or members in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of such member or members acceptable to the Bank, to guarantee the repayment of the principal and the payment of interest and other fees and charges of the loan in accordance with the terms thereof. The Board of Directors shall review annually the Bank's practice in this matter, paying due attention to the Bank's credit worthiness.

3. The loan or guarantee contract shall expressly state the currency or currencies, or ECU, in which all payments to the Bank thereunder shall be made.

**Article 15: Commission and fees**

1. The Bank shall charge, in addition to interest, a commission on loans made or participated in as part of its ordinary operations. The terms and conditions of this commission shall be determined by the Board of Directors.

2. In guaranteeing a loan as part of its ordinary operations, or in underwriting the sale of securities, the Bank shall charge fees, payable at rates and time determined by the Board of Directors, to provide suitable compensation for its risks.

3. The Board of Directors may determine any other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations.

**Article 16: Special reserve**

1. The amount of commissions and fees received by the Bank pursuant to Article 15 of this Agreement shall be set aside as a special reserve which shall be kept for meeting the losses of the Bank in accordance with Article 17 of this Agreement. The special reserve shall be held in such liquid form as the Bank may decide.

2. If the Board of Directors determines that the size of the special reserve is adequate, it may decide that all or part of the said commission or fees shall henceforth form part of the income of the Bank.
Article 17: Methods of meeting the losses of the Bank

1. In the Bank’s ordinary operations, in cases of arrears of default on loans made, participated in, or guaranteed by the Bank, and in case of losses on underwriting and in equity investment, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate provisions against possible losses.

2. Losses arising in the Bank’s ordinary operations shall be charged:
   (i) first, to the provisions referred to in paragraph 1 of this Article;
   (ii) second, to net income;
   (iii) third, against the special reserve provided for in Article 16 of this Agreement;
   (iv) fourth, against its general reserve and surpluses;
   (v) fifth, against the unimpaired paid-in capital; and
   (vi) last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraphs 4 and 5 of Article 6 of this Agreement.

Article 18: Special Funds

1. The Bank may accept the administration of Special Funds which are designed to serve the purpose and come within the functions of the Bank. The full cost of administering any such Special Fund shall be charged to that Special Fund.

2. Special Funds accepted by the Bank may be used in any manner and on any terms and conditions consistent with the purpose and functions of the Bank, with the other applicable provisions of this Agreement, and with the agreement or agreements relating to such Funds.

3. The Bank shall adopt such rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, except for those provisions expressly applicable only to ordinary operations of the Bank.

Article 19: Special Funds resources

The term “Special Funds resources” shall refer to the resources of any Special Fund and shall include:

(i) funds accepted by the Bank for inclusion in any Special Fund;

(ii) funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by such Special Fund; and

(iii) income derived from investment of Special Funds resources.

Chapter IV: Borrowing and other miscellaneous powers

Article 20: General powers

1. The Bank shall have, in addition to the powers specified elsewhere in the Agreement, the power to:

   (i) borrow funds in member countries or elsewhere, provided always that:

       (a) before making a sale of its obligations in the territory of a country, the Bank shall have obtained its approval; and

       (b) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approvals;

   (ii) invest or deposit funds not needed in its operations;

   (iii) buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;

   (iv) guarantee securities in which it has invested in order to facilitate their sale;

   (v) underwrite, or participate in the underwriting of, securities issued by any enterprise for purposes consistent with the purpose and functions of the Bank;

   (vi) provide technical advice and assistance which serve its purpose and come within its functions;

   (vii) exercise such powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement; and

   (viii) conclude agreements of cooperation with any public or private entity or entities.

2. Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government or member, unless it is in fact the obligation of a particular government or member, in which case it shall so state.
Chapter V: Currencies

Article 21: Determination and use of currencies

1. Whenever it shall become necessary under this Agreement to determine whether any currency is fully convertible for the purposes of this Agreement, such determination shall be made by the Bank, taking into account the paramount need to preserve its own financial interests, after consultation, if necessary, with the International Monetary Fund.

2. Members shall not impose any restrictions on the receipt, holding, use or transfer by the Bank of the following:

   (i) currencies or ECU received by the Bank in payment of subscriptions to its capital stock, in accordance with Article 6 of this Agreement;
   
   (ii) currencies obtained by the Bank by borrowing;
   
   (iii) currencies and other resources administered by the Bank as contributions to Special Funds; and
   
   (iv) currencies received by the Bank in payment on account of principal interest, dividends or other charges in respect of loans or investments, or the proceeds of disposal of such investments made out of any of the funds referred to in sub paragraphs (i) to (iii) of this paragraph, or in payment of commission, fees or other charges.

Chapter VI: Organization and management

Article 22: Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and such other officers and staff as may be considered necessary.

Article 23: Board of Governors: Composition

1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one Alternate. Each Governor and Alternate shall serve at the pleasure of the appointing member. No Alternate may vote except in the absence of his or her principal. At each of its annual meetings, the Board shall elect one of the Governors as Chairman who shall hold office until the election of the next Chairman.

2. Governors and Alternates shall serve as such without remuneration from the Bank.

Article 24: Board of Governors: Powers

1. All the powers of the Bank shall be vested in the Board of Governors.

2. The Board of Governors may delegate to the Board of Directors any or all of its powers, except the power to:

   (i) admit new members and determine the conditions of their admission;
   
   (ii) increase or decrease the authorized capital stock of the Bank;
   
   (iii) suspend a member;
   
   (iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
   
   (v) authorize the conclusion of general agreements for co-operation with other international organizations;
   
   (vi) elect the Directors and the President of the Bank;
   
   (vii) determine the remuneration of the Directors and Alternate Directors and the salary and other terms of the contract of service of the President;
   
   (viii) approve, after reviewing the auditors’ report, the general balance sheet and the statement of profit and loss of the Bank;
   
   (ix) determine the reserves and the allocation and distribution of the net profits of the Bank;
   
   (x) amend this Agreement;
(xi) decide to terminate the operations of the Bank and to distribute its assets; and

(xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.

3. The Board of Governors shall retain full power to exercise authority over any matter delegated or assigned to the Board of Directors under paragraph 2 of this Article, or elsewhere in this Agreement.

Article 25: Board of Governors: Procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by not less than five (5) members of the Bank or members holding not less than one quarter of the total voting power of the members.

2. Two-thirds of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.

3. The Board of Governors may by regulation establish a procedure whereby the Board of Directors may, when the latter deems such action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

4. The Board of Governors, and the Board of Directors to the extent authorized, may adopt such rules and regulations and establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

Article 26: Board of Directors: Composition

1. The Board of Directors shall be composed of twenty-three (23) members who shall not be members of the Board of Governors, and of whom:

(i) eleven (11) shall be elected by the Governors, representing Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom, the European Economic Community and the European Investment Bank; and

(ii) twelve (12) shall be elected by the Governors representing other members, of whom:

(a) four (4), by the Governors representing those countries listed in Annex A as Central and Eastern European countries eligible for assistance from the Bank;

(b) four (4), by the Governors representing those countries listed in Annex A as other European countries;

(c) four (4), by the Governors representing those countries listed in Annex A as non-European countries.

Directors, as well as representing members whose Governors have elected them, may also represent members who assign their votes to them.

2. Directors shall be persons of high competence in economic and financial matters and shall be elected in accordance with Annex B.

3. The Board of Governors may increase or decrease the size, or revise the composition, of the Board of Directors, in order to take into account changes in the number of members of the Bank, by an affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Without prejudice to the exercise of these powers for subsequent elections, the number and composition of the second Board of Directors shall be as set out in paragraph 1 of this Article.

4. Each Director shall appoint an Alternate with full power to act for him and her when he or she is not present. Directors and Alternates shall be nationals of member countries. No member shall be represented by more than one Director. An Alternate may participate in meetings of the Board but may vote only when he or she is acting on place of his or her principal.

5. Directors shall hold office for a term of three (3) years and may be re-elected; provided that the first Board of Directors shall be elected by the Board of Governors at its inaugural meeting, and shall hold office until the next immediately following annual meeting of the Board of Governors or, if that Board shall so decide at that annual meeting, until its next subsequent annual meeting. They shall continue in office until their successors shall have been chosen and assumed office. If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his or her term, a successor shall be chosen in accordance with Annex B for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his or her term, a successor may similarly be chosen for the remainder of the term, by the votes cast by such Governors who elected the former Director, in which election majority of the votes cast by such Governors shall be required. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter, except that of appointing an Alternate.

Article 27: Board of Directors: Powers

Without prejudice to the powers of the Board of Governors as provided in Article 24 of this Agreement, the Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

(i) prepare the work of the Board of Governors;
(ii) in conformity with the general directions of the Board of Governors, establish policies and take decisions concerning loans, guarantees, investment in equity capital, borrowing by the Bank, the furnishing of technical assistance and other operations of the Bank;

(iii) submit the audited accounts for each financial year for approval of the Board of Governors at each annual meeting; and

(iv) approve the budget of the Bank.

**Article 28: Board of Directors: Procedure**

1. The Board of Directors shall normally function as the principal office of the Bank and shall meet as often as the business of the Bank may require.

2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds of the total voting power of the members.

3. The Board of Governors shall adopt regulations under which, if there is no Director of its nationality, a member may send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

**Article 29: Voting**

1. The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank. In the event of any member failing to pay any part of the amount due in respect of its obligations in relation to paid-in shares under Article 6 of this Agreement, such member shall be unable for so long as such failure continues to exercise that percentage of its voting power which corresponds to the percentage which the amount due but unpaid bears to the total amount of paid-in shares subscribed to by that member in the capital stock of the Bank.

2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power of the members voting.

3. In voting in the Board of Directors, each Director shall be entitled to cast the number of votes to which the Governors who have elected him or her are entitled and those to which any Governors who have assigned their votes to him or her, pursuant to section D or Annex B, are entitled. A Director representing more than one member may cast separately the votes of the members he or she represents. Except as otherwise expressly provided in this Agreement, and except for general policy decisions in which cases such policy decisions shall be taken by a majority of not less than two-thirds of the total voting power of the members voting, all matters before the Board of Directors shall be decided by a majority of the voting power of the members voting.

**Article 30: The President**

1. The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President of the Bank. The President, while holding office, shall not be a Governor or a Director of an Alternate for either.

2. The term of office of the President shall be four (4) years. He or she may be re-elected. He or she shall, however, cease to hold office when the Board of Governors so decides by an affirmative vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. If the office of the President for any reason becomes vacant, the Board of Governors, in accordance with the provisions of paragraph 1 of this Article, shall elect a successor for up to four (4) years.

3. The President shall not vote, except that he or she may cast a deciding vote in case of an equal division. He or she may participate in meetings of the Board of Governors and shall chair the meetings of the Board of Directors.

4. The President shall be the legal representative of the Bank.

5. The President shall be chief of the staff of the Bank. He or she shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations to be adopted by the Board of Directors. In appointing officers and staff, he or she shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Bank.

6. The President shall conduct, under the direction of the Board of Directors, the current business of the Bank.

**Article 31: Vice-President(s)**

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. A Vice-President shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, a Vice-President shall exercise the authority and perform the functions of the President.

2. A Vice-President may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that he or she may cast the deciding vote when acting in place of the President.
Article 32: International character of the Bank

1. The Bank shall not accept Special Funds or other loans or assistance that may in any way prejudice, deflect or otherwise alter its purpose or functions.

2. The Bank, its President, Vice-President(s), officers and staff shall in their decisions take into account only considerations relevant to the Bank’s purpose, functions and operations, as set out in this Agreement. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

3. The President, Vice-President(s), officers and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 33: Location of offices

1. The principal office of the Bank shall be located in London.

2. The Bank may establish agencies or branch offices in the territory of any member of the Bank.

Article 34: Depositories and channels of communication

1. Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository for all the Bank’s holdings of its currency as well as other assets of the Bank.

2. Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement.

Article 35: Publication of reports and provision of information

1. The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three (3) months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations. The financial accounts shall be kept in ECU.

2. The Bank shall report annually on the environmental impact of its activities and may publish such other reports as it deems desirable to advance its purpose.

3. Copies of all reports, statements and publications made under this Article shall be distributed to members.

Article 36: Allocation and distribution of net income

1. The Board of Governors shall determine at least annually what part of the Bank’s net income, after making provisions for reserves and, if necessary, against possible losses under paragraph 1 of Article 17 of this Agreement, shall be allocated to surplus or other purposes and what part, if any, shall be distributed. Any such decision on the allocation of the Bank’s net income to other purposes shall be taken by a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. No such allocation, and no distribution, shall be made until the general reserve amounts to at least ten (10) per cent of the authorized capital stock.

2. Any distribution referred to in the preceding paragraph shall be made in proportion to the number of paid-in shares held by each member; provided that in calculating such number, account shall be taken only of payments received in cash and promissory notes encashed in respect of such shares on or before the end of the relevant fiscal year.

3. Payments to each member shall be made in such manner as the Board of Governors shall determine. Such payments and their use by the receiving country shall be without restriction by any member.
Chapter VII: Withdrawal and suspension of membership: temporary suspension and termination of operation

Article 37: Right of members to withdraw

1. Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office.

2. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice but in not event less than six (6) months after such notice is received by the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

Article 38: Suspension of membership

1. If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by not less than the same majority to restore the member to good standing.

2. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 39: Settlement of accounts with former members

1. After the date on which a member ceases to be a member, such former member shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans, equity investments or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur such liabilities with respect to loans, equity investments and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.

2. At the time a member ceases to be a member, the Bank shall arrange for the repurchase of such former member’s shares as a part of the settlement of accounts with such former member in accordance with the provisions of this Article. For this purpose, the purchase price of the shares shall be the value shown by the books of the Bank on the date of cessation of membership, with the original purchase price of each share being its maximum value.

3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:

   (i) any amount due to the former member for its shares shall be withheld so long as the former member, its central bank or any of its agencies or instrumentalities remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the former member resulting from its subscription for shares in accordance with paragraphs 4, 5 and 7 of Article 6 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date upon which the member ceases to be a member;

   (ii) payments for shares may be made from time to time, upon their surrender by the former member, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans, equity investments and guarantees in sub paragraph (i) of this paragraph until the former member has received the full repurchase price;

   (iii) payments shall be made on such conditions and in such fully convertible currencies, or ECU, and on such dates, as the Bank determines; and

   (iv) if losses are sustained by the Bank on any guarantees, participation in loans, or loans which were outstanding on the date when the member ceased to be a member, or if a net loss is sustained by the Bank on equity investments held by it on such date, and the amount of such losses exceeds the amount of the reserves provided against losses on the date when the member ceased to be a member, such former member shall repay, upon demand, the amount by which repurchase the price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions under paragraph 4 of Article 6 of this Agreement, to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

4. If the Bank terminates its operations pursuant to Article 41 of this Agreement within six (6) months of the date upon which any member ceases to be a member, all rights of such former members shall be determined in accordance with the provisions of Articles 41 to 43 of this Agreement.

Article 40: Temporary suspension of operations

In an emergency, the Board of Directors may suspend temporarily operations in respect of new loans, guarantees, underwriting, technical assistance and equity investments pending an opportunity for further consideration and action by the Board of Governors.
Article 41: Termination of operations

The Bank may terminate its operations by the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Upon such termination of operations the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 42: Liability of members and payments of claims

1. In the event of termination of the operations of the Bank, the liability of all members for all uncalled subscriptions to the capital stock of the Bank shall continue until all claims of creditors; including all contingent claims, shall have been discharged.

2. Creditors on ordinary operations holding direct claims shall be paid first out of the assets of the Bank, secondly out of the payments to be made to the Bank in respect of unpaid paid-in shares, and then out of payments to be made to the Bank in respect of callable capital stock. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and holders of contingent claims.

Article 43: Distribution of assets

1. No distribution under this Chapter shall be made to members on account of their subscriptions to the capital stock of the Bank until:

   (i) all liabilities to creditors have been discharged or provided for; and

   (ii) the Board of Governors has decided by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members, to make a distribution.

2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of assets. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.

3. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

Chapter VIII: Status, immunities, privileges and exemptions

Article 44: Purposes of chapter

To enable the Bank to fulfil its purpose and the functions with which it is entrusted, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member country.

Article 45: Status of the Bank

The Bank shall possess full legal personality and, in particular, the full legal capacity:

(i) to contract;

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

(iii) to institute legal proceedings.

Article 46: Position of the Bank with regard to judicial process

Actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 47: Immunity of assets from seizure

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 48: Immunity of archives

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

Article 49: Freedom of assets from restrictions

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.
Article 50: Privilege for communications

The official communications of the Bank shall be accorded by each member the same treatment accorded to the official communications of any other member.

All Governors, Directors, Alternates, officers, and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to actions performed by them in their official capacity except when the activities are not related to their official capacity. The immunity shall not apply, however, to civil liability in the case of damage arising from road traffic accident caused by any such Governor, Director, Alternate, Officer, or employee.

Article 52: Privilege of officers and employees

1. All Governors, Directors, Alternates, officers, and employees of the Bank and experts of the Bank shall be accorded the same immunities from immigration restrictions, alien registration requirements, and national service obligations as are accorded by each member to its representatives, officials, and employees of comparable rank of other members and shall not apply, however, to civil liability in the case of damage arising from road traffic accident caused by any such Governor, Director, Alternate, Officer, or employee.

The bank shall be granted the same treatment in respect of travelling facilities as are accorded to representatives, officials, and employees of comparable rank of other members.

2. The spouses and immediate dependants of those Directors, Alternate Directors, employees of the Bank who are resident in the country in which the Bank is located and of the principal office of the Bank, and the spouses and immediate dependants of those Directors, Alternate Directors, employees of the Bank in the country in which any agency or branch office of the Bank is located, shall be accorded the same immunities from immigration restrictions, alien registration requirements, and national service obligations, and the same facilities as are accorded to representatives, officials, and employees of comparable rank of other members.

3. Goods imported by the Bank and necessary for the exercise of its functions, goods required for the exercise of its functions, and goods required for the exercise of the functions of the Bank's agencies and branches, and from all export prohibitions and restrictions. Similarly goods exported from all export duties and taxes, and from all export prohibitions and restrictions.

4. Goods acquired or imported under this Article shall not be sold, hired, lent, given away, or removed from the Bank, and shall not be liable to duties or charges, except in accordance with conditions laid down by the Bank and necessary for the exercise of its functions.

5. The provisions of this Article shall not apply to taxes or duties which are no more than charges for public utility services.

6. The provisions of Article 53 shall not apply to taxes or duties which are no more than charges for public utility services.

7. Notwithstanding the provisions of paragraph 6 of this Article, a member may claim exemption from such taxes or duties or to provide for their reimbursement.

The Bank shall not make any reimbursement for such taxes or duties.

8. Paragraph 6 of this Article shall not apply to pensions and annuities paid by the Bank.

The Bank shall not make any reimbursement for such taxes or duties.

9. Tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whosoever held.

The Bank shall not make any reimbursement for such taxes or duties.

10. The Bank shall pay such taxes or duties and shall not deduct any tax from the amount payable to the principal office of the Bank.
10. Not a tax of any kind shall be levied on any obligation or security guarantied by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because its guarantied by the Bank, or

(ii) if the sole jurisdictional basis for such taxation is the location of any office; place of business maintained by the Bank.

Article 54: Implementation of Chapter

Each member shall promptly take such action as is necessary for the purpose of implementing the provisions of this Chapter and shall inform the Bank of the detailed action which it has taken.

Article 55: Waiver of immunities, privileges and exemptions

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President, Vice-President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice-President.

Chapter IX: Amendments, interpretation, arbitration

Article 56: Amendments

1. Any proposal to amend this Agreement, whether emanating from a member, a Governor or the Board of Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before that Board. If the proposed amendment is approved by the Board the Bank shall, by any rapid means of communication, ask all members whether they accept the proposed amendment. When not less than three-fourths of the members (including at least two countries from Central and Eastern Europe listed in Annex A), having not less than four-fifths of the total voting power of the members, have accepted the proposed amendment, the Bank shall certify that fact by formal communication addressed to all members.

2. Notwithstanding paragraph 1 of this Article:

   (i) acceptance by all members shall be required in the case of any amendment modifying:

      (a) the right to withdraw from the Bank;

      (b) the rights pertaining to purchase of capital stock provided from in paragraph 3 of Article 5 of this Agreement;

      (c) the limitations on liability provided for in paragraph 7 of Article 5 of this Agreement; and

      (d) the purpose and functions of the Bank defined by Articles 1 and 2 of this Agreement;

   (ii) acceptance by not less than three-fourths of the members having not less than eighty-five (85) per cent of the total voting power of the members shall be required in the case of any amendment modifying paragraph 4 of Article 8 of this Agreement.

   When the requirements for accepting any such proposed amendment have been met, the Bank shall certify that fact by formal communication addressed to all members.

3. Amendments shall enter into force for all members three (3) months after the date of the formal communication provided for in paragraphs 1 and 2 of this Article unless the Board of Governors specifies a different period.
Article 57: Interpretation and application

1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank, or between any members of the Bank, shall be submitted to the Board of Directors for its decision. If there is no Director of its nationality in that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in the meeting of the Board of Directors during such consideration. The representative of such member shall, however, have no vote. Such right of representation shall be regulated by the Board of Governors.

2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems it necessary, act on the basis of the decision of the Board of Directors.

Article 58: Arbitration

If a disagreement should arise between the Bank and a member which has ceased to be a member, or between the Bank and any member after adoption of a decision to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three (3) arbitrators, one appointed by the Bank, another by the member or former member concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article 59: Approval deemed given

Whenever the approval or the acceptance of any member is required before any act may be done by the Bank, except under Article 56 of this Agreement, approval or acceptance shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

Chapter X: Final provisions

Article 60: Signature and deposit

1. This Agreement, deposited with the Government of the French Republic (hereinafter called “the Depository”), shall remain open until 31 December 1990 for signature by the prospective members whose names are set forth in Annex A to this Agreement.

2. The Depository shall communicate certified copies of this Agreement to all the Signatories.

Article 61: Ratification, acceptance or approval

1. The Agreement shall be subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall, subject to paragraph 2 of this Article, be deposited with the Depository not later than 31 March 1991. The Depository shall duly notify the other Signatories of each deposit and the date thereof.

2. Any Signatory may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until one year after the date of its entry into force or, if necessary, until such later date as may be decided by a majority of Governors, representing a majority of the total voting power of the members.

3. A Signatory whose instrument referred to in paragraph 1 of this Article is deposited before the date on which this Agreement enters into force shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph shall become a member of the Bank on the date on which its instrument of ratification, acceptance or approval is deposited.

Article 62: Entry into force

1. This Agreement shall enter into force when instruments of ratification, acceptance or approval have been deposited by Signatories whose initial subscriptions represent not less than two thirds of the total subscriptions set forth in Annex A, including at least two countries from Central and Eastern Europe listed in Annex A.

2. If this Agreement has not entered into force by 31 March 1991, the Depository may convene a conference of interested prospective members to determine the future course of action and decide a new date by which instruments of ratification, acceptance or approval shall be deposited.
**Article 63: Inaugural meeting and commencement of operations**

1. As soon as this Agreement enters into force under Article 62 of this Agreement, each member shall appoint a Governor. The Depository shall call the first meeting of the Board of Governors within sixty (60) days of entry into force of this Agreement under Article 62 or as soon as possible thereafter.

2. At its first meeting, the Board of Governors:
   - (i) shall elect the President;
   - (ii) shall elect the Directors of the Bank in accordance with Article 26 of this Agreement;
   - (iii) shall make arrangements for determining the date of the commencement of the Bank’s operations; and
   - (iv) shall make such other arrangements as appear to it necessary to prepare for the commencement of the Bank’s operations.

3. The Bank shall notify its members of the date of commencement of its operations.

Done at Paris on 29 May 1990 in a single original, whose English, French, German and Russian texts are equally authentic, which shall be deposited in the archives of the Depository which shall transmit a duly certified copy to each of the other prospective members whose names are set forth in Annex A.

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**Annex A**

**Initial subscriptions to the authorized capital stock for prospective members which may become members in accordance with Article 61**

<table>
<thead>
<tr>
<th>A - European Communities</th>
<th>Number of shares</th>
<th>Capital subscription (in million ECU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>22,800</td>
<td>228.00</td>
</tr>
<tr>
<td>Denmark</td>
<td>12,000</td>
<td>120.00</td>
</tr>
<tr>
<td>France</td>
<td>85,175</td>
<td>851.75</td>
</tr>
<tr>
<td>Germany, Federal Republic of</td>
<td>85,175</td>
<td>851.75</td>
</tr>
<tr>
<td>Greece</td>
<td>6,500</td>
<td>65.00</td>
</tr>
<tr>
<td>Ireland</td>
<td>3,000</td>
<td>30.00</td>
</tr>
<tr>
<td>Italy</td>
<td>85,175</td>
<td>851.75</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2,000</td>
<td>20.00</td>
</tr>
<tr>
<td>Netherlands</td>
<td>24,800</td>
<td>248.00</td>
</tr>
<tr>
<td>Portugal</td>
<td>4,200</td>
<td>42.00</td>
</tr>
<tr>
<td>Spain</td>
<td>34,000</td>
<td>340.00</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>85,175</td>
<td>851.75</td>
</tr>
<tr>
<td>European Economic Community</td>
<td>30,000</td>
<td>300.00</td>
</tr>
<tr>
<td>European Investment Bank</td>
<td>30,000</td>
<td>300.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B - Other European countries</th>
<th>Number of shares</th>
<th>Capital subscription (in million ECU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>22,800</td>
<td>228.00</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1,000</td>
<td>10.00</td>
</tr>
<tr>
<td>Finland</td>
<td>12,500</td>
<td>125.00</td>
</tr>
<tr>
<td>Iceland</td>
<td>1,000</td>
<td>10.00</td>
</tr>
<tr>
<td>Israel</td>
<td>6,500</td>
<td>65.00</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>200</td>
<td>2.00</td>
</tr>
<tr>
<td>Malta</td>
<td>100</td>
<td>1.00</td>
</tr>
<tr>
<td>Norway</td>
<td>12,500</td>
<td>125.00</td>
</tr>
<tr>
<td>Sweden</td>
<td>22,800</td>
<td>228.00</td>
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<tr>
<td>Switzerland</td>
<td>22,800</td>
<td>228.00</td>
</tr>
<tr>
<td>Turkey</td>
<td>11,500</td>
<td>115.00</td>
</tr>
</tbody>
</table>
### C - Recipient countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Shares</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>7,900</td>
<td>79.00</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>12,800</td>
<td>128.00</td>
</tr>
<tr>
<td>German Democratic Republic</td>
<td>15,500</td>
<td>155.00</td>
</tr>
<tr>
<td>Hungary</td>
<td>7,900</td>
<td>79.00</td>
</tr>
<tr>
<td>Poland</td>
<td>12,800</td>
<td>128.00</td>
</tr>
<tr>
<td>Romania</td>
<td>4,800</td>
<td>48.00</td>
</tr>
<tr>
<td>Union of Soviet Socialist</td>
<td>60,000</td>
<td>600.00</td>
</tr>
<tr>
<td>Republics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>12,800</td>
<td>128.00</td>
</tr>
</tbody>
</table>

### D - Non-European countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Shares</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>10,000</td>
<td>100.00</td>
</tr>
<tr>
<td>Canada</td>
<td>34,000</td>
<td>340.00</td>
</tr>
<tr>
<td>Egypt</td>
<td>1,000</td>
<td>10.00</td>
</tr>
<tr>
<td>Japan</td>
<td>85,175</td>
<td>851.75</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>6,500</td>
<td>65.00</td>
</tr>
<tr>
<td>Mexico</td>
<td>3,000</td>
<td>30.00</td>
</tr>
<tr>
<td>Morocco</td>
<td>1,000</td>
<td>10.00</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1,000</td>
<td>10.00</td>
</tr>
<tr>
<td>United States of America</td>
<td>100,000</td>
<td>1,000.00</td>
</tr>
</tbody>
</table>

### E - Non allocated shares

<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>125</td>
<td>1.25</td>
</tr>
</tbody>
</table>

Total allocated shares: 1,000,000, 10,000.00

(∗) Prospective members are listed under the above categories only for the purpose of this Agreement. Recipient countries are referred to elsewhere in this Agreement as Central and Eastern European countries.

### Annex B

**Section A - Election of Directors by Governors representing Belgium, Denmark, France, The Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, The United Kingdom, The European Economic Community and The European Investment Bank (hereinafter referred to as Section A Governors)**

1. The provisions set out below in this Section shall apply exclusively to this Section.

2. Candidates for the office of Director shall be nominated by Section A Governors, provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section A Governors.

3. Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.

4. Subject to paragraph 10 of this Section, the 11 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 4.5 per cent of the total of the votes which can be cast (eligible votes) in Section A shall be considered elected.

5. Subject to paragraph 10 of this Section, if 11 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 11 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:

   (a) those Governors who voted in the first ballot for a person not elected and

   (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 5.5 per cent of the eligible votes.

6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 5.5 per cent of the eligible votes, the 5.5 per cent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 5.5 per cent is reached.

7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 4.5 per cent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 5.5 per cent and shall not be eligible to vote in a further ballot.
Subject to paragraph 10 of this Section, if, after the second ballot, 11 persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until 11 persons have been elected, provided that, if at any stage 10 persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the eleventh may be elected by a simple majority of the remaining votes cast.

In the case of an increase or decrease in the number of Directors to be elected by Section A Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 per cent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member of the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section B - Election of Directors by Governors representing other countries

Section B (i) - Election of Directors by Governors representing those countries listed in Annex A as Central and Eastern European Countries (recipient countries) (hereinafter referred to as Section B (i) Governors)

The provisions set out below in this Section shall apply exclusively to this Section.

Candidates for the office of Director shall be nominated by Section B (i) Governors providing that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B (i) Governors.

Each Governor eligible to vote shall cast for one person all of the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.

Subject to paragraph 10 of this Section, the 4 persons receiving the highest number of votes shall be Directors, except that no person who receives less than 12 per cent of the total of the votes which can be cast (eligible votes) in Section B (i) shall be considered elected.

Subject to paragraph 10 of this Section, if 4 persons are not elected on the first ballot, a second ballot shall be held in which, unless there were no more than 4 candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall only:

(a) those Governors who voted in the first ballot for a person not elected and

(b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 13 per cent of the eligible votes.

In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 13 per cent of the eligible votes, the 13 per cent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 13 per cent is reached.

Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 12 per cent shall be considered as casting all or his or her votes for such person, even if the total votes for such person thereby exceed 13 per cent and shall not be eligible to vote in a further ballot.

Subject to paragraph 10 of this Section, if, after the second ballot, four persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until four persons have been elected, provided that, if at any stage three persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the fourth may be elected by a simple majority of the remaining votes cast.

In the case of an increase or decrease in the number of Directors to be elected by Section B (i) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 per cent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member of the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.
Section B (ii) - Election of Directors by Governors representing those countries listed in Annex A as other European countries (hereinafter referred to as Section B (ii) Governors)

1. The provisions set out below in this Section shall apply exclusively to this Section.

2. Candidates for the office of Director shall be nominated by Section B (ii) Governors provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B (ii) Governors.

3. Each Governor eligible to vote shall cast for one person all the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.

4. Subject to paragraph 10 of this Section, if four persons have not been elected, a second ballot shall be held in which, unless there were no more than four candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:

   (a) those Governors who voted in the first ballot for a person not elected and

   (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 21.5 per cent of the eligible votes.

5. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 21.5 per cent of the eligible votes, the 21.5 per cent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 21.5 per cent is reached.

6. Any Governor, part of whose votes must be counted in order to raise the total votes cast for any person above 20.5 per cent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 21.5 per cent and shall not be eligible to vote in a further ballot.

7. Subject to paragraph 10 of this Section, if, after the second ballot, four persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until four persons have been elected, provided that, if at any stage three persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the fourth may be elected by a simple majority of the remaining votes cast.

9. In the case of an increase or decrease in the number of Directors to be elected by section B (ii) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 per cent, has not deposited its instrument of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section B (iii) - Election of Directors by Governors representing those countries listed in Annex A as Non-European countries (hereinafter referred to as Section B (iii) Governors)

1. The provisions set out below in this Section shall apply exclusively to this Section.

2. Candidates for the office of Director shall be nominated by Section B (iii) Governors provided that a Governor may nominate only one person. The election of Directors shall be by ballot of Section B (iii) Governors.

3. Each Governor eligible to vote shall cast for one person all the votes to which the member appointing him or her is entitled under paragraphs 1 and 2 of Article 29 of this Agreement.

4. Subject to paragraph 10 of this Section, if four persons have not been elected, a second ballot shall be held in which, unless there were no more than four candidates, the person who received the lowest number of votes in the first ballot shall be ineligible for election and in which there shall vote only:

   (a) those Governors who voted in the first ballot for a person not elected and

   (b) those Governors whose votes for a person elected are deemed under paragraphs 6 and 7 below of this Section to have raised the votes cast for that person above 21.5 per cent of the eligible votes.

5. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 21.5 per cent of the eligible votes, the 21.5 per cent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 21.5 per cent is reached.

6. Any Governor, part of whose votes must be counted in order to raise the total votes cast for any person above 20.5 per cent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 21.5 per cent and shall not be eligible to vote in a further ballot.

7. Subject to paragraph 10 of this Section, if, after the second ballot, four persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until four persons have been elected, provided that, if at any stage three persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the fourth may be elected by a simple majority of the remaining votes cast.

8. Subject to paragraph 10 of this Section, if, after the second ballot, four persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until four persons have been elected, provided that, if at any stage three persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the fourth may be elected by a simple majority of the remaining votes cast.

9. In the case of an increase or decrease in the number of Directors to be elected by section B (iii) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6 and 7 of this Section shall be appropriately adjusted by the Board of Governors.

10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 2.8 per cent, has not deposited its instrument of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.
6. In determining whether the votes cast by a Governor are deemed to have raised the total votes cast for any person above 9 per cent of the eligible votes, the 9 per cent shall be deemed to include, first, the votes of the Governor casting the largest number of votes for such person, then the votes of the Governor casting the next largest number and so on, until 9 per cent is reached.

7. Any Governor, part of whose votes must be counted in order to raise the total of votes cast for any person above 8 per cent shall be considered as casting all of his or her votes for such person, even if the total votes for such person thereby exceed 9 per cent and shall not be eligible to vote in a further ballot.

8. Subject to paragraph 10 of this Section, if, after the second ballot, four persons have not been elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, until four persons have been elected, provided that, if at any stage three persons are elected, notwithstanding the provisions of paragraph 4 of this Section, the fourth may be elected by a simple majority of the remaining votes cast.

9. In the case of an increase or decrease in the number of Directors to be elected by Section B(iii) Governors, the minimum and maximum percentages specified in paragraphs 4, 5, 6, and 7 of this Section shall be appropriately adjusted by the Board of Governors.

10. So long as any Signatory, or group of Signatories, whose share of the total amount of capital subscriptions provided in Annex A is more than 5 per cent, has not deposited its instrument or their instruments of ratification, approval or acceptance, there shall be no election for one Director in respect of each such Signatory or group of Signatories. The Governor or Governors representing such a Signatory or group of Signatories shall elect a Director in respect of each Signatory or group of Signatories, immediately after the Signatory becomes a member or the group of Signatories become members. Such Director shall be deemed to have been elected by the Board of Governors at its inaugural meeting, in accordance with paragraph 3 of Article 26 of this Agreement, if he or she is elected during the period in which the first Board of Directors shall hold office.

Section C - Arrangements for the election of Directors representing countries not listed in Annex A

If the Board of Governors decides, in accordance with paragraph 3 of Article 26 of this Agreement, to increase or decrease the size, or revise the composition, of the Board of Directors, in order to take into account changes in the number of members of the Bank, the Board of Governors shall first consider whether any amendments are required to this Annex and may make any such amendments as it deems necessary as part of such decision.
Letter from the Head of the Soviet Delegation

To the Chairman of the Conference on the
Establishment of the European Bank
for Reconstruction and Development

Mr. Chairman,

As you know, the initiative of the President of France, M. F. Mitterrand, to establish the European Bank for Reconstruction and Development for the purpose of facilitating the transition of Central and Eastern European countries towards market-oriented economies has found understanding and support on behalf of the Soviet authorities. The Soviet delegation participated in the sessions of talks on drafting the constituent documents of the Bank. As a result the constituent countries have reached considerable progress in drawing up the Agreement establishing the European Bank for Reconstruction and Development.

At the same time, certain difficulties largely stem from fears of a number of countries that due to the size of its economy the Soviet Union may become the principal recipient of credits of the Bank and therefore will narrow its capacity to extend aid to other Central and Eastern European Countries.

In this connection I would like to assure you, dear Mr. Chairman, that the intentions of the Soviet Union to become an equal member of the Bank account primarily for its will to establish a new institution of multilateral cooperation so as to foster historical reforms on the European continent.

I would like to inform you that my government is prepared to limit its access to the Bank’s resources, pursuant to paragraph 4 of Article 8 of the Articles of Agreement of the Bank, for a period of three years starting from the entry into force of the Articles of Agreement of the Bank.

During that period, the Soviet Union wishes that the Bank will provide technical assistance and other types of assistance directed to finance its private sector, to facilitate the transition of state-owned enterprises to private sector ownership and control and to help enterprises operating competitively and moving to participation in the market-oriented economy, subject to the proportion set forth in paragraph 3 of Article 11 of this Agreement. The total amount of any assistance thus provided by the Bank would not exceed the total amount of the cash disbursed and the promissory notes issued by the Soviet Union for its shares.

I am confident that continuing economic reforms in the Soviet Union will inevitably promote the expansion of the Bank’s activities into the territory of the Soviet Union. However, the USSR, being interested in securing the multilateral character of the Bank, will not choose that at any time in future the Soviet borrowings will exceed an amount consistent with maintaining the necessary diversity in the Bank’s operations and prudent limits on its exposure.

Please accept, Mr. Chairman, the assurance of my highest consideration.

Head of Soviet Delegation
Chairman of the Board
of the State Bank of the USSR
Victor V. GERASHCHENKO

Chairman’s Report on the Agreement Establishing the European Bank for Reconstruction and Development

The European Bank for Reconstruction and Development (EBRD) stems from an initiative by President Mitterrand of France, strongly endorsed by the European Council at Strasbourg on 9 December 1989, as a positive reaction from the European Community to the dramatic political and economic changes in Central and Eastern Europe.

From the beginning it was envisaged that the meetings to discuss the setting up of the Bank would be open to other countries as well as those of Central and Eastern Europe. The first meetings of potential members took place in Paris on 15 and 16 January 1990, with representatives from all 24 members of the Organization for Economic Cooperation and Development; Malta and Cyprus; eight Central and Eastern European countries; the European Economic Community and the European Investment Bank. At meetings from 8 to 11 March 1990, these Delegates were joined by representatives from Egypt, Israel, the Republic of Korea, Liechtenstein and Morocco and on 8 and 9 April also by representatives from Mexico. The final negotiations were in Paris on 20 May 1990.

During the meetings to discuss the EBRD Articles, Delegates came to the view that certain formulations in the text represented general understandings which needed to be recorded, but which were not suitable for the Articles. It was therefore agreed that the Chairman would produce this report summarizing these understandings and that the report would form part of the EBRD’s basic documents, for future reference in interpreting the Articles. The explanatory paragraphs attached to this introduction, which form the bulk of this report, should be viewed against that background. A Signing Ceremony for the Agreement took place in Paris on 29 May 1990, in the presence of President Mitterrand and many Ministers from countries participating in the Bank.
Explanatory notes

Article 2

1. Delegates were anxious to show that the focus of the Bank’s functions was the private sector but, given that the private sector in the potential recipient countries was at present either small or non-existent, that the Bank would also support the public sector in its transition from purely centralized control to demonopolization, decentralization or privatization and to a competitive business environment, and would assist recipient member countries in implementing structural and economic reforms, only through the measures described in subparagraphs (i) to (viii) inclusive of paragraph 1 of this Article.

2. In paragraph 1, subparagraph (i), Delegates shared the view that “other interested investors” covered both domestic and foreign investors.

3. In paragraph 1, subparagraph (iii), Delegates understood that “infrastructure” might include training in managerial and technical skills.

4. In paragraph 1, subparagraph (vii), Delegates recognized the serious environmental problems in Central and Eastern Europe, and emphasized that principles of environmentally sound development must be integrated into the full range of the Bank’s operations. Thus Delegates intended “in the full range of its activities” to include all of the Bank’s activities, including technical assistance and all special operations, and not merely that the Bank should be able to provide support directly for specific environmental projects.

5. In paragraph 2, Delegates believed it essential that the Bank should work in “close co-operation” with the IMF and the World Bank Group (including the IFC and MIGA), so as to ensure compatibility with their activities and to benefit from their experience and expertise, as well as to ensure that recipient member countries were pursuing sound economic programmes.

6. In continuing that the close co-operation should be “with all its members”, Delegates had especially in mind the important role of the European Economic Community and the European Investment Bank.

7. In the same paragraph, Delegates also understood that “other related bodies and any entity, whether public or private” included such bodies as the Council of Europe (and in particular the Social Development Fund), the International Investment Bank, the Nordic Investment Bank and the Economic Commission for Europe. Delegates noted that the Bank was free, in accordance with paragraph 1 subparagraph (viii) of Article 20 of the Agreement, to enter into agreements of co-operation with any such body.

Article 3

1. Delegates agreed that both the European Economic Community and the European Investment Bank (EIB) should be members, given the importance accorded to their role by the European Community Heads of State or Government who had first endorsed the idea of the Bank. It was not intended that their membership would be a precedent for other organizations or Banks to become members of the Bank, or that their membership would be used as a precedent for them to become members of other organizations or other banks.

2. Delegations took note that the EIB and its participating members confirmed that the EIB had legal power to make a capital subscription to the Bank under the Statute of the European Investment Bank.

Article 4

The essentially European character of the Bank lent itself to the denomination of its original authorized capital stock in the European Currency Unit, the ECU. Delegates understood the ECU to be at the centre of the European Monetary System and formulated in relation to a basket of European Community currencies, the weights of which are re-examined by European Community Finance Ministers every five years or, on request, if the weight of any currency has changed by 25 per cent.

Article 5

1. Paragraph 3 requires the Board of Governors to review the adequacy and composition of the Bank’s capital stock at least every five years. A decision may then be taken either to increase the capital stock or not. This paragraph lays down the pre-emptive rights of all members in the event of an increase and stipulates that there is no obligation upon any member to subscribe to new shares. These rights are then protected by paragraph 2 of Article 56 of the Articles of Agreement.

2. Paragraph 4 provides for the possibility of decisions to allow individual members to increase their shareholding in the Bank. Where such an increase is not possible without an increase in the total capital stock, the pre-emptive rights and other requirements of paragraph 3 are brought into play.

Article 6

1. In paragraph 2, Delegates agreed that the drawdown of promissory notes should be pro rata based on a schedule to be established by the Board of Directors who should take account of the net financing requirement based on historical resource flows.

2. In paragraph 3, Delegates agreed that the initial choice between ECU, United States dollars or Japanese yen made by each member would apply to the payment of all of the instalments mentioned in paragraph 1, as well as to the payments made as a result of a call on the original capital.
Article 8

In relation to the implementation of paragraph 3 of this Article, Delegates understood that the same procedures and voting arrangements described in this paragraph for suspending or otherwise modifying a member's access to Bank resources should apply to the reverse circumstances, namely when a member's access to Bank resources was being reconsidered in the light of its resuming the implementation of policies consistent with Article 1 of the Agreement.

Article 11

1. This Article establishes the ways the Bank shall carry out its purpose and functions, including in relation to regional projects. In describing recipients of Bank financing and assistance, and in setting limits on Bank financing and assistance to the state sector, the Article seeks to take into account the different arrangements in the different countries.

2. Delegates emphasised, in relation to the reference to private ownership and control in this Article, that control by private investors meant the ability effectively to determine enterprise decisions and policies.

3. In paragraph 1 subparagraph (v), Delegates were aware that the infrastructure needs of the potential recipient countries were immense but also that there were existing bilateral and multilateral sources of help for that purpose. They thus deliberately limited the Bank's possible activities relating to infrastructure reconstruction and development to those “necessary for private sector development and the transition to a market-oriented economy”.

4. Delegates intended that paragraph 1, subparagraph (ii)(c) of this Article would be read together with subparagraph (vii) of Article 13. The Bank was not to engage in underwriting when private sector securities firms or others were able to provide the relevant financing, services and facilities on reasonable terms.

Article 12

1. Delegates intended this Article to reinforce the financial soundness of the Bank.

2. In interpreting the meaning of “the total amount of outstanding loans, equity investments and guarantees” in paragraph 1, Delegates shared the view that the Board of Directors should exercise prudence in approving all such commitments in line with its obligations under paragraph 1 of this Article.

3. In paragraph 2, Delegates intended the Board of Directors to make a rule stipulating the maximum stake that the Bank should take in the equity of any enterprise, but that this rule should include provision for exceptions in specific circumstances where this seemed desirable or necessary. Such circumstances might for instance arise if a financing partner decided to reduce its own stake in the relevant equity.

4. In paragraph 3, Delegates meant “disbursed equity investments” to be interpreted as excluding any such investments as might subsequently have been disposed of to the value achieved by such realization.

Article 13

1. Delegates expected that the operational principles set forth in this Article would be supplemented by a more detailed and comprehensive statement of operating policies to be adopted by the Board of Directors. This statement of policies would cover, among other things: the extent to which the Bank would be expected to go to satisfy itself that the funds which it invested were used efficiently and economically and, where such funds were used for the purchase of goods, that the goods were bought on reasonable terms and in favourable markets; and the detailed requirements for the identification, appraisal, monitoring, implementation and ex-post evaluation of all projects, including their economic, technical, managerial, financial and environmental aspects.

2. In sub-paragraph (i), the stipulation that the Bank should apply sound banking principles to all its operations was meant to cover all of its activities, including its financial policies (for example its management of exchange rate risks) and not just the activities listed in the rest of the Article.

3. In sub-paragraph (ii), Delegates described the precise form of programme lending in which the Bank could become involved as “projects, whether individual or in the context of specific investment programmes”, so as to make clear that fast-disbursing policy-based lending is not included.

4. In sub-paragraph (vii), the intention of Delegates was that the Bank should not compete with other organizations; rather, it should complement or supplement existing financing possibilities. Delegates also understood that “financing” and “facilities” were broad terms involving the whole range of Bank operations, including underwriting. Delegates intended this sub-paragraph to be read together with sub-paragraph (xi), where the latter applies.

5. In sub-paragraph (x), Delegates intended the word “investments” to cover the Bank’s loans and guarantees as well as its equity investments. In connection with this provision it had seemed desirable to avoid writing into the Articles any requirement that preference be given to any particular class or classes of purchasers. However, the Bank could often find it necessary or appropriate, when making an investment, to give to private investors with which it was associated in the enterprise a right of first refusal, within a reasonable time limit, to purchase the Bank’s interest therein. Moreover, if the Bank had various opportunities of selling an investment on roughly the same terms, it should bear in mind, in deciding among them, the desirability of fostering local capital markets.
6. In sub-paragraph (xii), Delegates agreed upon completely open procurement (and not procurement open only to members), based on international tendering, where appropriate, and believed that such tenders should be genuinely competitive, in line with the GATT Agreement on Government Procurement. Private sector enterprises in which the Bank held equity or debt might be encouraged, but not obliged, to use international tenders to obtain goods or services efficiently and economically. Delegates were also anxious to give less developed countries, who might not become members, the opportunity to tender for Bank contracts, on equal terms with Bank members, as a means of assisting their development process and of reassuring them, through this original gesture, that the interest of shareholders in the new Bank did not mean reduced interest in their traditional partners in development.

**Article 14**

1. Paragraph 1 requires the Bank, in setting terms and conditions for its financing operations, to take full account of the need to safeguard its income. Delegates envisaged that this requirement would avoid the risk of such operations being in practice subsidised from the cost-free resources available to the Bank from members' paid-in subscriptions.

2. The wording of paragraph 2 of this Article gives the Bank some flexibility to react according to circumstances and would permit the Board to consider a wide range of factors in deciding a policy on guarantees for loans to state-owned enterprises.

3. In reaching decisions on these issues, the Board would need to bear in mind that a fundamental goal of the Bank was to develop a strong private sector in eligible member countries. To ensure that private entrepreneurs took full responsibility for their commercial undertakings, the Board shall follow the present practice of the international Finance Corporation in not requiring a member government guarantee on loans to private sector enterprises. It could take into account the fact that a state-owned enterprise would be more likely to respond quickly to market forces, and to make the transition to market-oriented economies, if that enterprise could not rely on a government guarantee to discharge its responsibilities under a Bank loan. The Board could also set loan terms, pursuant to paragraph (x) of Article 13, to compensate the Bank for any commercial or other risks should it decide not to require a guarantee by a member government.

4. For the purpose of Article 11, paragraph 3, when the Bank does require a member country guarantee to a state-owned enterprise (i.e. a guarantee by the member or a public agency or instrumentality), the loan shall be considered as made to the state sector unless that state-owned enterprise is in transition to private ownership and control. A former state-owned enterprise which has achieved private ownership and control shall be regarded as a private sector enterprise, and the Bank shall not require member country guarantees on new loans to that enterprise.

**Article 17**

Delegates made no provision in respect of possible losses arising on special operations. Delegates envisaged that the Bank would make specific arrangements with the source of each relevant Special Fund in the agreement governing its use, so as to protect the separation of each type of resource in accordance with paragraph 2 of Article 10.

**Article 18**

Delegates understood that Special Funds accepted by the Bank would be assets of the Bank for the purposes of the privileges and immunities provisions of the Articles. Delegates envisaged that each Special Fund would be used and accounted for separately, but this was not specified since it was a matter for the source of each such Fund to determine in consultation with the Bank.

**Article 20**

1. In giving the Bank the general power to underwrite under this Article, Delegates had in mind that the Bank could agree to take on to its own books, if necessary and for a commission, some agreed portion of any shares and securities unsold as a result of a public or private enterprise issuing equity share capital or securities. If the issue proved a complete success such shares or securities would not need to be taken up by the Bank. If some remained unsold, however, and if the Bank's underwriting commitment was invoked, such shares and securities would then form part of the Bank's overall exposure in the country concerned and be subject to any limits applicable.

2. Delegates agreed that underwriting should only represent a small part of the Bank's activities, in view of the financial risks involved; that the Bank should only undertake underwriting services when necessary to fill market gaps; and that the general power to underwrite would be subject to the provisions on underwriting in Articles 11 and 13.

3. In paragraph 1, sub-paragraph (iii), Delegates did not intend this provision to prevent the Bank using private placement or other means of disposing of securities in which it had invested, if an adequate secondary market in those securities did not exist.

4. Delegates agreed that the authority specified in sub-paragraph (iv) of this Article to guarantee securities in which the Bank had invested should not be used in the case of securities which the Bank had acquired as part of its liquidity investments.

**Article 24**

Delegates agreed that the Bank would bear the cost of remuneration of not more than four people working full time on Bank matters, in respect of each Directorship.
Article 26

1. In paragraph 2 of this Article, Delegates hoped that as far as possible Directors would also have a wide and well-balanced knowledge of Central and Eastern Europe, so as to contribute competently to the Bank’s purpose and functions as set out in Articles 1 and 2 and to fulfill competently their obligations in paragraph 3 of Article 8.

2. Delegates recognised the importance for the original member countries from recipient countries listed in Annex A of maintaining at least four Directors for this group, so as to allow each such country either its own Director or its own Alternate in the event that the list of such countries is modified. Delegates agreed that in deciding to increase or decrease the size, or revise the composition of the Board of Directors, in order to take into account changed in the number of the members of the Bank, as provided in paragraph 3 of this Article, the Board of Governors should take account of this wish.

3. Delegates agreed that Directors and their Alternates should be resident at the headquarters of the Bank.

Article 28

In paragraph 3, Delegates noted that usual practice in other International Financial Institutions was not to permit a prospective borrower specially to be represented at the Board.

Article 29

1. Delegates intended that members whose payments, including encashment of promissory notes, fell short of the full amount due on the relevant dates to the Bank in respect of their paid-in shares should forfeit the corresponding percentage of their voting power unless and until the shortfall was made good.

2. The intention in paragraph 3 was to allow split voting by Directors representing more than one member, without making such voting obligatory.

3. Delegates intended that, in the case of differing views on whether or not issues involved “general policy”, decisions would be made by the Board on the basis of advice from the Legal Counsel. In general, decisions on individual operations would not involve such issues, but “general policy issues” would include, inter alia, the budget; the annual programme of operations; borrowing policy, including borrowing limits; interest rate policy; exchange risk management policy; the drawing down of notes; underwriting policy and the organizational structure of the Bank.

Article 30

Delegates intended that men and women should be given equal opportunities in the recruitment process and in terms of service, training, promotion and career development generally.

Article 35

1. Delegates agreed that there was no need to have a provision about working languages in the Articles. The letter from the Conference Chairman to all Delegates (copy attached to this Report) sets out the understanding of Delegates about working languages.

2. Delegates were conscious that there might be little to report initially on the Bank’s environmental impact and that the form of the first annual reports on this subject might be very different from later versions.

Article 36

Delegates were of the view that the principle behind paragraph 2 was that the distribution of cash should be strictly proportional to the cash payments made by each member, and the notes encashed, in respect of its paid-in shares.

Article 39

In paragraph 2, Delegates envisaged that all potential new members would join the Bank by subscribing to share capital at par value, with no account being taken of accumulated reserves. Delegates were thus concerned that those who later chose to leave the Bank for any reason should not profit unduly by so doing, or indeed have any profit incentive to do so, in the event of the book value of their shares having greatly increased since their original purchase. The wording of this paragraph therefore had the aim of ensuring that they should not get back more than they had paid in. The reference to “shown by the books of the Bank” could permit adjustments in Bank financial statements to reflect current and accumulated losses.

Article 46

Delegates noted that this Article was almost exactly the same as Section 3 of Article VII of the I.B.R.D.’s Articles of Agreement. They hoped that courts construing it would draw on the jurisprudence that had evolved in connection with the I.B.R.D.’s Articles.

Article 52

Delegates accepted paragraph 2 of Article 52 in the light of the locations then being considered for Bank operations.

Articles 51 and 55

These Articles were worded to reflect recent international thinking and practice, in accordance with the strong wishes of many Delegates.
**Article 53**

1. With respect to Article 53, paragraphs 1, 2 and 3, Delegates shared the view that members would accord the greatest deference to the Bank on whether a Bank activity was “official” or whether a purchase of goods and services was “necessary” for the “official” activities of the Bank, e.g. a duly authorized purchase of goods is to be presumed as “necessary” for the “official” activities of the Bank. Beyond this, Delegates shared the view that paragraph 2 was to be interpreted in the light of national practices applicable to international organizations with similar provisions.

2. It was accepted that nothing in Article 53 was to be interpreted as preventing any member from granting greater exemption from taxation than that provided for in this Article.

3. It was the common understanding of Delegates that “duties”, whilst “import duties” and “export duties”, in paragraph 3, include customs duties.

4. In paragraph 6, Delegates understood that the “internal effective tax” was not a tax as that term is commonly used in tax treaties, national tax practice and so forth, and was not a tax which is imposed in the exercise of sovereign power. In addition they understood that the Bank’s contracts of employment would contain provisions regarding the “internal effective tax”.

5. With respect to paragraphs 6 and 7, Delegates shared the view that the Bank will regularly inform the members concerned, according to arrangements made with such members, of the amount of the salaries and emoluments paid to its Directors, Alternates, officers and employees in order to enable them to tax those salaries and emoluments (paragraph 7) or to tax properly the income from other sources then the exempt salaries and emoluments (paragraph 6).

6. Delegates took note of the importance placed by some members on their right to tax income derived by their residents who are officers or employees of the Bank. The provisions of paragraph 6 and 7 of Article 53 do not preclude these members from lodging appropriate reservations in accordance with international law.

**Articles 60 and 61**

Delegates intended that these Articles should be read in conjunction with Article 3. Prospective members who sign the Agreement by the date specified in Article 60 and who deposit instruments of ratification, acceptance or approval by the date specified in paragraph 1 or paragraph 2 of Article 61, shall become parties to the Agreement in accordance with the Articles and shall, inter alia, be entitled to subscribe to the number of shares allocated to them in Annex A. The terms and conditions of membership of prospective members who sign the Agreement after the date specified in Article 60 and/or who deposit their instruments of ratification, acceptance or approval later than the date in paragraphs 1 or 2 of Article 61 will be determined by the Bank in accordance with paragraph 2 of Article 3. In respect of the initial shares to be subscribed to by such members, paragraph 2 of Article 3 should be read in conjunction with paragraph 2 of Article 5.

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**Article 62**

Delegates intended, immediately after the adoption of the Agreement by Heads of Delegations, to start discussion on the possibility of transitional arrangements allowing the operations of the bank to start as soon as possible after the date of entry into force of that Agreement.
Letter from the Chairman of the conference to all delegations

During our discussions about the European Bank for Reconstruction and Development, we agreed to follow the normal practice of making no reference to the working languages in the Bank’s Statutes. This letter is therefore to record the understanding we reached together, that the four languages of the authentic text of the Agreement, mentioned in the testimonium, would be the Bank’s working languages, to be used by the Bank according to its day to day needs, and taking into consideration the interests of efficiency and economy.

By-Laws of the European Bank for Reconstruction and Development

These By-Laws are adopted under the authority of, and are intended to be complementary to, the Agreement establishing the European Bank for Reconstruction and Development (hereinafter referred to as the “Agreement”); and they shall be construed accordingly.

In the event of a conflict between the provisions of these By-Laws and the provisions of the Agreement, the provisions of the Agreement shall prevail. In the event of a conflict between these By-Laws and any rules and regulations adopted pursuant to the Agreement, the By-Laws shall prevail.

Section 1: Principal Office and offices of the Bank

(a) The Principal Office of the Bank shall be located in London.

(b) The Board of Directors may authorize the establishment of agencies or branch offices of the Bank at any place in the territories of any member, whenever it is necessary to do so in order to facilitate the efficient conduct of the business of the Bank.

Section 2: Rules of Procedure - Board of Governors

All matters before the Board of Governors shall be governed by the Rules of Procedure of the Board of Governors.

Section 3: Conditions of service - Governors

Governors and their Alternates shall perform their duties without remuneration from the Bank. Their expenses incurred in attending meetings of the Board of Governors shall not be paid by the Bank.

Section 4: Conditions of service - Directors

(A) Service

(a) Each Director and his or her Alternate shall devote to the activities of the Bank such time and attention as the interests of the institution may require, and one or other shall normally be available at the Bank’s principal office.

(b) If he or she does not intend to be a full time Director of the Bank, such Director shall, as soon as possible after assuming office and from time to time as necessary, determine, in consultation with the President, how much time he or she and his or her Alternate will devote to the business of the Bank.

(c) When a Director or his or her Alternate is unable to attend to the business of the Bank for reasons of health or similar reasons, the Director may appoint a temporary Alternate to take his or her place. The temporary Alternate shall receive no salary or compensation for expenses in this capacity for his or her services.
(B) Remuneration

(a) The Bank shall bear the cost of remuneration of any four people in respect of each Directorship. If a Directorship chooses that its Director and his or her Alternate shall be among those four, they shall receive a remuneration for the time of service rendered to the Bank at such annual rates as shall be determined from time to time by the Board of Governors. Remuneration as determined shall continue until changed by the Board of Governors. Such remuneration shall be prorated, in accordance with such provisions as the Board of Directors shall from time to time approve, according to the time spent by the Director or Alternate in the service of the Bank, as evidenced by such detailed certifications necessary to establish the exact periods of service for the Bank. Remuneration shall be paid in accordance with the established procedures of the Bank.

(b) Full-time Directors and Alternates resident in London may participate in such medical, pension, retirement and other benefits as may be established for the staff of the Bank. Directors and Alternates who are not full-time or who are not resident in London shall participate in such medical, pension, retirement and other benefits as shall be agreed with the President on a case-by-case basis with a view to ensuring that the benefits available to those Directors and Alternates are reasonable, once due account has been taken of how much time he or she and his or her Alternate will devote to the business of the Bank.

(C) Expenses (travel and leave)

(a) The Board of Directors may make appropriate provision whereby:

(i) Each Director and Alternate Director shall be entitled to a reasonable allowance for expenses which in the opinion of the Bank were incurred by him or her in travelling officially, with the concurrence of the Board of Directors, to the country or countries he or she represents or on such other missions as the President may request for the Bank.

(ii) Each full-time Director and Alternate Director resident in London shall be entitled upon the completion of each two (2) years of continuous full-time service in either or both capacities to receive a reasonable allowance for expenses incurred for transportation of him or herself and his or her immediate family in making a single round-trip journey for annual leave in the country of which he or she is a national, provided that in the case of a Director, he or she is, at the date of beginning the trip, in a term of service which will expire not less than six (6) months thereafter, and, in the case of an Alternate, he or she is, at the date of beginning the trip, serving in a term of service which, even if there is a change of Director, is expected to expire not less than six (6) months thereafter.

(b) Any Director or Alternate Director who requests reimbursement or compensation from the Bank for expenses he or she has incurred in fulfilling a commission for the Bank, shall include in this request a statement to the effect that he or she has not received, nor will he or she receive, reimbursement or compensation for such expenses from any other source.

(c) Any Director or Alternate Director shall be entitled in accordance with guidelines established by the Bank, to reimbursement of reasonable expenses which in the opinion of the Bank were incurred by him or her in connection with official Bank business.

(d) The term “full-time” shall be deemed to mean full-time service for the Bank, excepting absences provided for by (a) of this sub-section and occasional other periods of absence from the principal office of the Bank. The “reasonable allowance” for expenses referred to in C (a) (i) above shall include appropriate costs of travel and transportation and shall be based on the established policies and ceilings established by the Bank.

(e) In the interest of the Bank other appropriate arrangements consistent with the By-Laws and their purposes may be made in individual cases, as determined by the Board of Directors.

(D) Office services

The Bank shall provide, subject to the provisions of sub-section B of this section, such secretarial and other staff services, office space and other facilities as may be necessary for the performance of the duties of the Directors and their Alternates.

Section 5: Conditions of service - President

The salary, and any other terms of remuneration, and any allowances of the President shall be determined by the Board of Governors on recommendation of the Board of Directors and shall be included in his or her contract. The President may participate in such medical, pension, retirement and other plans as may be established for the staff of the Bank.

Section 6: Conditions of service - Vice President(s)

The salary, and any other terms of remuneration, and any allowances, and the term of office, the authority and functions of the Vice-President(s) shall be determined by the Board of Directors and included in his or her contract(s). The Vice President(s) may participate in such medical, pension, retirement and other plans as may be established for the staff of the Bank.

Section 7: Code of Conduct

At its inaugural meeting the Board of Governors shall adopt, and may from time to time revise, a Code of Conduct concerning inter alia personal investment holdings and transactions which shall be binding on all Directors, their Alternates and temporary Alternates, the President and Vice President(s), and officers and staff of the Bank.
Section 8: Delegation of powers

(a) The Board of Directors is authorized by the Board of Governors to exercise all the powers of the Bank, with the exception of those expressly reserved to the Board of Governors by paragraph 2 of Article 24 and other provisions of the Agreement, and subject to these By-Laws. The Board of Directors shall not take any action pursuant to powers delegated by the Board of Governors which is inconsistent with any action taken by the Board of Governors.

(b) The President shall conduct, under the direction of the Board of Directors, the current business of the Bank. The Board of Directors shall establish conditions (including provision for reporting), procedures and thresholds pursuant to which the President may submit various types of matters to it for consideration under an expedited procedure.

Section 9: Special representation of members at meetings of the Board of Directors

Whenever the Board of Directors is to consider a matter particularly affecting a member which has no Director or Alternate of its own nationality, the member shall be promptly informed by rapid means of communication of the date set for its consideration and shall have the right to send a representative to the meeting. No final action shall be taken by the Board of Directors, nor any question affecting the member submitted to the Board of Governors, until the member has been offered a reasonable opportunity to present its views and to be heard at a meeting of the Board of Directors of which the member has had reasonable notice. Any member, so electing, may waive this provision.

Section 10: Vacant directorships

(a) When a new Director has to be elected because of a vacancy arising in terms of paragraph 5 of Article 26 of the Agreement, the President shall notify the members which elected the former Director of the existence of the vacancy. The President may convene a meeting of the Governors of such countries for the exclusive purpose of electing a new Director; or he or she may request that candidates be nominated and conduct the election by any rapid means of communication. Successive ballots shall be cast, in accordance with the principles of Annex B of the Agreement, until one of the candidates receives an absolute majority of the votes cast; and after each ballot the candidate with the smallest number of votes shall be dropped from the next ballot.

(b) When a new Director is elected, the Alternate of the former Director shall continue in office until he or she is re-appointed or a successor to him or her is appointed.

Section 11: Report of the Board of Directors

At each annual meeting of the Board of Governors, the Board of Directors shall submit an annual report on the operations and policies of the Bank, including a separate report on the activities of any Special Funds of the Bank, established or accepted in accordance with Article 18 of the Agreement.

Section 12: Financial year

The financial year of the Bank shall begin on 1 January and end on 31 December of each year, except if the entry into force of the Agreement is later than 1 January, when the financial year shall begin on the date of entry into force and shall end on 31 December of the same year.

Section 13: Audits and budget

(a) The accounts of the Bank shall be audited in accordance with generally accepted accounting principles at least once a year by independent external auditors of international reputation chosen by the Board of Directors on the basis of a proposal by the President, and on the basis of this audit the Board of Directors shall submit to the Board of Governors for approval at its annual meeting a statement of accounts, including a general balance sheet and a statement of profit and loss. A separate financial statement shall be submitted for the operations of any Special Fund.

(b) The President shall prepare an annual administrative budget to be presented to the Board of Directors for approval. The budget, as approved, shall be presented to the Board of Governors at its next annual meeting. Notwithstanding the above provision, the President shall submit to the Board of Directors for approval, not later than 3 months after the inaugural meeting of the Board of Governors, the administrative budget of the Bank for its first financial year of operations.

Section 14: Application for membership of the Bank

When submitting an application to the Board of Governors, with a recommendation that the applicant country be admitted to membership, the Board of Directors, inter alia after a report, in consultation with the applicant country, by the President, shall recommend to the Board of Governors the number of shares of capital stock to be subscribed and such other conditions as, in the opinion of the Board of Directors, the Board of Governors may wish to prescribe.

Section 15: Suspension of a member

Before any member is suspended from membership of the Bank, the matter shall be considered by the Board of Directors, inter alia after a proposal by the President. The President shall inform the member sufficiently in advance of the complaint against it, and shall give the member reasonable time to explain its case orally and in writing. The Board of Directors shall recommend to the Board of Governors whatever action it considers appropriate. The member shall be notified of the recommendation and of the date on which the matter is to be considered by the Board of Governors, and it shall be given reasonable time in which to present its case orally and in writing before the Board of Governors. Any member may waive this right.

Section 16: Amendments to the By-Laws

The Board of Governors may amend these By-Laws at any of its sessions or by taking a vote without a meeting, in accordance with the provisions of Section 10 of the Rules of Procedure of the Board of Governors.
Rules of Procedure of the Board of Governors

Section 1: Definitions

(a) “Governor”, except when the Governor is acting as the Chairman or Vice-Chairman of an annual meeting under Section 6, includes the Alternate or a Temporary Alternate when such Alternate is acting for a Governor.

(b) “Board” refers to the Board of Governors.

(c) “Director”, except where otherwise specified, includes the Alternate when such Alternate is acting for a Director.

(d) “President” refers to the President of the Bank or to a Vice-President when he or she is acting in place of the President.

(e) “Agreement” refers to the Agreement Establishing the European Bank for Reconstruction and Development.

(f) “By-Laws” refers to the By-Laws of the European Bank for Reconstruction and Development.

(g) “Agenda” refers to the list of items to be considered at a meeting.

(h) “Member” means a member of the Bank.

(i) “Secretary” means the Secretary General of the Bank or an official designated by the President to serve in the Secretary General’s absence.

Section 2: Meetings

(a) The Board shall hold an annual meeting at such date and place as the Board shall determine; provided, however, that the Board of Directors may change the date and place of such annual meeting when special circumstances or reasons arise to justify such action.

(b) The Board may, in addition, hold special meetings when it so decides or when called by the Board of Directors pursuant to paragraph 1 of Article 25 of the Agreement.

(c) The Secretary shall notify all members, by the most rapid possible means of communication reasonably available, of the date and place of each meeting of the Board. Such notifications must be dispatched at least forty-five (45) days prior to the date of any annual meeting and thirty (30) days prior to the date of a special meeting. In case of emergency, notification by telex, facsimile or other rapid means of communication ten (10) days prior to the date set for the meeting shall be sufficient.

(d) Two thirds of the Governors shall constitute a quorum for any meeting of the Board, provided such majority represents not less than two thirds of the total voting power of the members. Any meeting of the Board of Governors at which there is no quorum may be adjourned by a majority of the Governors present. Any meeting of the Board of Governors at which there is no quorum may be postponed from day to day for a maximum of two (2) days by decision of a majority of the Governors present. No notice need be given of any such postponed meeting.

(e) The Board may order the temporary adjournment of any meeting and its resumption at a later date.

(f) Except as otherwise specifically directed by the Board, the President, together with the Chairman of the Board, and in co-operation with the host country, shall have charge of all arrangements for the holding of meetings of the Board.

Section 3: Attendance at meetings

(a) The Directors and their Alternates may attend any meeting of the Board and participate therein. However, a Director and his or her Alternate shall not be entitled to vote, unless he or she shall be entitled to vote as a temporary Alternate or Governor.

(b) The Chairman of the Board, in consultation with the Board of Directors, may invite observers to attend any meeting of the Board.

Section 4: Agenda for meetings of the Board

(a) Under the direction of the Board of Directors, the President shall prepare an agenda for each meeting of the Board of Governors and transmit such agenda to members together with, or in advance of, the notice of the meeting.

(b) Additional subjects may be placed on the agenda for any meeting of Governors by any Governor provided that he or she shall give notice thereof to the President at least fifteen (15) days prior to the date of the meeting. The President shall give notice of such additional items through a supplementary list to be communicated to members within 48 hours of receipt of such notice from a Governor.

(c) The agenda, as well as any supplementary list, shall be submitted to the Board for approval at the first business session of each meeting by the Chairman of the Board.

(d) When a special meeting is called the agenda shall be limited to the items communicated by the President.

(e) In the course of any meeting of the Board, the Board may modify, add to, or eliminate items from the agenda.
(f) In exceptional cases the President, under the direction of the Board of Directors, may include at any time additional items in the draft agenda for any meeting of the Board of Governors. The President shall notify each Governor of such additional items as quickly as possible.

Section 5: Representation of members

At each meeting of the Board, the Secretary shall submit a list of the Governors, Alternates, or Temporary Alternates of the members whose appointment has been officially communicated to the Bank.

Section 6: Chairman and Vice-Chairmen

(a) At the beginning of its inaugural meeting the Board, under the chairmanship of the Governor for the host country, shall elect one of its Governors to be Chairman and two other Governors to be Vice-Chairmen and they shall serve in their respective positions until the end of the first annual meeting of the Board. In the absence of the Chairman, the Vice-Chairman designated by the Chairman shall act in his or her place.

(b) At the end of each annual meeting the Board shall elect one of its Governors to be Chairman and two other Governors to be Vice-Chairmen, and they shall serve in their respective positions until the end of the next annual meeting of the Board. In the absence of the Chairman, the Vice-Chairman designated by the Chairman shall act in his or her place.

(c) The Chairman, or the Vice-Chairman acting as Chairman, may not vote, but his or her Alternate or Temporary Alternate Governor may vote in his or her place.

Section 7: Secretary

The Secretary General of the Bank shall serve as Secretary of the Board.

Section 8: Committees

The Board may at any meeting establish such committees as may be necessary or appropriate to facilitate its work and such committees shall report to the Board.

Section 9: Voting

(a) Except as otherwise expressly provided in the Agreement, all decisions of the Board shall be made by a majority of the voting power of the members voting. At any meeting the Chairman may ascertain the sense of the meeting in lieu of a formal vote but a formal vote shall be taken whenever requested by any Governor; in this event the written text of the proposal to be voted upon shall be distributed to the Governors.

(b) At any meeting of the Board, the vote of any member must be cast in person by the Governor, his or her Alternate, or in their absence, by a formally designated Temporary Alternate appointed by a member for the purpose of attending and voting at the Board when both the Governor and his or her Alternate are absent.

Section 10: Voting without meeting

(a) Whenever the Board of Directors considers that the decision on a specific question which is for the Board to determine should not be postponed until the next annual meeting of the Board and does not warrant the calling of a special meeting of the Board, the Board of Directors shall promptly transmit to each Governor the proposals relating to that question with a request for a vote on such proposals.

(b) In compliance with such a request, votes shall reach the Bank within such period as may be determined by the Board of Directors. Upon the expiration of that period, the President shall report the votes to the Board of Directors which shall record the results of the voting in applying the provisions of paragraphs 1 and 2 of Article 29 of the Agreement as if a meeting of the Board had been held. The President shall communicate the results to all Governors. Unless replies are received from not less than two thirds of the Governors, representing not less than two thirds of the voting power, the proposals shall lapse.

Section 11: Record of proceedings

The Board shall keep a summary record of its proceedings which shall be available to all members and kept on file at the Bank.
Rules of Procedure of the Board of Directors

Section 1: Authority of these Rules

These Rules of Procedure of the Board of Directors, hereinafter called “Rules”, are adopted pursuant to paragraph 4 of Article 25 of the Agreement, to Article 28 of the Agreement, and to Section 8 of the By-laws.

Section 2: Definitions

(a) “Director”, except for a Director acting as Chairman under Section 3(a), includes the Alternate or a temporary Alternate, as the case may be, when such Alternate is acting for a Director.

(b) “Board” refers to the Board of Directors.

(c) “President” refers to the President of the Bank.

(d) “Agreement” refers to the Agreement Establishing the European Bank for Reconstruction and Development.

(e) “By-laws” refers to the By-laws of the European Bank for Reconstruction and Development.

(f) “Agenda” refers to the list of items to be considered at a meeting.

(g) “Chairman” refers to the person acting as Chairman of the meetings of the Board of Directors pursuant to Section 3(a).

(h) “Secretary” means the Secretary General of the Bank or an official designated by the President to serve in the Secretary General’s absence.

Section 3: Meetings

(a) The President, or, in the absence of the President, the First Vice-President, or in the absence of both, the Vice-President so designated by the President, shall act as Chairman of the Board. In the event of their absence from any meeting, the Board shall select a Director as Chairman.

(b) Meetings of the Board shall be called by the President as the business of the Bank may require. The Board may be called into session at any time by the President on his own initiative. The President shall call the Board at any time at the written request of any Director. In exceptional circumstances, and in the absence or incapacity of both the President and the First Vice-President, the Secretary may call a meeting upon the request of at least three (3) Directors.

(c) Except in special circumstances when notice of a meeting shall be given as soon as possible, the Secretary shall notify the Directors and their Alternates of meetings at least three (3) working days in advance of each meeting.

(d) The Board shall meet at the principal office of the Bank unless it decides that a particular meeting shall be held elsewhere.

(e) A majority of the Directors shall constitute a quorum for any meeting of the Board, provided such majority represents not less than two-thirds of the total voting power of the members.

(f) In addition to the Directors and their Alternates, the President, Vice-President(s), and the Secretary, meetings of the Board shall be open to attendance only by such members of the Bank’s staff as the President may designate, representatives of members appointed under paragraph 3 of the Article 28 of the Agreement, and such other persons as the Board may invite.

(g) At the request of the President or any Director, meetings may be held in Executive Session which shall be attended only by the Directors and their Alternates, the President, Vice-President(s), the Secretary, and, with the approval of the Board, granted separately for each Executive Session, such other persons as are specifically named, without prejudice to the provisions of paragraph 3 of Article 28 of the Agreement.

Section 4: Agenda for meetings

(a) An Agenda for each meeting of the Board shall be prepared by the President, or on his instructions, and a copy of such Agenda shall be given to each Director and his or her Alternate at least three (3) working days before such meeting. In the case of a meeting called in special circumstances, the Agenda shall be given to each Director at least twenty four hours before such meeting. Any matter upon which the Board has power to act shall be included on the Agenda for any meeting of the Board, if any Director so requests.

(b) If any Director shall so request, action by the Board on any matter, whether or not included on the Agenda for the particular meeting, shall be postponed not more than once for a minimum of two (2) working days.

(c) The Board may postpone discussion or decision of any agenda item for such period as it deems appropriate.

(d) Matters not on the Agenda for a meeting may be considered at that meeting unless a Director or the Chairman objects thereto.

(e) Any item of the Agenda for a meeting, consideration of which has not been completed at that meeting, shall, unless the Board decides otherwise, be automatically included at the beginning of the Agenda for the next meeting.

(f) Documents for discussion in the Board shall be submitted to Directors at least twenty one (21) calendar days before the schedule discussion, except that documents containing commercially confidential information, or other categories of documents which the Board had decided to handle under expedited procedures, shall be submitted to the Directors at least ten (10) working days before the scheduled discussion.
Section 5: Voting

(a) The Chairman shall ordinarily ascertain and announce to the meeting the sense of the meeting with regard to any matter and the Board shall be deemed to have acted in accordance with the announcement by the Chairman without the necessity of taking a formal vote. A Director dissenting from the decision of the Board may require that his or her views be recorded in the summary record of the proceedings of the meeting. Any Director may request a formal vote to be taken in accordance with the provisions of paragraph 3 of Article 29 of the Agreement.

(b) Directors may vote only in person.

Section 6: Notice to Directors

(a) Any notice required by these Rules to be given to a Director or his or her Alternate shall be deemed to have been sufficiently given when it shall have been delivered in writing, by telephone, or in person during regular business hours of the Bank at the office of the Director in the principal office of the Bank or as provided for meetings elsewhere called under Section 3(d) above.

(b) Whenever any document is required by these Rules to be delivered to a Director or his or her Alternate it shall be deemed to have been sufficiently delivered if it is deposited, during regular business hours of the Bank, at the office of the Director in the principal office of the Bank or as provided for meetings elsewhere called under Section 3(d) above.

(c) The giving of any notice or the delivery of any document which is required by these Rules to be given or delivered to any Director or his or her Alternate may be waived by the Director in writing, by any reasonable rapid means of communication, or in person, at any time.

Section 7: Secretary

The Secretary General shall act as Secretary of the Board.

Section 8: Minutes

(a) The Secretary shall be responsible for the preparation of minutes and a summary record of the proceedings of the meetings of the Board.

(b) The draft minutes and summary record of the proceedings shall be circulated to all Directors as soon as possible, and not later than forty eight (48) hours after meetings. They shall be presented to the Board for approval within a reasonable period of time.

(c) The minutes shall contain: (i) the names of attendees; (ii) a record of the approval of the minutes of the previous meeting; (iii) titles of the agenda items; and (iv) agreements and decisions reached.

(d) Any Director may require that his or her views be recorded in the summary record of the proceedings of the meeting.

(e) The Secretary shall be responsible for the custody of the minutes, summary records of the proceedings and other documents relating to proceedings of the Board and shall be the only person authorised to certify copies thereof.

Section 9: Publicity

The minutes shall be published. The summary records of the proceedings of the Board are confidential and shall not be published, except when the Board decides to authorise the President to arrange for suitable publicity on any matter relating thereto. The Board shall develop special procedures to assure the confidentiality of commercial transactions.

Section 10: Amendments

These Rules may be amended by a majority of the Directors, representing not less than two thirds of the voting power, at any meeting provided at least then (10) days notice of the proposed amendment has been given to the Directors in writing.

Section 11: Committees

The Board may establish such committees as may be appropriate to facilitate its work to the extent authorised by the Board of Governors. Such committees shall report to the Board.

(These Rules were adopted by the Board of Directors on 18–19 April 1991. Sections 5, 8 and 9 were amended by the Board of Directors on 19 September 2006.)
Headquarters Agreement
Between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Bank for Reconstruction And Development

The Government of the United Kingdom of Great Britain and Northern Ireland and the European Bank for Reconstruction and Development;

Having regard to the Agreement Establishing the European Bank for Reconstruction and Development;

Noting that Article 33 of that Agreement provides that the Principal Office of the European Bank for Reconstruction and Development shall be located in London;

Desiring to define the status, privileges and immunities in the United Kingdom of the Bank and persons connected therewith;

Have agreed as follows:

Article 1: Use of terms

For the purpose of this Agreement:

(a) “Agreement Establishing the Bank” means the Agreement Establishing the European Bank for Reconstruction and Development signed in Paris on 29th May 1990, and any amendments thereto;

(b) “Bank” means the European Bank for Reconstruction and Development;

(c) “Government” means the Government of the United Kingdom of Great Britain and Northern Ireland (the “United Kingdom”);

(d) the terms “Member”, “President”, “Vice-President”, “Governor”, “Alternate Governor”, “Temporary Alternate Governor”, “Director”, “Alternate Director” and “Temporary Alternate Director” have the same meaning as in the Agreement Establishing the Bank, its By-laws or Rules of Procedure;

(e) “Premises of the Bank” means the land, buildings and parts of building, including access facilities, used for the Official Activities of the Bank;

(f) “Representatives of Members” means heads of delegations of Members participating in meetings convened by the Bank other than meetings of the Governors or the Board of Directors;

(g) “Members of Delegations” means alternates, advisers, technical experts and secretaries of delegations of Representatives of Members;

(h) “Officers” means the President, the Vice-President and other persons appointed by the President to be Officers of the Bank;

(i) “Employees of the Bank” means the staff of the Bank excluding those staff both recruited locally and assigned to hourly rates of pay;

(j) “Archives of the Bank” includes all records, correspondence, documents, manuscripts, still and moving pictures and films, sound recordings, computer programmes and written materials, video tapes or discs, and discs or tapes containing data belonging to, or held by, the Bank;

(k) “Official Activities of the Bank” includes all activities undertaken pursuant to the Agreement Establishing the Bank, and all activities appropriate to fulfil its purpose and functions under Articles 1 and 2 of that Agreement, or undertaken in exercise of its powers under Article 20 of that Agreement including its administrative activities; and

(l) “Persons Connected with the Bank” means Governors, Alternate Governors, Temporary Alternate Governors, Representatives of Members, Members of Delegations, Directors, Alternate Directors, Temporary Alternate Directors, the President, the Vice-Presidents, Officers and Employees of the Bank, and experts performing missions for the Bank.

Article 2: Interpretation

1 This Agreement shall be interpreted in the light of the primary objective of enabling the Bank fully and efficiently to discharge its responsibilities in the United Kingdom and to fulfil its purpose and functions.

2 This Agreement shall be regarded as implementing and supplementing certain of the provisions of the Agreement Establishing the Bank and shall not be regarded as modifying or derogating from the provisions of that Agreement, particularly Chapter VIII thereof.

Article 3: Judicial personality

The Bank shall possess full legal personality and, in particular, the full legal capacity:

(a) to contract;

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

(c) to institute legal proceedings.

Article 4: Immunity from Judicial Proceedings

1 Within the scope of its official activities the Bank shall enjoy immunity from jurisdiction, except that the immunity of the Bank shall not apply:

(a) to the extent that the Bank shall have expressly waived any such immunity in any particular case or in any written document;
3 The Bank shall allow duly authorized representatives of public utilities to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises of the Bank and its facilities.

4 No service (other than service by post) or execution of any legal process or any ancillary act such as the seizure of private property shall be permitted by the Government to take place within the Premises of the Bank except with the express consent of and under conditions approved by the President.

5 Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises of the Bank from becoming a refuge from justice for persons subject to extradition or deportation, or who are avoiding arrest or service of legal process under the law of the United Kingdom.

Article 7: Protection of the Premises of the Bank

1 The Government is under a special duty to take all appropriate measures to protect the Premises of the Bank against any intrusion or damage and to prevent any disturbance of the peace of the Bank or impairment of its dignity.

2 If so requested by the Bank, the Government shall, in consultation with the Commissioner of Metropolitan Police and the Bank, develop policies and procedures so that unauthorized entry of any person shall be prevented, order on the Premises of the Bank shall be preserved, and uninvited persons shall be removed from those Premises.

3 The Bank shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the Premises of the Bank are not prejudiced by any use made by the Bank of those Premises.

Article 8: Public utilities and services in the Premises of the Bank

1 The Government shall do its utmost to ensure that the Bank shall be provided with the necessary public utilities and services, including, but not limited to, electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection and that such public utilities and services shall be supplied on reasonable terms. In case of any interruption or threatened interruption of any of the said utilities and services, the Government shall consider the needs of the Bank of equal importance to those of diplomatic missions and shall take steps to ensure that the operations of the Bank are not prejudiced.

2 Any preferential rates or tariffs which may be granted to diplomatic missions in the United Kingdom for supplies of the utilities and services mentioned in paragraph 1 of this Article shall also be accorded to the Bank if compatible with international conventions, regulations and arrangements to which the Government is a party.
Article 9: Flag and emblem

The Bank shall be entitled to display its flag and emblem on the Premises of the Bank and on the means of transport of the Bank and of its President.

Article 10: Immunity of property and inviolability of Archives of the Bank

1 The property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking or foreclosure by executive or legislative action.

2 The Archives of the Bank shall be inviolable.

Article 11: Communications and publications

1 The Bank shall enjoy in the United Kingdom for its official communications and the transfer of all its documents treatment not less advantageous to the Bank than the most favourable treatment accorded by the Government to any international organization, in the matter of priorities, rates and surcharges on mails, cables, radiograms, telefax, telephone and other forms of communications, and press rates for information to the press and radio, and in this respect the Government, in the exercise of any regulatory function, shall have regard to the particular needs of the Bank for telecommunications and the most advanced commercial communications technology.

2 The Government shall permit and protect unrestricted communication on the part of the Bank for all the Official Activities of the Bank, and no censorship shall be applied to the official correspondence and other official communications of the Bank.

3 The Bank shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall have immunities and privileges not less favourable than those accorded to diplomatic couriers and bags.

Article 12: Exemption from taxation

1 Within the scope of its Official Activities the Bank, its property, assets, income and profits shall be exempt from all present and future direct taxes including income tax, capital gains tax and corporation tax.

2 The Bank shall be granted relief from rates, or any other local taxes or duties or rates in substitution therefor or in addition thereto, levied on the Premises of the Bank with the exception of the proportion which, as in the case of diplomatic missions, represents a charge for public services. The rates, or any other local taxes or duties or rates levied in substitution therefor or in addition thereto, referred to in this paragraph shall in the first instance be paid by the Government, which shall recover from the Bank the proportion which represents a charge for public services.

Article 13: Exemption from customs and indirect taxes

1 The Bank shall have exemption from duties (whether of customs or excise) and taxes on importation and exportation of goods which are imported and exported by or on behalf of the Bank and are necessary for its Official Activities, or on the importation or exportation of any publications of the Bank imported and exported by it or on its behalf. Documentation signed by or on behalf of the President shall be conclusive evidence as to the necessity of any such goods for the Official Activities of the Bank.

2 The Bank shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods which are imported or exported by the Bank and are necessary for its Official Activities and in the case of any publications of the Bank imported or exported by it.

3 The Bank shall be exempt from car tax and Value Added Tax on any official vehicles and shall be accorded a refund of Value Added Tax paid on any other goods and services which are supplied for the Official Activities of the Bank.

4 The Bank shall be accorded a refund of duty (whether of customs or excise) and Value Added Tax paid on the importation of hydrocarbon oils (as defined in Section 1 of the Hydrocarbon Oil Duties Act 1979) purchased by it and necessary for the exercise of its Official Activities.

5 The Bank shall have exemption from excise duty on spirits of United Kingdom origin purchased in the United Kingdom for the purpose of official entertainment to the extent that such exemption is accorded to diplomatic missions. Documentation signed by or on behalf of the President shall be conclusive evidence that any purchase is for the purpose of official entertainment.

6 The Bank shall also be exempt from any indirect taxes which may be introduced in the future in the United Kingdom where the Agreement Establishing the Bank provides for such an exemption. The Bank and the Government shall consult as to the method for implementing such exemption.

Article 14: Resale

1 Goods which have been acquired or imported under Article 13 shall not be sold, given away, hired out or otherwise disposed of in the United Kingdom unless the Government has been informed beforehand and the relevant duties and taxes paid.

2 The duties and taxes to be paid shall be calculated on the basis of the rate prevailing and the value of the goods on the date on which the goods change hands or are made over to other uses.
Article 15: Privileges and immunities for Persons Connected with the Bank

1 The Government undertakes to authorize the entry into the United Kingdom without delay, and without charge for visas, of Persons Connected with the Bank, and members of their families forming part of their households.

2 Persons Connected with the Bank shall:
   (a) be immune from jurisdiction and legal process, including arrest and detention, even after termination of their mission or service, in respect of acts performed by them in their official capacity, including words written or spoken by them; this immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such person;
   (b) be exempt, together with members of their family forming part of their households, from immigration restrictions and alien registration and from registration formalities for the purposes of immigration control;
   (c) be exempt, together with members of their families forming part of their households, from national service obligations;
   (d) have the same freedom of movement in the territory of the United Kingdom (subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security), and the same treatment in respect of travelling facilities, as is generally accorded to officials of comparable rank of diplomatic missions;
   (e) be given, together with members of their families forming part of their households, the same repatriation facilities in times of international crises as officials of comparable rank of diplomatic missions;
   (f) be accorded inviolability for all their official papers and documents.

3 In addition to the privileges and immunities set out in paragraph 2, Directors, Alternate Directors, Officers and Employees of the Bank, and experts under contract longer than 18 months shall, at the time of first taking up their post in the United Kingdom, be exempt from duties (whether of customs or excise) and other such taxes and charges (except payments for services) in respect of import of their furniture and personal effects (including one motor car each), and the furniture and personal effects of members of their family forming part of their household, which are in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall normally be imported within six months of the first entry of such person into the United Kingdom; an extension of this period will however be granted where justified. If such persons on the termination of their functions export goods to which this paragraph applies, they shall be exempt from any duty or other charge which may be imposed by reason of such export (except payment for services). The privileges referred to in this paragraph shall be subject to the conditions governing the disposal of goods imported into the United Kingdom free of duty and to the general restrictions applied in the United Kingdom to all imports and exports.

4 (a) In addition to the privileges and immunities set out in paragraph 2, Governors, Alternate Governors, and Representatives of Members shall:
   (i) have the right to use codes and to receive documents or correspondence by special courier or diplomatic bag;
   (ii) have the same customs facilities as regards their personal baggage as are accorded to diplomatic agents; and
   (iii) be immune from arrest and detention, and from seizure of their personal baggage.
   (b) The provisions of this Article in respect of Governors, Alternate Governors, Temporary Alternate Governors, Directors, Alternate Directors, Temporary Alternate Directors and Representatives of Members shall be applicable irrespective of the relations existing between the Governments which those persons represent and the Government of the United Kingdom, and are without prejudice to any special immunities to which such persons may otherwise be entitled.

5 In addition to the privileges and immunities set out in paragraph 2, the President and five (5) Vice-Presidents shall enjoy the same privileges and immunities as are accorded to diplomatic agents, in accordance with international law supplemented by practice in the United Kingdom.

6 The privileges and immunities set out in paragraphs 2(b), 2(c), 2(e), 3, 4 and 5 shall not apply to Persons Connected with the Bank who are nationals of the United Kingdom and the privileges and immunities set out in paragraphs 2(e), 3, 4 and 5 shall not apply to Persons Connected with the Bank who are permanent residents of the United Kingdom.

7 The privileges and immunities in this Article shall not apply to Representatives of the United Kingdom nor the members of their delegations.

Article 16: Income tax

1 The Directors, Alternate Directors, Officers and Employees of the Bank shall be subject to an internal effective tax imposed by the Bank for its benefit on salaries and emoluments paid by the Bank. From the date on which this tax is applied such salaries and emoluments shall be exempt from United Kingdom income tax, but the Government shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

2 In the event that the Bank operates a system for the payment of pensions or annuities to former Officers and Employees of the Bank, the provisions of paragraph 1 of this Article shall not apply to such pensions or annuities.
Article 17: Social security

From the date on which the Bank establishes or joins a social security scheme, the Directors, Alternate Directors, Officers and Employees of the Bank shall with respect to services rendered for the Bank be exempt from the provisions of any social security scheme established by the United Kingdom.

Article 18: Opportunity to take employment

1 The Bank shall not employ as an Officer or Employee of the Bank any person who is present in the United Kingdom at the time of such employment without taking all reasonable steps to ascertain that such person is not present in the United Kingdom in violation of the relevant immigration laws or is not subject to a prohibition thereunder from taking up employment in the United Kingdom. If the Government determines that any person employed by the Bank was at the time of taking up his employment in violation of the immigration laws or was subject to such a prohibition, the Bank and the Government shall consult with a view to agreeing on the appropriate remedy, including, where appropriate, termination of such employment.

2 The spouses and members of the family forming part of the household of those Directors, Alternate Directors, Officers and Employees of the Bank and experts performing services for the Bank shall be accorded opportunity to take employment in the United Kingdom.

Article 19: Objects of immunities, privileges and exemptions: Waiver

1 The immunities, privileges and exemptions conferred under this Agreement are granted in the interests of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Agreement in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and duty to waive any immunity, privilege or exemption in respect of any Officer or Employee of the Bank or expert performing services for the Bank, other than the President or a Vice-President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice-President.

2 Privileges and immunities accorded to Representatives of Members and members of Delegations under Article 15 are provided in order to assure complete independence in the exercise of their functions, and may be waived by the member concerned.

Article 20: Notification of appointments: Cards

1 The Bank shall inform the Government when an Officer or Employee of the Bank or an expert performing services for the Bank takes up or relinquishes his or her duties. Furthermore, the Bank shall from time to time send to the Government a list of all such Officers, Employees of the Bank and experts. It shall in each case indicate whether or not the individual concerned is a national of the United Kingdom or permanently resident in the United Kingdom.

2 The Government shall issue to all Officers and Employees of the Bank, on notification of their appointment, a card bearing the photograph of the holder and identifying him or her as an Officer or Employee of the Bank.

Article 21: Co-operation

1 The Bank shall co-operate at all times with the appropriate authorities of the United Kingdom in order to prevent any abuse of the immunities, privileges, exemptions and facilities provided for in this Agreement.

2 Nothing in this Agreement shall affect the right of the Government to take precautions necessary for the security of the United Kingdom. If the Government considers it necessary to apply the preceding sentence, it shall approach the Bank as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interests of the Bank. The Bank shall collaborate to avoid any prejudice to the security of the United Kingdom.

Article 22: Modification

At the request of the Government or of the Bank, consultation shall take place respecting the implementation, modification or extension of this Agreement. Any understanding, modification or extension may be given effect by an Exchange of Notes between authorized representatives of the Government and of the President.

Article 23: Settlement of disputes

1 Any dispute between the Government and the Bank concerning the interpretation or application of this Agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to an arbitration tribunal of three arbitrators, to be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, the Bank and the Government each shall appoint one member of the tribunal. The two members so appointed shall then select a third arbitrator who is not a national of the United Kingdom. That third arbitrator shall be President of the tribunal.
2 If within three months from the date of notification of the request for
arbitration, the necessary appointments have not been made, either the Government
or the Bank may, in the absence of any other agreement, invite the President of the
International Court of Justice to make the necessary appointments. If the President is
a national of the United Kingdom or if he is otherwise prevented from discharging the
said function, the Vice-President shall be invited to make the necessary appointments.
If the Vice-President is a national of the United Kingdom or if he too is prevented from
discharging the said function, the member of the International Court of Justice next
in seniority who is not a national of the United Kingdom shall be invited to make the
necessary appointments.

3 The decisions of the tribunal shall be final and binding. The tribunal
shall adopt its own rules of procedure, and in this respect shall be guided by the Rules
of Procedure for Arbitration Proceedings of the International Centre for Settlement of
Investment Disputes established by the Convention on the Settlement of Investment
Disputes between States and Nationals of Other States, done at Washington D.C. on
18th March 1965.

4 The costs of the tribunal shall be shared equally between the Bank and
the Government, unless the tribunal decides otherwise.

Article 24: Final provisions, entry into force and termination

1 This Agreement shall enter into force on signature.

2 This Agreement may be terminated by agreement between the
Government and the Bank. In the event of the Principal Office of the Bank being moved
from the territory of the United Kingdom, this Agreement shall cease to be in force
after the period reasonably required for such transfer and the disposal of the property of
the Bank in the United Kingdom.

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

Done in duplicate at London on the 15th day of April 1991.

For the European Bank for
Reconstruction and Development
Jacques Attali

For the Government of the United
Kingdom of Great Britain and
Northern Ireland
John Major
Agreement between the
International Committee of the Red Cross and the
Swiss Federal Council to determine the legal status of
the Committee in Switzerland, 1993
Agreement between the International Committee of the Red Cross and the Swiss Federal Council to determine the legal status of the Committee in Switzerland

30-04-1993 Article, International Review of the Red Cross, No. 293

Full text of the headquarters agreement, signed 19 March 1993, between the ICRC and the government of Switzerland.

The International Committee of the Red Cross,

on the one hand,

and

the Swiss Federal Council,

on the other,

wishing to determine the legal status of the Committee in Switzerland and, to that end, to regulate their relations in a headquarters agreement,

have agreed on the following provisions:

I. STATUS, PRIVILEGES AND IMMUNITIES OF THE ICRC

Article 1

Personality

The Federal Council recognizes the international juridical personality and the legal capacity in Switzerland of the International Committee of the Red Cross (hereinafter referred to as the Committee or the ICRC), whose functions are laid down in the Geneva Conventions of 1949 and the Additional Protocols of 1977 and in the Statutes of the International Red Cross and Red Crescent Movement.

Article 2

Freedom of action of the ICRC

The Swiss Federal Council guarantees the ICRC independence and freedom of action.

Article 3

Inviolability of premises

The buildings or parts of buildings and the adjoining ground used for the purposes of the ICRC, by whomever they may be owned, shall be inviolable. No agent of the Swiss public authority may enter them without the express consent of the Committee. Only the President or his duly authorized representative shall be competent to waive this right of inviolability.

Article 4

Inviolability of archives

The archives of the ICRC and, in general, all documents and data media belonging to it or in its possession shall be inviolable at all times, wherever they may be.

Article 5

Immunity from legal process and execution

1. In the conduct of its business, the ICRC shall enjoy immunity from legal process and execution, except:
   a) in so far as this immunity is formally waived, in a specific case, by the President of the ICRC or his duly authorized representative;
   b) in respect of civil liability proceedings brought against the ICRC for damage caused by any vehicle belonging to it or circulating on its behalf;
   c) in respect of a dispute, on relations of service, between the Committee and its staff, former staff or their rightful claimants;
   d) in respect of seizure, by court order, of salaries, wages and other emoluments owed by the ICRC to a member of its staff;
   e) in respect of a dispute between the ICRC and the pension fund or provident fund referred to in Article 10, paragraph 1, of the present agreement;
   f) in respect of a counter-claim directly related to principal proceedings brought by the ICRC; and
   g) in respect of execution of a settlement by arbitration pursuant to Article 22 of the present agreement.

2. The buildings or parts of buildings, the adjoining ground and the assets owned by the ICRC or used by it for its purposes, wherever they may be and by whomever they may be held, shall be immune from any measure of execution, expropriation or requisition.

Article 6

Fiscal position

1. The ICRC, its assets, income and other property shall be exempt from direct federal, cantonal and communal taxation. With regard to immovable property, however, such exemption shall apply only to that which is owned by the Committee and which is occupied by its services, and to income derived therefrom.

2. The ICRC shall be exempt from indirect federal, cantonal and communal taxation. Exemption from federal purchase tax shall be granted only for purchases intended for the official use of the Committee, and in so far as the amount invoiced for one same and single purchase exceeds five hundred Swiss francs.
3. The ICRC shall be exempt from all federal, cantonal and communal charges which do not represent charges for specific services rendered.

4. If necessary, the exemptions mentioned above may be applied by way of reimbursement at the request of the ICRC and in accordance with a procedure to be determined by the ICRC and the competent Swiss authorities.

Article 7

Customs position

The customs clearance of articles intended for the official use of the ICRC shall be governed by the Ordinance of 13 November 1985 on the customs privileges of international organizations, of the States in their relations with such organizations and of special Missions of foreign States. [1 ]

Article 8

Free disposal of funds

The Committee may receive, hold, convert and transfer funds of any kind, gold, any currency, specie and other securities, and may dispose of them freely both within Switzerland and in its relations with other countries.

Article 9

Communications

1. The ICRC shall enjoy for its official communications treatment not less favourable than that accorded to the international organizations in Switzerland, to the extent compatible with the International Telecommunication Convention of 6 November 1982. [2 ]

2. The ICRC shall have the right to dispatch and receive its correspondence, including data media, by duly identified courier or bags which shall have the same privileges and immunities as diplomatic couriers and bags.

3. No censorship shall be applied to the duly authenticated official correspondence and other official communications of the ICRC.

4. Operation of telecommunication installations must be coordinated from the technical standpoint with the Swiss PTT. [3 ]

Article 10

Pension fund

1. Any pension fund or provident fund established by the ICRC and officially operating on behalf of the President, the members of the Committee or ICRC staff shall, with or without separate legal status, be accorded the same exemptions, privileges and immunities as the ICRC itself with regard to its movable property.

2. Funds and foundations, with or without separate legal status, administered under the auspices of the ICRC and devoted to its official purposes, shall be given the benefit of the same exemptions, privileges and immunities as the ICRC itself with regard to their movable property. Funds set up after the entry into force of the present agreement shall enjoy the same privileges and immunities, subject to the agreement of the competent Federal authorities.

II. PRIVILEGES AND IMMUNITIES GRANTED TO PERSONS SERVING THE ICRC IN AN OFFICIAL CAPACITY

Article 11

Privileges and immunities granted to the President and the members of the Committee and to ICRC staff and experts

The President and the members of the Committee, and ICRC staff and experts, irrespective of nationality, shall enjoy the following privileges and immunities:

a) immunity from legal process, even when they are no longer in office, in respect of words spoken or written and acts performed in the exercise of their functions;

b) inviolability for all papers and documents.

Article 12

Privileges and immunities granted to staff not of Swiss nationality

In addition to the privileges and immunities mentioned in Article 11, ICRC staff who are not of Swiss nationality shall:

a) be exempt from national service obligations in Switzerland;

b) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;

c) be accorded the same privileges in respect of exchange and transfer facilities for their assets in Switzerland and in other countries as are accorded to officials of the other international organizations;

d) be given, together with their relatives dependent on them and their domestic staff, the same repatriation facilities as are accorded to officials of the international organizations;

e) remain subject to the law on old-age and survivors' insurance and continue to pay AVS/AI/APG [4 ] contributions and unemployment and accident insurance contributions.

Article 13

Exceptions to immunity from legal process and execution

The persons referred to in Article 11 of the present agreement shall not enjoy immunity from legal process in the event of civil liability proceedings brought against them for damage caused by any vehicle belonging to them or driven by them or in the event of offences under federal road traffic regulations punishable by fine.

Article 14

Military service of Swiss staff

1. In a limited number of cases, leave of absence from military service (leave for foreign countries) may be granted to Swiss staff holding executive office at ICRC headquarters; persons granted such leave shall be dispensed from compulsory training service, inspections and shooting practice.
2. For the other Swiss staff of the ICRC, applications for dispensation from or rescheduling of training service, providing all due reasons and counter-signed by the staff member concerned, may be submitted by the ICRC to the Federal Department of Foreign Affairs for transmission to the Federal Military Department, which will give them favourable consideration.

3. Finally, a limited number of dispensations from active service will be granted to ICRC staff in order to enable the institution to continue its work even during a period of mobilization.

Article 15

Object of immunities

1. The privileges and immunities provided for in the present agreement are not designed to confer any personal benefits on those concerned. They are established solely to ensure, at all times, the free functioning of the ICRC and the complete independence of the persons concerned in discharging their duties.

2. The President of the ICRC must waive the immunity of staff member or expert in any case where he considers that such immunity would impede the course of justice and could be waived without prejudice to the interests of the ICRC. The Assembly of the Committee shall have the power to waive the immunity of the President or of the Committee members.

Article 16

Entry, stay and departure

The Swiss authorities shall take all necessary measures to facilitate the entry into, the stay in, and the departure from Swiss territory of persons, irrespective of their nationality, serving the ICRC in an official capacity.

Article 17

Identity cards

1. The Federal Department of Foreign Affairs shall give the ICRC, for the President, each member of the Committee and each staff member, an identity card bearing the photograph of the holder. This card, authenticated by the Federal Department of Foreign Affairs and the ICRC, shall serve to identify the holder vis-à-vis all federal, cantonal and communal authorities.

2. The ICRC shall transmit regularly to the Federal Department of Foreign Affairs a list of the members of the Committee and staff of the ICRC who are assigned to the organization's headquarters on a lasting basis, indicating for each person the date of birth, nationality, residence in Switzerland or in another country, and the post held.

Article 18

Prevention of abuses

The ICRC and the Swiss authorities shall cooperate at all times to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges and immunities provided for in this agreement.

Article 19

Disputes of a private nature

The ICRC shall make provision for appropriate modes of settlement of:

a) disputes arising out of contracts to which the ICRC is or becomes party and other disputes of a private law character;

b) disputes involving any ICRC staff member who by reason of his or her official position enjoys immunity, if such immunity has not been waived under the provisions of Article 15.

III. NON-RESPONSIBILITY OF SWITZERLAND

Article 20

Non-responsibility of Switzerland

Switzerland shall not incur, by reason of the activity of the ICRC on its territory any international responsibility for acts or omissions of the ICRC or its staff.

IV. FINAL PROVISIONS

Article 21

Execution

The Federal Department of Foreign Affairs is the Swiss authority which is entrusted with the execution of this agreement.

Article 22

Settlement of disputes

1. Any divergence of opinion concerning the application or interpretation of this agreement which has not been settled by direct negotiations between the parties may be submitted by either party to an arbitral tribunal composed of three members, including the chairman thereof.

2. The Swiss Federal Council and the ICRC shall each appoint one member of the tribunal.

3. The members so appointed shall choose their chairman.

4. In the event of disagreement between the members on the choice of chairman, the chairman shall be chosen, at the request of the members of the tribunal, by the President of the International Court of Justice or, if the latter is unavailable, by the Vice-President, or if he in turn is unavailable, by the longest-serving member of the Court.

5. The tribunal shall seize of a dispute by either party by petition.

6. The tribunal shall lay down its own procedure.

7. The arbitration award shall be binding on the parties to the dispute.
Revision

1. The present agreement may be revised at the request of either party.
2. In this event, the two parties shall consult each other concerning the amendments to be made to its provisions.

Article 24

Denunciation

The present agreement may be denounced by either party, giving two years' notice in writing.

Article 25

Entry into force

The present agreement enters into force on the date of its signature.

Done at Berne, on 19 March 1993, in two copies in French.

For the International Committee of the Red Cross

The President:

For the Swiss Federal Council

The Head of the Federal Department of Foreign Affairs

Cornelio Sommaruga René Felber

Notes

1. RS 631.145.0
2. RS 0.784.16
3. PTT - Post, Telegraph and Telephones (ed.)
4. Old-age, survivors', disability and loss of earnings insurance (ed.).
Constitutive Act of the African Union, 2000
CONSTITUTIVE ACT OF THE AFRICAN UNION

We, Heads of State and Government of the Member States of the Organization of African Unity (OAU):

1. The President of the People's Democratic Republic of Algeria
2. The President of the Republic of Angola
3. The President of the Republic of Benin
4. The President of the Republic of Botswana
5. The President of Burkina Faso
6. The President of the Republic of Burundi
7. The President of the Republic of Cameroon
8. The President of the Republic of Cape Verde
9. The President of the Central African Republic
10. The President of the Republic of Chad
11. The President of the Islamic Federal Republic of the Comoros
12. The President of the Republic of Congo
13. The President of the Republic of the Congo
14. The President of the Democratic Republic of Congo
15. The President of the Republic of Djibouti
16. The President of the Arab Republic of Egypt
17. The President of the State of Eritrea
18. The Prime Minister of the Federal Democratic Republic of Ethiopia
19. The President of the Republic of Equatorial Guinea
20. The President of the Gabonese Republic
21. The President of the Republic of The Gambia
22. The President of the Republic of Ghana
23. The President of the Republic of Guinea
24. The President of the Republic of Guinea Bissau
25. The President of the Republic of Kenya
26. The Prime Minister of Lesotho
27. The President of the Republic of Liberia
28. The Leader of the 1st of September Revolution of the Great Socialist People's Libyan Arab Jamahiriya
29. The President of the Republic of Madagascar
30. The President of the Republic of Malawi
31. The President of the Republic of Mali
32. The President of the Islamic Republic of Mauritania
33. The Prime Minister of the Republic of Mauritius
34. The President of the Republic of Mozambique
35. The President of the Republic of Namibia
36. The President of the Republic of Niger
37. The President of the Federal Republic of Nigeria
38. The President of the Republic of Nigeria
39. The President of the Sahrawi Arab Democratic Republic
40. The President of the Republic of Sao Tome and Principe
41. The President of the Republic of Senegal
42. The President of the Republic of Seychelles
43. The President of the Republic of Sierra Leone
44. The President of the Republic of Somalia
45. The President of the Republic of South Africa
46. The President of the Republic of Sudan
47. The King of Swaziland
48. The President of the United Republic of Tanzania
49. The President of the Togolese Republic
50. The President of the Republic of Tunisia
51. The President of the Republic of Uganda
52. The President of the Republic of Zambia
53. The President of the Republic of Zimbabwe

INSPIRED by the noble ideals which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States;

CONSIDERING the principles and objectives stated in the Charter of the Organization of African Unity and the Treaty establishing the African Economic Community;

RECALLING the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation;

CONSIDERING that since its inception, the Organization of African Unity has played a determining and invaluable role in the liberation of the continent, the affirmation of a common identity and the process of attainment of the unity of our Continent and has provided a unique framework for our collective action in Africa and in our relations with the rest of the world;

DETERMINED to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world;

CONVINCED of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization;

GUIDED by our common vision of a united and strong Africa and by the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector in order to strengthen solidarity and cohesion among our peoples;
CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

FURTHER DETERMINED to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively;

RECALLING the Declaration which we adopted at the Fourth Extraordinary Session of our Assembly in Sirte, the Great Socialist People's Libyan Arab Jamahiriya, on 9.9. 99, in which we decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our Continental Organization and the Treaty establishing the African Economic Community;

HAVE AGREED AS FOLLOWS:

Article 1
Definitions
In this Constitutive Act:
"Act" means the present Constitutive Act;
"AEC" means the African Economic Community;
"Assembly" means the Assembly of Heads of State and Government of the Union;
"Charter" means the Charter of the OAU;
"Committee" means a Specialized Technical Committee of the Union;
"Council" means the Economic, Social and Cultural Council of the Union;
"Court " means the Court of Justice of the Union;
"Executive Council" means the Executive Council of Ministers of the Union;
"Member State" means a Member State of the Union;
"OAU" means the Organization of African Unity;

"Parliament" means the Pan-African Parliament of the Union;
"Union" means the African Union established by the present Constitutive Act.

Article 2
Establishment
The African Union is hereby established in accordance with the provisions of this Act.

Article 3
Objectives
The objectives of the Union shall be to:
(a) Achieve greater unity and solidarity between the African counties and the peoples of Africa;
(b) Defend the sovereignty, territorial integrity and independence of its Member States;
(c) Accelerate the political and socio-economic integration of the continent;
(d) Promote and defend African common positions on issues of interest to the continent and its peoples;
(e) Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
(f) Promote peace, security, and stability on the continent;
(g) Promote democratic principles and institutions, popular participation and good governance;
(h) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
(i) Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
(j) Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
(k) Promote cooperation in all fields of human activity to raise the living standards of African peoples;

(l) Coordinate and harmonize policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

(m) Advance the development of the continent by promoting research in all fields, in particular in science and technology;

(n) Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4
Principles

The Union shall function in accordance with the following principles:

(a) Sovereign equality and interdependence among Member States of the Union;

(b) Respect of borders existing on achievement of independence;

(c) Participation of the African peoples in the activities of the Union;

(d) Establishment of a common defence policy for the African Continent;

(e) Peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;

(f) Prohibition of the use of force or threat to use force among Member States of the Union;

(g) Non-interference by any Member State in the internal affairs of another;

(h) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;

(i) Peaceful co-existence of Member States and their right to live in peace and security;

(j) The right of Member States to request intervention from the Union in order to restore peace and security;

(k) Promotion of self-reliance within the framework of the Union;

(l) Promotion of gender equality;

(m) Respect for democratic principles, human rights, the rule of law and good governance;

(n) Promotion of social justice to ensure balanced economic development;

(o) Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

(p) Condemnation and rejection of unconstitutional changes of governments.

Article 5
Organs of the Union

1. The organs of the Union shall be:

(a) The Assembly of the Union;

(b) The Executive Council;

(c) The Pan-African Parliament;

(d) The Court of Justice;

(e) The Commission;

(f) The Permanent Representatives Committee;

(g) The Specialized Technical Committees;

(h) The Economic, Social and Cultural Council;

(i) The Financial Institutions;

2. Other organs that the Assembly may decide to establish.

Article 6
The Assembly

1. The Assembly shall be composed of Heads of States and Government or their duly accredited representatives.

2. The Assembly shall be the supreme organ of the Union.

3. The Assembly shall meet at least once a year in ordinary session. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.
4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State or Government elected after consultations among the Member States.

Article 7
Decisions of the Assembly

1. The Assembly shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States of the Union. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.

Article 8
Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9
Powers and Functions of the Assembly

1. The functions of the Assembly shall be to:
   (a) Determine the common policies of the Union;
   (b) Receive, consider and take decisions on reports and recommendations from the other organs of the Union;
   (c) Consider requests for Membership of the Union;
   (d) Establish any organ of the Union;
   (e) Monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States;
   (f) Adopt the budget of the Union;
   (g) Give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;
   (h) Appoint and terminate the appointment of the judges of the Court of Justice;
   (i) Appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.

2. The Assembly may delegate any of its powers and functions to any organ of the Union.

Article 10
The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.

2. Council shall meet at least twice a year in ordinary session. It shall also meet in an extra-ordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

Article 11
Decisions of the Executive Council

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

Article 12
Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13
Functions of the Executive Council

1. The Executive Council shall co-ordinate and take decisions on policies in areas of common interest to the Member States, including the following:
(a) Foreign trade;
(b) Energy, industry and mineral resources;
(c) Food, agricultural and animal resources, livestock production and forestry;
(d) Water resources and irrigation;
(e) Environmental protection, humanitarian action and disaster response and relief;
(f) Transport and communications;
(g) Insurance;
(h) Education, culture, health and human resources development;
(i) Science and technology;
(j) Nationality, residency and immigration matters;
(k) Social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped;
(l) Establishment of a system of African awards, medals and prizes.

2. The Executive Council shall be responsible to the Assembly. It shall consider issues referred to it and monitor the implementation of policies formulated by the Assembly.

3. The Executive Council may delegate any of its powers and functions mentioned in paragraph 1 of this Article to the Specialized Technical Committees established under Article 14 of this Act.

Article 14
The Specialized Technical Committees
Establishment and Composition

1. There is hereby established the following Specialized Technical Committees, which shall be responsible to the Executive Council:

(a) The Committee on Rural Economy and Agricultural Matters;
(b) The Committee on Monetary and Financial Affairs;
(c) The Committee on Trade, Customs and Immigration Matters;
(d) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;
(e) The Committee on Transport, Communications and Tourism;
(f) The Committee on Health, Labour and Social Affairs; and
(g) The Committee on Education, Culture and Human Resources.

2. The Assembly shall, whenever it deems appropriate, restructure the existing Committees or establish other Committees.

3. The Specialized Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.

Article 15
Functions of the Specialized Technical Committees

Each Committee shall within its field of competence:

(a) Prepare projects and programmes of the Union and submit in to the Executive Council;
(b) Ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
(c) Ensure the coordination and harmonization of projects and programmes of the Union;
(d) Submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provision of this Act; and
(e) Carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act.

Article 16
Meetings

1. Subject to any directives given by the Executive Council, each Committee shall meet as often as necessary and shall prepare its rules of procedure and submit
them to the Executive Council for approval.

Article 17
The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a Pan-African Parliament shall be established.

2. The composition, powers, functions and organization of the Pan-African Parliament shall be defined in a protocol relating thereto.

Article 18
The Court of Justice

1. A Court of Justice of the Union shall be established;

2. The statute, composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19
The Financial Institutions

The Union shall have the following financial institutions, whose rules and regulations shall be defined in protocols relating thereto:

(a) The African Central Bank;
(b) The African Monetary Fund;
(c) The African Investment Bank.

Article 20
The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.

2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.

3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21
The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other Plenipotentiaries of Member States.

2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22
The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.

2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

Article 23
Imposition of Sanctions

1. The Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of its contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments therefrom.

2. Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

Article 24
The Headquarters of the Union

1. The Headquarters of the Union shall be in Addis Ababa in the Federal Democratic Republic of Ethiopia.

2. There may be established such other offices of the Union as the Assembly may, on the recommendation of the Executive Council, determine.
**Article 25**
**Working Languages**

The working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese.

**Article 26**
**Interpretation**

The Court shall be seized with matters of interpretation arising from the application or implementation of this Act. Pending its establishment, such matters shall be submitted to the Assembly of the Union, which shall decide by a two-thirds majority.

**Article 27**
**Signature, Ratification and Accession**

1. This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.

2. The instruments of ratification shall be deposited with the Secretary-General of the OAU.

3. Any Member State of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

**Article 28**
**Entry into Force**

This Act shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU.

**Article 29**
**Admission to Membership**

1. Any African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.

2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

**Article 30**
**Suspension**

Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.

**Article 31**
**Cessation of Membership**

1. Any State which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform Member States thereof. At the end of one year from the date of such notification, if not withdrawn, the Act shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Union.

2. During the period of one year referred to in paragraph 1 of this Article, any Member State wishing to withdraw from the Union shall comply with the provisions of this Act and shall be bound to discharge its obligations under this Act up to the date of its withdrawal.

**Article 32**
**Amendment and Revision**

1. Any Member State may submit proposals for the amendment or revision of this Act.

2. Proposals for amendment or revision shall be submitted to the Chairman of the Commission who shall transmit same to Member States within thirty (30) days of receipt thereof.

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals within a period of one year following notification of Member States, in accordance with the provisions of paragraph 2 of this Article.

4. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority and submitted for ratification by all Member States in accordance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairman of the Commission by a two-thirds majority of the Member States.
**Article 33**

**Transitional Arrangements and Final Provisions**

1. This Act shall replace the Charter of the Organization of African Unity. However, the Charter shall remain operative for a transitional period of one year or such further period as may be determined by the Assembly, following the entry into force of the Act, for the purpose of enabling the OAU/AEC to undertake the necessary measures regarding the devolution of its assets and liabilities to the Union and all matters relating thereto.

2. The provisions of this Act shall take precedence over and supersede any inconsistent or contrary provisions of the Treaty establishing the African Economic Community.

3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or decisions which may be adopted in this regard by the Parties thereto within the transitional period stipulated above.

4. Pending the establishment of the Commission, the OAU General Secretariat shall be the interim Secretariat of the Union.

5. This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the Commission who shall transmit a certified true copy of the Act to the Government of each signatory State. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory States of the dates of the deposit of the instruments of ratification or accession and shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

IN WITNESS WHEREOF, WE have adopted this Act.

Done at Lomé, Togo, this 11th day of July, 2000.
Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, 2007
Federal Act
on the Privileges, Immunities and Facilities and the
Financial Subsidies granted by Switzerland as a Host State
("Host State Act", "HSA")

of 22 June 2007 (Status as at 1 January 2008)

Chapter 1: Subject Matter

Art. 1

This Act regulates, in the sphere of host state policy:

a. the granting of privileges, immunities and facilities;
b. the granting of financial subsidies and the provision of other support measures.

Chapter 2: Privileges, Immunities and Facilities

Section 1: Beneficiaries

Art. 2

1 The Confederation may grant privileges, immunities and facilities to the following institutional beneficiaries:

a. intergovernmental organisations;
b. international institutions;
c. quasi-governmental international organisations;
d. diplomatic missions;
e. consular posts;
f. permanent missions or other representations to intergovernmental organisations;
g. special missions;
h. international conferences;
i. secretariats or other bodies established under an international treaty;
j. independent commissions;
k. international courts;
l. arbitration tribunals;
m. other international bodies.

2 The Confederation may grant privileges, immunities and facilities to the following natural persons ("individual beneficiaries"):

a. individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at one of the institutional beneficiaries referred to in paragraph 1 above;
b. eminent persons carrying out an international mandate;
c. individuals entitled to accompany one of the individual beneficiaries referred to in letters a or b, including private household employees.

Section 2: Content, Scope of Application and Duration

Art. 3

1 The privileges and immunities include:

a. inviolability of the person, premises, property, archives, documents, correspondence and diplomatic bag;
b. immunity from legal proceedings and the enforcement of judgments;
c. exemption from direct taxes;
d. exemption from indirect taxes;
e. exemption from customs duties and other import taxes;
f. freedom to acquire, receive, hold, transfer and convert funds, currencies, cash and other movable property;
Art. 5
Scope of application

1 The personal and material scope of application of the privileges, immunities and facilities shall be determined case by case in the light of:
   a. international law, Switzerland’s international obligations, and international practice;
   b. the beneficiary’s legal status and the importance of its role in international relations.

2 Exemption from direct taxes may be granted to all the beneficiaries referred to in Article 2 above. However, in the case of individual beneficiaries within the meaning of Article 2, paragraph 2 who are Swiss nationals, the exemption shall be granted only if the institutional beneficiary to which they are called has adopted an internal tax system of its own, provided that this condition is in accordance with international law.

3 Exemption from indirect taxes may be granted to all beneficiaries referred to in Article 2 above. However, individual beneficiaries within the meaning of Article 2 paragraph 2 shall be exempted from value added tax and mineral oil tax only if they hold diplomatic status.

4 Exemption from customs duties and other import taxes may be granted to all the beneficiaries referred to in Article 2.

5 The Federal Council shall issue regulations on entry into Switzerland, residence and work for the individual beneficiaries referred to in Article 2, paragraph 2, subject to what is permissible under international law.

Art. 6
Duration

The duration of privileges, immunities and facilities may be limited.

Section 3: Requirements for Granting Privileges, Immunities and Facilities

Art. 7
International institutions

An international institution may be accorded privileges, immunities and facilities if:
   a. has structures similar to those of an intergovernmental organisation;
   b. performs functions of a governmental nature or functions typically assigned to an intergovernmental organisation; and
   c. enjoys international recognition in the international legal order, and in particular under an international treaty, a resolution of an intergovernmental organisation or a policy document adopted by a group of States.

Art. 8
A quasi-governmental international organisation may be accorded privileges, immunities and facilities if:
   a. a majority of its members are states, organisations governed by public law, or entities performing functions of a governmental nature;
   b. it has structures similar to those of an intergovernmental organisation; and
   c. it operates in two or more States.

Art. 9
International conferences

An international conference may be accorded privileges, immunities and facilities if:
   a. it is convened under the aegis of an intergovernmental organisation, an international institution, a quasi-governmental international organisation, a secretariat or any other body established by an international treaty, under the aegis of Switzerland or at the initiative of a group of States; and
b. a majority of participants represent States, intergovernmental organisations, international institutions, quasi-governmental international organisations, secretariats or other bodies established by international treaty.

Art. 10 Secretariats or other bodies established by international treaty
A secretariat or other body may be accorded privileges, immunities and facilities if it is established under an international treaty which assigns to it certain tasks with a view to the implementation of that treaty.

Art. 11 Independent commissions
An independent commission may be accorded privileges, immunities and facilities if:
   a. its legitimacy derives from a resolution of an intergovernmental organisation or of an international institution, or if it was established by a group of States or by Switzerland;
   b. it enjoys broad political and financial support among the international community;
   c. its mandate is to examine an issue of importance to the international community;
   d. its mandate is limited in time; and
   e. the granting of privileges, immunities and facilities contributes substantially to the fulfilment of its mandate.

Art. 12 International courts
An international court may be accorded privileges, immunities and facilities if it is established under an international treaty or by a resolution of an intergovernmental organisation or of an international institution.

Art. 13 Arbitration tribunals
An arbitration tribunal may be accorded privileges, immunities and facilities if:
   a. it is established under an arbitration clause in an international treaty or under an agreement between the subjects of international law who are parties to the arbitration; and
   b. the parties to the arbitration referred to in letter a above can show a particular need for the arbitration tribunal to sit in Switzerland.

Art. 14 Other international bodies
Any other international body may by way of exception be accorded privileges, immunities and facilities if:
   a. it works closely with one or more intergovernmental organisations or international institutions based in Switzerland or with States in carrying out tasks which are normally the responsibility of those intergovernmental organisations, international institutions or States;
   b. it plays a key role in an important area of international relations;
   c. it has wide recognition at the international level; and
   d. the granting of privileges, immunities and facilities contributes substantially to the fulfilment of its mandate.

Art. 15 Eminent persons carrying out an international mandate
An eminent person carrying out an international mandate may by way of exception be accorded privileges, immunities and facilities if he or she:
   a. executes a mandate that is limited in time and conferred by an intergovernmental organisation, an international institution or a group of States;
   b. is a foreign national;
   c. is resident in Switzerland for the duration of the mandate and was not habitually resident in Switzerland prior to its commencement;
   d. does not engage in any gainful activity; and
   e. needs to be in Switzerland for the purposes of the mandate.

Chapter 3: Acquisition of Land and Buildings for Official Purposes

Art. 16 Acquisition of land and buildings
1 Institutional beneficiaries, within the meaning of Article 2 paragraph 1, may acquire land and buildings for the purposes of their official activities. The area of the property concerned must not exceed what is necessary for those purposes.
2 The acquirer must submit an application to the Federal Department of Foreign Affairs ("the Department") and a copy of the same to the relevant authority in the canton concerned.
3 The Department shall consult the relevant authority in the canton concerned and verify that the acquirer is an institutional beneficiary within the meaning of Article 2 paragraph 1, and that the acquisition is for official purposes. It shall then issue a ruling. Approval of the application is conditional on the necessary authorisations, i.e. building permits and safety clearance being obtained from the competent authorities.
4 Entry in the land register of an acquisition of land or buildings within the meaning of paragraph 1 above is conditional on approval having been given in accordance with paragraph 3 above.
**Art. 17** Definitions

1. The acquisition of land and buildings is understood to be any acquisition of a title to a building, part of a building or a piece of land, a right of habitation or a usufruct to a building or a part thereof, or the acquisition of other rights which confer on the holder equivalent status to that of owner, such as a long-term lease of land or buildings if the terms of such lease go beyond the scope of practice in civil matters.

2. A change of use is deemed an acquisition for these purposes.

3. Land and buildings for official purposes are buildings or parts of buildings together with the curtilage thereof which are used for the purpose of carrying out the official activities of the institutional beneficiary.

**Chapter 4: Financial Subsidies and other Support Measures**

**Art. 18** Purposes

The aim of financial subsidies and other support measures is in particular to:

a. facilitate the installation, work, integration and security in Switzerland of the beneficiaries referred to in Article 19;

b. promote the reputation of Switzerland as a host state;

c. further Swiss bids to play host to the beneficiaries referred to in Article 2;

d. promote activities in the area of host state policy.

**Art. 19** Beneficiaries

Financial subsidies and other support measures may be granted to:

a. the beneficiaries referred to in Article 2;

b. international non-governmental organisations (Chapter 5);

c. associations and foundations whose activities serve the purposes set out in Article 18.

**Art. 20** Modalities

Financial subsidies and other support measures provided by the Confederation may take the form of:

a. financial subsidies on a one-off or recurring basis;

b. grants to the institutional beneficiaries referred to in Article 2 paragraph 1, either directly or via the Building Foundation for International Organisations (FIPOI) in Geneva, interest-free building loans repayable within 50 years;

c. financial contributions to international conferences in Switzerland;

d. one-off or recurring subsidies in-kind such as personnel, premises or equipment;

e. the creation of associations or foundations governed by private law and participation in such associations or foundations;

f. instructions to the relevant police authorities to implement further security measures going beyond those already adopted by Switzerland to meet its security obligations under international law in the Federal Act of 21 March 1997 on Measures to Safeguard Internal Security.

**Art. 21** Due compensation to the cantons

The Confederation may pay due compensation to the cantons for tasks they carry out under Article 20 letter f that do not fall within their competence under the Federal Constitution.

**Art. 22** Finance

The funds necessary to implement this Act will be provided for in the budget. A guarantee credit will be sought in the case of a commitment for which funding extends beyond a single budget year.

**Art. 23** Conditions, procedures and detailed rules

The Federal Council shall lay down the conditions, procedures and detailed rules for the granting of financial subsidies and other support measures.

**Chapter 5: International Non-Governmental Organisations**

**Art. 24** Principles

1. International non-governmental organisations (INGOs) may establish themselves in Switzerland in accordance with Swiss law.

2. The Confederation may facilitate the establishment or the activities of an INGO in Switzerland subject to the applicable law. It may accord an INGO the financial subsidies and other support measures provided for under this Act.

3. INGOs may be entitled to benefits provided for under other federal acts, in particular the tax exemption provided for under the Federal Act of 14 December 1990 on Direct Federal Taxation and the simplified procedures for the hiring of foreign personnel provided for under Swiss legislation.

4. INGOs are not eligible for the privileges, immunities and facilities contemplated by this Act.

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3 SR 120
4 SR 642.11
Art. 25  Definition

An INGO, for the purposes of this Act, is an organisation:

a. with the legal form of an association or a foundation formed in accordance with Swiss law;

b. whose members are natural persons of different nationalities or legal persons formed in accordance with the national laws of different States;

c. which is genuinely active in several States;

d. whose objectives are charitable or in the public interest within the meaning of Article 56, letter g, of the Federal Act of 14 December 1990 on Direct Federal Taxation;

e. which operates in conjunction with an intergovernmental organisation or international institution, for example by having observer status at such organisation or institution; and

f. whose presence in Switzerland is of special interest to Switzerland.

Chapter 6: Powers

Art. 26  Granting of privileges, immunities and facilities and of financial subsidies and other support measures

1 The Federal Council shall:

a. grant the privileges, immunities and facilities;

b. grant the financial subsidies and adopt the other support measures within the limit of the relevant budget appropriations.

2 The Federal Council may enter into international treaties concerning:

a. the granting of privileges, immunities and facilities;

b. the tax treatment of beneficiaries within the meaning of Article 2;

c. the status of Swiss employees of institutional beneficiaries within the meaning of Article 2 paragraph 1, for the purposes of Swiss social insurance;

d. the granting of financial subsidies and other support measures, subject to the budgetary prerogative of the Federal Assembly;

e. cooperation with neighbouring States in the area of host state policy.

3 The Federal Council may delegate to the Department the power:

a. to grant privileges, immunities and facilities of limited duration;

b. to grant financial subsidies of limited duration, to fund international conferences in Switzerland and to provide subsidies in-kind of limited duration in accordance with Article 20;

c. to instruct the relevant police authorities to implement further security measures in accordance with Article 20, letter f.

Art. 27  Terms of employment of individual beneficiaries

1 The Federal Council may issue standard contracts of employment or otherwise regulate the conditions of employment in Switzerland of the individual beneficiaries referred to in Article 2 paragraph 2, insofar as permissible under international law. It may, in particular, set minimum wages.

2 The Federal Council shall, in particular, lay down the basic pay and working conditions of the private household employees referred to in Article 2 paragraph 2, as well as the social security arrangements for such employees in the event of illness, accident, invalidity or unemployment, insofar as permissible under international law.

Art. 28  Settlement of private-law disputes in cases of immunity from legal and enforcement proceedings

When entering into a headquarters agreement with an institutional beneficiary within the meaning of Article 2 paragraph 1, the Federal Council shall ensure that the beneficiary adopt appropriate measures with a view to the satisfactory settlement of:

a. disputes arising out of contracts to which the institutional beneficiary may be a party and of other private-law disputes;

b. disputes involving staff of the institutional beneficiary who enjoy immunity by reason of their official capacity, unless that immunity is waived.

Art. 29  Participation of the cantons

1 Before entering into any agreement to grant privileges, immunities and facilities for a duration of not less than one year or unlimited in time, the Federal Council shall consult with the canton in which the beneficiary is based and with the neighbouring cantons.

2 If the privileges, immunities and facilities entail any exception to the tax law of the canton in which the beneficiary is based, the Federal Council’s decision shall be taken in consultation with the canton in question.
The cantons shall participate, within the meaning of the Federal Act of 22 December 1999 on the Participation of the Cantons in the Foreign Policy of the Confederation, in the negotiation of international treaties in the area of host state policy.

**Art. 30 Information**

The Department may provide information to anybody demonstrating a particular interest in:

a. the nature and extent of the privileges, immunities and facilities accorded, and the beneficiaries thereof;

b. the financial subsidies and other support measures accorded and the beneficiaries thereof.

**Art. 31 Compliance with the terms of the privileges, immunities and facilities**

1. The Federal Council shall monitor compliance with the terms of the privileges, immunities and facilities granted and shall take the measures necessary if it finds instances of abuse. It may, where appropriate, rescind the relevant agreements or revoke the privileges, immunities and facilities granted.

2. The Federal Council may delegate to the Department the power to revoke the privileges, immunities and facilities granted to an individual beneficiary.

**Art. 32 Suspension, withdrawal and recovery of financial subsidies and other support measures**

The Federal Council or, if within its remit, the Department, may suspend or withdraw financial subsidies and other support measures or demand the full or partial reimbursement of subsidies already provided, if the beneficiary, despite having been issued a notice to comply, fails to fulfil its tasks as foreseen or only partly fulfils its tasks.

**Chapter 7: Final Provisions**

**Art. 33 Implementing provisions**

1. The Federal Council shall enact the implementing provisions.

2. It may implement the present Act in association with the cantons or private legal entities.

3. It may delegate administrative responsibilities in the area of host state policy to private legal entities.

**Art. 34 Repeal and amendment of current law**

The repeal and amendment of the current law is regulated in the Annex.

**Art. 35 Coordination with the Foreign Nationals Act of 16 December 2005 (FNA)**

On the commencement of this Act or of the FNA, whichever is later, or on the simultaneous commencement of both, Chapter II number 2 of the Annex to this Act will become redundant and Article 98, paragraph 2, FNA is worded as follows:

**Art. 98 para. 2**

...

**Art. 36 Referendum and commencement**

1. This Act is subject to an optional referendum.

2. The Federal Council shall determine the commencement date.

Commencement date: 1 January 2008

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6. SR 138.1

7. SR 142.20. This amendment is inserted in the said Federal Act

8. BRB of 7 December 2007 (AS 2007 6649)
Repeal and amendment of current law

I

The following Federal Acts and Federal Decrees are repealed:

1. Federal Decree of 30 September 1955 on Agreements with International Organisations on their Legal Status in Switzerland;
2. Federal Act of 5 October 2001 on Participation and Financial Aid in relation to the Foundation for the International Red Cross and Red Crescent Museum;

II

The following Federal Acts are amended as follows:

1. Federal Act of 21 March 1997 on Measures to Safeguard Internal Security
   
   Art. 5 para. 1 let. b

2. Federal Act of 26 March 1931 on the Residence and Permanent Settlement of Foreign Nationals
   
   Art. 25 para. 1 let. f

3. Federal Act of 16 December 1983 on the Acquisition of Real Estate in Switzerland by Non-Residents
   
   Art. 7 let. h

4. Subsidies Act of 5 October 1990
   
   Art. 2 para. 4 let. a

5. Value Added Tax Act of 2 September 1999


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9 [AS 1956 1137]
10 [AS 2002 1902]
11 [AS 2000 2979]
12 SR 120. This amendment is inserted in the said Federal Act.
14 SR 211.412.41. These amendments are inserted in the said Federal Act.
15 SR 616.1. This amendment is inserted in the said Federal Act.
16 SR 641.20. This amendment is inserted in the said Federal Act.
17 SR 641.61. This amendment is inserted in the said Federal Act.
7. Federal Act of 14 December 1990\textsuperscript{18} on Direct Federal Taxation

\textit{Art. 15 para. 1}

\ldots

\textit{Art. 56 let. i}

\ldots

8. Federal Act of 14 December 1990\textsuperscript{19} on the Harmonisation of Direct Taxation at Cantonal and Communal Levels

\textit{Art. 4a}

\ldots

\textit{Art. 23 para. 1 let. h}

\ldots

9. Federal Act of 13 October 1965\textsuperscript{20} on Withholding Tax

\textit{Art. 28 para. 2}

\ldots

10. Federal Act of 20 December 1946\textsuperscript{21} on the Old-Age and Survivors Insurance

\textit{Art. 1a para. 4 let. b}

\ldots

11. Federal Act of 18 March 1994\textsuperscript{22} on Health Insurance

\textit{Art. 3 para. 2}

\ldots

12. Federal Act of 20 March 1981\textsuperscript{23} on Accident Insurance

\textit{Art. 1a para. 2}

\ldots

13. Unemployment Insurance Act of 25 June 1982\textsuperscript{24}

\textit{Art. 2a}

\ldots

\textsuperscript{18} SR 642.11. These amendments are inserted in the said Federal Act.

\textsuperscript{19} SR 642.14. These amendments are inserted in the said Federal Act.

\textsuperscript{20} SR 642.21. This amendment is inserted in the said Federal Act.

\textsuperscript{21} SR 831.10. This amendment is inserted in the said Federal Act.

\textsuperscript{22} SR 832.10. This amendment is inserted in the said Federal Act.

\textsuperscript{23} SR 832.20. This amendment is inserted in the said Federal Act.

\textsuperscript{24} SR 837.0. This amendment is inserted in the said Federal Act.
Ordinance on the Federal Act on the Privileges and Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, 2007
Ordinance

to the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State

(Host State Ordinance, HSO)

of 7 December 2007 (Status as at 1 January 2008)

The Swiss Federal Council, on the basis of Article 33 of the Host State Act of 22 June 20071 (‘HSA’), decrees:

Chapter 1: Subject Matter and Definitions

Art. 1 Subject matter

1 This Ordinance lays down the implementing rules for the HSA. It determines in particular:

a. the scope of the privileges, immunities and facilities which may be granted to the different types of institutional beneficiary concerned;
b. the conditions of entry, residence and work on Swiss territory for individual beneficiaries;
c. the procedure for the acquisition of land and buildings by institutional beneficiaries;
d. the rules governing the granting of financial subsidies and other support measures.

2 The conditions of entry, residence and work for private household employees are laid down in a separate ordinance.

Art. 2 Meaning of permanent mission or other representation to intergovernmental organisations

A permanent mission or other representation to intergovernmental organisations means in particular:

a. the permanent missions to the United Nations Office or to other intergovernmental organisations, including the permanent missions to the World Trade Organization;
b. the permanent representations to the Conference on Disarmament;
c. the permanent delegations of intergovernmental organisations at intergovernmental organisations;
d. observer bureaux.

Art. 3 Meaning of special mission

A special mission within the meaning of the Convention of 8 December 19692 on Special Missions includes:

a. temporary missions composed of representatives of a State sent to Switzerland in accordance with Article 2 of the Convention of 8 December 1969 on Special Missions;
b. temporary missions composed of representatives of States in connection with meetings between two or more States in accordance with Article 18 of the Convention of 8 December 1969 on Special Missions;
c. temporary missions composed of representatives of a State and of non-State representatives in connection with the exercise of Swiss good offices.

Art. 4 Meaning of principal individual beneficiary

A principal individual beneficiary is an individual beneficiary as referred to in Article 2 paragraph 2 letters a and b, HSA.

Art. 5 Meaning of members of local staff

Members of local staff are persons employed by a State to perform official duties within the meaning of the Vienna Convention of 18 April 19613 on Diplomatic Relations, the Vienna Convention of 24 April 19634 on Consular Relations, or the Convention of 8 December 19695 on Special Missions, but who do not form part of the transferable staff of the sending State. These persons may be nationals of the sending State or of another State. They generally perform the duties of service staff within the meaning of the aforementioned Conventions but may also perform other duties referred to in those Conventions.

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1 SR 192.12
2 SR 0.191.2
3 SR 0.191.01
4 SR 0.191.02
5 SR 0.191.2
Chapter 2: Scope of Privileges, Immunities and Facilities

Section 1: Institutional Beneficiaries

Art. 6 General provisions
1 The following institutional beneficiaries are accorded all of the privileges, immunities and facilities set out in Article 3 HSA in accordance with international law and international practice:
   a. intergovernmental organisations;
   b. international institutions;
   c. diplomatic missions;
   d. consular posts;
   e. permanent missions or other representations to intergovernmental organisations;
   f. special missions;
   g. international conferences;
   h. secretariats or other bodies established under an international treaty;
   i. independent commissions;
   j. international courts;
   k. arbitration tribunals.
2 Diplomatic missions and permanent missions or other representations to intergovernmental organisations are governed in particular by the Vienna Convention of 18 April 1961 on Diplomatic Relations.
3 Consular posts are governed in particular by the Vienna Convention of 24 April 1963 on Consular Relations.
4 Special missions are governed in particular by the Convention of 8 December 1969 on Special Missions.
5 Privileges, immunities and facilities are granted to independent commissions for the scheduled duration of their activity. The granting of privileges, immunities and facilities may be extended for a limited period if the circumstances so warrant, in particular if the independent commission’s mandate is extended or if it requires additional time to draw up and publish its report.

Art. 7 Quasi-governmental international organisations
Quasi-governmental international organisations are accorded some or all of the following privileges, immunities and facilities:

Art. 8 Other international bodies
1 Other international bodies may be accorded all of the privileges, immunities and facilities set out in Article 3 HSA.
2 In determining the scope of the privileges, immunities and facilities to be accorded in each case, the Federal Council shall take into account in particular the structure of the body concerned and its connections to the intergovernmental organisations, international institutions, or States with which it works, as well as its role in international relations and its international prominence.
3 Subject to any special provisions contained in a headquarters agreement entered into with the Federal Council or in any other international treaty to which Switzerland is party, other international bodies may be hosted by an intergovernmental organisation or by an international institution only with the consent of the Federal Department of Foreign Affairs (FDFA).

Section 2: Individual Beneficiaries

Art. 9 Principles
1 The privileges, immunities and facilities accorded to individual beneficiaries are granted in the interest of the institutional beneficiaries concerned and not that of the individuals themselves. Their purpose is not to confer any benefit on individuals but to enable the institutional beneficiaries to carry out their work effectively.
2 In the case of the individuals referred to in Article 2, paragraph 2 letters a and b HSA, the privileges, immunities and facilities are conditional on the FDFA having established that those individuals are genuinely engaged in official duties. In the case of the persons referred to in Article 2 paragraph 2, letter c HSA, they are conditional on the authorisation granted them by the FDFA to accompany the principal individual beneficiary.
3 All questions relating to a determination as to whether an individual is genuinely engaged in official duties, an authorisation to accompany a principal individual beneficiary, the scope of privileges, immunities and facilities that apply, and all other questions concerning the legal status in Switzerland of individual beneficiaries, are resolved in accordance with diplomatic practice between the FDFA and the institutional beneficiary concerned and without the individual beneficiary being involved in any way.
Art. 10  Scope of privileges, immunities and facilities
The scope of the privileges, immunities and facilities accorded to individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at any of the institutional beneficiaries referred to in Article 6 paragraph 1 is determined on the basis of the category of staff to which they belong in accordance with international law and international practice. Individuals shall be assigned to the different categories provided for under international law.

Art. 11  Categories of individual beneficiary
1 In the case of intergovernmental organisations, international institutions, international conferences, secretariats or other bodies established under an international treaty, independent commissions and other international bodies, the categories of individual beneficiary are in particular the following:
   a. members of senior management;
   b. high-ranking officials;
   c. other officials;
   d. representatives of the organisation’s members;
   e. experts and all other persons acting in an official capacity for these institutional beneficiaries;
   f. persons entitled to accompany any of the individual beneficiaries referred to in letters a to e.

2 In the case of international courts and arbitration tribunals, the categories of individual beneficiary, in addition to the categories specified in paragraph 1 above, are in particular the following:
   a. judges;
   b. prosecutors, deputy prosecutors, and prosecution service staff;
   c. registrars, deputy registrars, and registry staff;
   d. defence counsel, witnesses and victims;
   e. arbitrators;
   f. persons entitled to accompany any of the individual beneficiaries referred to in letters a to e.

3 In the case of diplomatic missions, consular posts, permanent missions and other representations to intergovernmental organisations, and special missions, the categories of individual beneficiary are in particular the following:
   a. members of diplomatic staff;
   b. members of administrative and technical staff;
   c. members of service staff;
   d. consular officers;
   e. consular employees;
   f. members of local staff;
   g. persons entitled to accompany any of the individual beneficiaries referred to in letters a to f.

Art. 12  Individuals who are called to act in an official capacity at a quasi-governmental international organisation
1 Individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at a quasi-governmental international organisation and who are not Swiss nationals are accorded some or all of the following privileges and immunities for the duration of their service:
   a. exemption from direct taxes on the salaries, emoluments and allowances paid to them by the quasi-governmental international organisation;
   b. exemption from taxes on lump sums received on any grounds from a pension scheme or other provident fund, as at the time of such payment; the tax exemption does not however cover income earned on such sums or assets in which they are invested, or pensions and annuities paid to former staff by the quasi-governmental international organisation concerned;
   c. exemption from Swiss entry and residence requirements.

2 Members of the general assembly, foundation board, executive board or other governing body of a quasi-governmental international organisation may be granted immunity from criminal, civil and administrative proceedings for acts performed in their official capacity as well as inviolability for their documents.

Art. 13  Individuals who are called to act in an official capacity at other international bodies
The scope of the privileges, immunities and facilities accorded to individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at other international bodies shall be determined on the basis of the privileges, immunities and facilities that the Federal Council shall grant to the other international body concerned, pursuant to Article 8 above, and on the basis of the category of staff to which they belong.

Art. 14  Eminent persons carrying out an international mandate
Eminent persons carrying out an international mandate may be accorded all of the privileges, immunities and facilities set out in Article 3 HSA. The Federal Council shall determine the scope of the privileges, immunities and facilities according to the circumstances of each particular case.

Art. 15  Duration of privileges, immunities and facilities granted to individual beneficiaries
1 Privileges, immunities and facilities are granted to individual beneficiaries for the duration of their official duties.
Privileges, immunities and facilities accorded to accompanying persons expire at the same time as those accorded to the person they accompany, unless otherwise provided for in this Ordinance (Chapter 3).

Privileges, immunities and facilities accorded to private household employees come to an end one month after the end of their employment even if a dispute with the former employer in relation to the employment remains unresolved.

The FDFA shall determine case by case whether, at the end of the period of service and in accordance with international practice, to accord a limited extension of time (courtesy period) in order to give those concerned time to make arrangements for their departure.

Chapter 3: Entry, Residence and Employment Requirements

Art. 16 Entry requirements

1 When crossing the border to take up his or her duties, an individual beneficiary must be in possession of a recognised identity document and, where applicable, a visa.

2 A request must be made to the FDFA by the institutional beneficiary concerned in order for the individual beneficiary to be allowed take up his or her duties.

Art. 17 Residence requirements

1 The FDFA shall issue legitimation cards to members of the staff of institutional beneficiaries established in Switzerland who are entitled to privileges and immunities and to persons entitled to accompany such persons. It shall determine the different types of legitimation card to be issued and the conditions attaching thereto.

2 The immigration authority of the canton concerned shall issue a standard residence permit in accordance with the applicable law to persons called to act in an official capacity at institutional beneficiaries who are entitled only to exemption from taxes, and to persons entitled to accompany them.

3 The legitimation card issued by the FDFA serves as a residence permit for Switzerland, certifies the holder’s privileges and immunities, and exempts him or her from any visa requirement for the duration of his or her function.

Individual beneficiaries holding a legitimation card issued by the FDFA are exempted from the obligation to register with their cantonal residents registry. They may however register voluntarily.

Art. 18 Employment requirements

1 Institutional beneficiaries are entitled, in accordance with international law, to determine the terms of employment of their staff.

2 Members of diplomatic missions, of consular posts, of permanent missions or other representations to intergovernmental organisations and of special missions who are Swiss nationals or are permanently resident in Switzerland at the commencement of their function are subject to Swiss employment law. Any choice-of-law clause providing for the application of the law of a foreign State shall have effect only to the extent permitted under Swiss law.

3 Members of the local staff of diplomatic missions, of consular posts, of permanent missions or other representations to intergovernmental organisations, and of special missions, are subject to Swiss employment law irrespective of their nationality and of their place of residence at the time of engagement. Any choice-of-law clause providing for the application of the law of a foreign State shall have effect only to the extent permitted under Swiss law.

Art. 19 Social security

Insofar as the institutional beneficiary as employer is not, under international law, subject to obligatory Swiss social security legislation and the members of the staff of the institutional beneficiary are not subject to that legislation, the institutional beneficiary shall determine the social protection arrangements for its staff in accordance with international law and shall operate a social security scheme of its own.

Art. 20 Accompanying persons

1 The following persons are entitled to accompany the principal individual beneficiary and enjoy the same privileges, immunities and facilities if living together in the same household:

   a. the spouse of the principal individual beneficiary;

   b. the same-sex partner of the principal individual beneficiary if the partnership has been registered in Switzerland or under an equivalent foreign provision or if the partner is treated by the institutional beneficiary concerned as an official partner or as a dependent;

   c. the cohabiting partner of the principal individual beneficiary (which within the meaning of Swiss law is a person of the opposite sex not married to the principal individual beneficiary) if the cohabiting partner is treated by the institutional beneficiary concerned as an official partner or as a dependent;

   d. the unmarried children up to the age of 25 of the principal individual beneficiary;

   e. the unmarried children up to the age of 25 of the spouse, or of the same-sex partner, or of the cohabiting partner, if officially in that person’s care.

2 The following persons may, by way of exception, be authorised by the FDFA to accompany a principal individual beneficiary if they live together in the same household; they shall be issued with a legitimation card but shall not be accorded privileges, immunities or facilities:
a. the same-sex partner of the principal individual beneficiary if he or she is not recognised by the institutional beneficiary concerned as an official partner or as a dependent but the application for a residence permit is nonetheless submitted by the institutional beneficiary and the relationship can be shown to be long-standing, and if it is not possible for the couple to register their partnership under Swiss law or under the law of another State;
b. the cohabiting partner of the principal individual beneficiary if the cohabiting partner is not recognised by the institutional beneficiary concerned as an official partner or as a dependent but the application for a residence permit is nonetheless submitted by the institutional beneficiary and the relationship can be shown to be long-standing;
c. the unmarried children over the age of 25 of the principal individual beneficiary if they are in his or her sole care;
d. the unmarried children over the age of 25 of the spouse, or of the same-sex partner, or of the cohabiting partner, if they are in the principal individual beneficiary’s sole care;
e. the ascendants of the principal individual beneficiary or of his or her spouse, same-sex partner, or cohabiting partner within the meaning of paragraph 1, if they are in the principal individual beneficiary’s sole care;
f. in exceptional cases, other persons in the sole care of the principal individual beneficiary if it is not possible for them to be entrusted to the care of a third party in the country of origin (cases of force majeure).

3 Private household employees may be authorised by the FDFA to accompany a principal individual beneficiary if they satisfy the requirements laid down in the separate ordinance on entry, residence and work requirements referred to in Article 1 paragraph 2.

4 Authorisation for the persons referred to in this Article to accompany a principal individual beneficiary must be sought prior to the entry into Switzerland of such persons.

5 The FDFA shall determine case by case whether a person wishing to accompany a principal individual beneficiary satisfies the requirements of this article. All questions arising therefrom shall be resolved in accordance with diplomatic practice between the FDFA and the institutional beneficiary concerned and without the individual beneficiary being involved in any way.

Art. 21 Access to employment for persons called to act in an official capacity

1 Persons who are called to act in an official capacity at an institutional beneficiary must as a rule perform their official duties on a full-time basis. This is without prejudice to the special provisions governing honorary consuls under the Vienna Convention of 24 April 19639 on Consular Relations, and those governing persons whose duties are limited to a specific mandate, such as lawyers engaged in proceedings before international courts or arbitration tribunals.

2 Persons who are called to act in an official capacity at an institutional beneficiary may, by way of exception, be authorised by the relevant cantonal authorities to carry out a secondary gainful activity for up to ten hours a week, provided that they are living in Switzerland and the activity concerned is not incompatible with the performance of their official duties. The decision of the cantonal authorities shall be taken in agreement with the FDFA.

3 Teaching a specialised subject may, in particular, constitute an acceptable secondary activity, but any activity of a commercial nature, inter alia, shall be deemed incompatible with the performance of the person’s official duties.

4 Persons who are called to act in an official capacity at an institutional beneficiary who engage in a secondary gainful activity do not enjoy privileges or immunities of any kind in respect of that activity. In particular, they have no immunity from criminal, civil and administrative proceedings or from execution of any judgment or sentence arising in relation to the secondary gainful activity. Such persons are subject to Swiss law in relation to the secondary gainful activity, in particular Swiss social security legislation, and to tax in Switzerland on earnings from the activity, unless otherwise provided for under a bilateral convention on double taxation or on social security.

Art. 22 Facilitated access to employment for persons entitled to accompany the principal individual beneficiary

1 The following persons have facilitated access to employment in Switzerland for the duration of the function of the principal individual beneficiary if they are entitled, in accordance with Article 20 paragraph 1, to accompany the principal individual beneficiary and if they are living in Switzerland and in the same household as the principal individual beneficiary:

a. the spouse of the principal individual beneficiary within the meaning of Article 20 paragraph 1 letter a;
b. the same-sex partner of the principal individual beneficiary within the meaning of Article 20 paragraph 1 letter b;
c. the cohabiting partner of the principal individual beneficiary within the meaning of Article 20 paragraph 1 letter c;
d. the unmarried children of the principal individual beneficiary, within the meaning of Article 20 paragraph 1 letter d if they entered Switzerland as authorised accompanying persons before the age of 21; they are entitled to facilitated access to employment until the age of 25, after which they must take the necessary steps to ensure that their residence and employment situations are in accordance with the legislation governing the residence and establishment of non-nationals;
e. the unmarried children of the spouse, same-sex partner or cohabiting partner, within the meaning of Article 20 paragraph 1 letter e if they entered Switzerland as authorised accompanying persons before the age of 21; they are entitled to facilitated access to employment until the age of 25, after which they must take the necessary steps to ensure that their residence and employment situations are in accordance with the legislation governing the residence and establishment of non-nationals.

2 To facilitate their access to employment, the FDFA shall, on request, issue to the persons referred to in paragraph 1 a document certifying to potential employers that the individual concerned is not subject to the quota on foreign workers, or to the principle of priority recruitment areas, or to labour market regulations (principle of priority preference for residents, and ex ante vetting of pay and conditions).

3 Persons within the scope of paragraph 1 who engage in gainful activity shall, on submission of a contract of employment, an offer of employment, or a declaration to the effect that they intend to engage in a self-employed activity together with a description of that activity, be issued by the cantonal authority concerned with a special residence permit, known as a ‘Ci permit’, in place of their legitimisation card. A self-employed activity may be carried out only after the Ci permit-holder has been authorised by the competent authorities to carry out the profession or occupation in question.

4 Persons within the scope of paragraph 1 who engage in gainful activity in Switzerland are subject to Swiss law in relation to that activity. In particular, they enjoy no privileges or immunities and are subject to Swiss social security legislation and to tax in Switzerland on the earnings from the gainful activity unless otherwise provided for under a bilateral convention on double taxation or on social security.

5 The further implementation rules shall be laid down by the FDFA with the agreement of the Federal Office for Migration.

Chapter 4: Procedures for Granting Privileges, Immunities and Facilities

Art. 23 The Granting of Privileges, Immunities and Facilities

1 Without prejudice to the privileges, immunities and facilities arising directly under international law, the Federal Council shall determine case by case the privileges, immunities and facilities to be granted to institutional beneficiaries and persons who are called to act in an official capacity at such institutions, to eminent persons carrying out an international mandate, and to the persons referred to in Article 20.

2 The FDFA is empowered to grant privileges, immunities and facilities and to enter into international agreements for that purpose, where the duration of the institutional beneficiary’s activity does not exceed one year to:

a. special missions, persons called to act in an official capacity at such special missions, and persons entitled to accompany such persons;

b. international conferences, persons called to act in an official capacity at such international conferences, and persons entitled to accompany such persons.

Art. 24 Modalities

1 Diplomatic missions, consular posts, and permanent missions or other representations to intergovernmental organisations, the members of such representations and persons entitled to accompany such members become automatically entitled in accordance with international law and international practice to privileges, immunities and facilities on being authorised by the FDFA to establish themselves in Switzerland.

2 The privileges, immunities and facilities of the following institutional beneficiaries, of the persons called to act in an official capacity at such institutional beneficiaries, and of the persons entitled to accompany such persons are granted by way of an agreement to that effect entered into between the Federal Council and the institutional beneficiary concerned:

a. intergovernmental organisations;

b. international institutions;

c. quasi-governmental international organisations;

d. secretariats or other bodies established under an international treaty;

e. international courts;

f. arbitration tribunals.

3 The privileges, immunities and facilities of the following institutional beneficiaries, of the persons who are called to act in an official capacity at such institutional beneficiaries, and of the persons entitled to accompany such persons are granted by way of a unilateral decision of the Federal Council or of the FDFA or by way of an agreement to that effect entered into between the Federal Council or the FDFA and the institutional beneficiary concerned:

a. special missions;

b. international conferences;

c. independent commissions;

d. other international bodies.

4 The privileges, immunities and facilities of eminent persons carrying out an international mandate are granted by way of a unilateral decision of the Federal Council.
Chapter 5: Acquisition of Land and Buildings for Official Purposes

Art. 25 Procedure
1 Any application for permission to acquire land or buildings shall be submitted to the FDFA by the acquiring party or its agent, with a copy to be sent to the competent authority in the canton concerned.
2 The application must include the following particulars and documents:
   a. the draft contract of acquisition indicating the mode of acquisition (sale, gift, long-term lease, etc.);
   b. the purpose of acquisition (residence of head of mission, secretariat of representation, head office of organisation, etc.);
   c. a description of the property, to include in particular the area of the land and of the building; in the case of a vacant site or a proposed extension of an existing building, the area proposed to be built upon must also be indicated;
   d. a list of the properties in Switzerland already owned by the institutional beneficiary, a description of such properties including in particular the area of the land and buildings concerned and the use of same.
3 The net habitable area of any building intended for residential use may not as a rule exceed 200 m².
4 The FDFA may impose conditions in respect of an acquisition of property. In particular, it may require reciprocity if the acquiring party is a foreign State acquiring a property for the official needs of its diplomatic mission, consular posts, or permanent missions to intergovernmental organisations in Switzerland.

Art. 26 Decision
The FDFA shall issue its decision after receiving the opinion of the canton concerned.

Chapter 6: Financial Subsidies and other Support Measures

Art. 27 Financial powers
1 The Federal Council shall decide on financial subsidies and other support measures with a foreseeable cost exceeding CHF 3 million in the case of a one-off measure, or CHF 2 million per annum in the case of a recurring measure.
2 The FDFA:
   a. shall decide on one-off financial subsidies and in-kind subsidies not exceeding CHF 3 million;
   b. shall decide on recurring financial subsidies and in-kind subsidies not exceeding CHF 2 million per annum;
   c. may fund international conferences in Switzerland;
   d. may enter into international treaties to that end.

Art. 28 Procedure for granting subsidies and other support measures
1 The procedure for granting financial subsidies and other support measures is laid down in respect of each appropriation during the authorisation process.
2 The procedure for the payment of due compensation to the cantons for the cost of giving effect to Article 20, letter f, HSA is laid down in agreements to be entered into with each canton concerned. The FDFA shall be authorised to enter into such agreements. It indicates in the agreement that, where applicable, the relevant credits are subject to approval by Parliament.

Chapter 7: International Non-Governmental Organisations

Art. 29 International non-governmental organisations (INGOs) wishing to benefit from the measures provided for under federal legislation, in particular the tax exemption provided for by the Federal Act of 14 December 1990 10 on Direct Federal Taxation and the facilitated employment of foreign staff provided for under Swiss legislation, must satisfy the relevant statutory requirements and submit an application to the competent authority designated by the relevant statute.

Chapter 8: Powers of the FDFA

Art. 30 In addition to the powers provided for in the specific provisions of this Ordinance, the FDFA shall:
   a. negotiate the agreements to be entered into pursuant to the HSA or this Ordinance, in consultation with the bodies concerned;
   b. be the authority responsible for implementing the agreements on privileges, immunities, facilities, and financial subsidies and other support measures, without prejudice to the specific powers of other federal bodies;
   c. regulate the details of the implementation of this Ordinance without prejudice to the specific powers of other federal bodies;

10 SR 642.11
d. supervise compliance with the terms of the privileges, immunities and facilities; to this effect it shall take all appropriate measures in accordance with international practice; on finding an instance of abuse it may revoke a natural person’s privileges, immunities and facilities where such a measure is proportionate with the objectives;

e. determine case by case whether a person is to be deemed an ‘individual beneficiary’ within the meaning of Article 2 paragraph 2 letters a and c HSA and issue the appropriate legitimation cards to eligible persons;

f. determine the length of the courtesy period that may be allowed to an individual beneficiary at the end of his or her period of service;

g. direct the Federal Security Service to instruct the relevant police authorities to implement the further security measures referred to in Article 20 letter f HSA;

h. enter into the bilateral agreements necessary to secure for the members of the diplomatic missions, the permanent missions or other representations to intergovernmental organisations and of the consular posts of Switzerland abroad the same privileges, immunities and facilities as are accorded to foreign representations of the same category in Switzerland.

2 The FDFA shall adopt rules regulating its own internal allocation of responsibilities.

Chapter 9: Final Provisions

Art. 31 Amendment of current legislation
The amendment of current legislation is regulated in the Annex.

Art. 32 Commencement
This Ordinance comes into force on 1 January 2008.

Amendment of Current Legislation

The following Ordinances are amended as follows:

1. Ordinance of 27 June 2001\textsuperscript{11} on Security Matters subject to Federal Powers

Art. 6 para. 1 let. d
...

2. Ordinance of 24 October 2007\textsuperscript{12} on Fees under the Federal Act on Foreign Nationals

Art. 13 para. 1 let. b
...

3. Ordinance of 24 October 2007\textsuperscript{13} on Entry and Visa Procedure

Art. 21 para. 1 let. c
...

4. Federal Staff Ordinance of 3 July 2001\textsuperscript{14}

Art. 88 para. 2
...

\textsuperscript{11} SR 120.72. The following amendment is inserted in the said Ordinance.
\textsuperscript{12} SR 142.209. The following amendment is inserted in the said Ordinance.
\textsuperscript{13} SR 142.204. The following amendment is inserted in the said Ordinance.
\textsuperscript{14} SR 172.220.111.3. The following amendment is inserted in the said Ordinance.
5. Ordinance of 1 October 1984\textsuperscript{15} on the Acquisition of Real Estate in Switzerland by Non-Residents

\begin{itemize}
  \item Art. 5 para. 3 let. a
  \item Art. 15 para. 2
\end{itemize}

6. Ordinance of 7 June 2004\textsuperscript{16} on the Ordipro Information System of the Federal Department for Foreign Affairs

\begin{itemize}
  \item Art. 1 para. 2
  \item Art. 3 let. v and w
  \item Art. 4 para. 1
  \item Art. 5 para. 2 let. g
\end{itemize}

7. Customs Ordinance of 1 November 2006\textsuperscript{17}

\begin{itemize}
  \item Art. 6 para. 2
\end{itemize}

8. Ordinance of 13 November 1985\textsuperscript{18} on the Customs Privileges of the International Organisations, of States in their Relations with such Organisations and of the Special Missions of Foreign States

\begin{itemize}
  \item Expression replaced
  \item Art. 1 para. 1\textsuperscript{bis}
  \item Art. 18a
\end{itemize}

9. Ordinance of 29 March 2000\textsuperscript{19} to the Federal Act on Value Added Tax

\begin{itemize}
  \item Expression replaced
  \item Art. 19a let. a
  \item Heading before Art. 20
  \item Art. 20 para. 1 and 1\textsuperscript{bis}
  \item Art. 21
  \item Repealed
  \item Art. 23 para. 2
  \item Art. 27a
\end{itemize}

\textsuperscript{15} SR 211.412.411. The following amendments are inserted in the said Ordinance.

\textsuperscript{16} SR 235.21. The following amendments are inserted in the said Ordinance.

\textsuperscript{17} SR 631.01. The following amendment is inserted in the said Ordinance.

\textsuperscript{18} SR 631.145.0. The following amendments are inserted in the said Ordinance.

\textsuperscript{19} SR 641.201. The following amendments are inserted in the said Ordinance.
<table>
<thead>
<tr>
<th>Host State Act</th>
<th>International Organisations</th>
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<tr>
<td><em>Art. 26 para. 1 let. b, c and d</em></td>
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<td><em>Art. 86 para. 1 let. b and c</em></td>
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<td>12. Ordinance of 14 June 2002[^22] on Telecommunications Installations</td>
<td><em>Art. 16 let. j</em></td>
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<td><em>Art. 16 let. j</em></td>
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<td><em>Art. 7 para. 6</em></td>
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<td>14. Ordinance of 31 October 1947[^24] on the Old-Age and Survivors’ Insurance</td>
<td><em>Art. 3 para. 1, 3 and 5</em></td>
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<td><em>Art. 1b let. a, b and c</em></td>
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[^20]: SR 641.611. The following amendment is inserted in the said Ordinance.
[^21]: SR 741.51. The following amendments are inserted in the said Ordinance.
[^22]: SR 784.101.2. The following amendment is inserted in the said Ordinance.
[^23]: SR 784.401. The following amendment is inserted in the said Ordinance.
[^24]: SR 831.101. The following amendments are inserted in the said Ordinance.
[^25]: SR 832.102. The following amendments are inserted in the said Ordinance.
[^26]: SR 832.202. The following amendment is inserted in the said Ordinance.
Charter of the Association of Southeast Asian Nations, 2007
CHARTER OF THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS

PREAMBLE

WE, THE PEOPLES of the Member States of the Association of Southeast Asian Nations (ASEAN), as represented by the Heads of State or Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam:

NOTING with satisfaction the significant achievements and expansion of ASEAN since its establishment in Bangkok through the promulgation of The ASEAN Declaration;

RECALLING the decisions to establish an ASEAN Charter in the Vientiane Action Programme, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter;

MINDFUL of the existence of mutual interests and interdependence among the peoples and Member States of ASEAN which are bound by geography, common objectives and shared destiny;

INSPIRED by and united under One Vision, One Identity and One Caring and Sharing Community;

UNITED by a common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations;

RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity;

ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms;

RESOLVED to ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process;

CONVINCED of the need to strengthen existing bonds of regional solidarity to realise an ASEAN Community that is politically cohesive, economically integrated and socially responsible in order to effectively respond to current and future challenges and opportunities;

COMMITTED to intensifying community building through enhanced regional cooperation and integration, in particular by establishing an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community, as provided for in the Bali Declaration of ASEAN Concord II;

HEREBY DECIDE to establish, through this Charter, the legal and institutional framework for ASEAN,

AND TO THIS END, the Heads of State or Government of the Member States of ASEAN, assembled in Singapore on the historic occasion of the 40th anniversary of the founding of ASEAN, have agreed to this Charter.
CHAPTER I
PURPOSES AND PRINCIPLES

ARTICLE 1
PURPOSES

The Purposes of ASEAN are:

1. To maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region;

2. To enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation;

3. To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction;

4. To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment;

5. To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital;

6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation;

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;

8. To respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges;

9. To promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples;

10. To develop human resources through closer cooperation in education and life-long learning, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community;

11. To enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice;

12. To strengthen cooperation in building a safe, secure and drug-free environment for the peoples of ASEAN;

13. To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building;

14. To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region; and

15. To maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive.
ARTICLE 2
PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN.

2. ASEAN and its Member States shall act in accordance with the following Principles:

(a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

(b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;

(c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

(d) reliance on peaceful settlement of disputes;

(e) non-interference in the internal affairs of ASEAN Member States;

(f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

(g) enhanced consultations on matters seriously affecting the common interest of ASEAN;

(h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

(i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

(k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

(l) respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;

(m) the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

(n) adherence to multilateral trade rules and ASEAN’s rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.
CHAPTER II
LEGAL PERSONALITY

ARTICLE 3
LEGAL PERSONALITY OF ASEAN

ASEAN, as an inter-governmental organisation, is hereby conferred legal personality.

CHAPTER III
MEMBERSHIP

ARTICLE 4
MEMBER STATES

The Member States of ASEAN are Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

ARTICLE 5
RIGHTS AND OBLIGATIONS

1. Member States shall have equal rights and obligations under this Charter.

2. Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.

3. In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to Article 20.

ARTICLE 6
ADMISSION OF NEW MEMBERS

1. The procedure for application and admission to ASEAN shall be prescribed by the ASEAN Coordinating Council.

2. Admission shall be based on the following criteria:
(a) location in the recognised geographical region of Southeast Asia;

(b) recognition by all ASEAN Member States;

(c) agreement to be bound and to abide by the Charter; and

(d) ability and willingness to carry out the obligations of Membership.

3. Admission shall be decided by consensus by the ASEAN Summit, upon the recommendation of the ASEAN Coordinating Council.

4. An applicant State shall be admitted to ASEAN upon signing an Instrument of Accession to the Charter.

CHAPTER IV
ORGANS

ARTICLE 7
ASEAN SUMMIT

1. The ASEAN Summit shall comprise the Heads of State or Government of the Member States.

2. The ASEAN Summit shall:

(a) be the supreme policy-making body of ASEAN;

(b) deliberate, provide policy guidance and take decisions on key issues pertaining to the realisation of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

(c) instruct the relevant Ministers in each of the Councils concerned to hold ad hoc inter-Ministerial meetings, and address important issues concerning ASEAN that cut across the Community Councils. Rules of procedure for such meetings shall be adopted by the ASEAN Coordinating Council;

(d) address emergency situations affecting ASEAN by taking appropriate actions;

(e) decide on matters referred to it under Chapters VII and VIII;
(f) authorise the establishment and the dissolution of Sectoral Ministerial Bodies and other ASEAN institutions; and

(g) appoint the Secretary-General of ASEAN, with the rank and status of Minister, who will serve with the confidence and at the pleasure of the Heads of State or Government upon the recommendation of the ASEAN Foreign Ministers Meeting.

3. ASEAN Summit Meetings shall be:

(a) held twice annually, and be hosted by the Member State holding the ASEAN Chairmanship; and

(b) convened, whenever necessary, as special or ad hoc meetings to be chaired by the Member State holding the ASEAN Chairmanship, at venues to be agreed upon by ASEAN Member States.

ARTICLE 8
ASEAN COORDINATING COUNCIL

1. The ASEAN Coordinating Council shall comprise the ASEAN Foreign Ministers and meet at least twice a year.

2. The ASEAN Coordinating Council shall:

(a) prepare the meetings of the ASEAN Summit;

(b) coordinate the implementation of agreements and decisions of the ASEAN Summit;

(c) coordinate with the ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them;

(d) coordinate the reports of the ASEAN Community Councils to the ASEAN Summit;

(e) consider the annual report of the Secretary-General on the work of ASEAN;

(f) consider the report of the Secretary-General on the functions and operations of the ASEAN Secretariat and other relevant bodies;

(g) approve the appointment and termination of the Deputy Secretaries-General upon the recommendation of the Secretary-General; and

(h) undertake other tasks provided for in this Charter or such other functions as may be assigned by the ASEAN Summit.

3. The ASEAN Coordinating Council shall be supported by the relevant senior officials.

ARTICLE 9
ASEAN COMMUNITY COUNCILS

1. The ASEAN Community Councils shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council.

2. Each ASEAN Community Council shall have under its purview the relevant ASEAN Sectoral Ministerial Bodies.

3. Each Member State shall designate its national representation for each ASEAN Community Council meeting.
4. In order to realise the objectives of each of the three pillars of the ASEAN Community, each ASEAN Community Council shall:

(a) ensure the implementation of the relevant decisions of the ASEAN Summit;

(b) coordinate the work of the different sectors under its purview, and on issues which cut across the other Community Councils; and

(c) submit reports and recommendations to the ASEAN Summit on matters under its purview.

5. Each ASEAN Community Council shall meet at least twice a year and shall be chaired by the appropriate Minister from the Member State holding the ASEAN Chairmanship.

6. Each ASEAN Community Council shall be supported by the relevant senior officials.

ARTICLE 10
ASEAN SECTORAL MINISTERIAL BODIES

1. ASEAN Sectoral Ministerial Bodies shall:

(a) function in accordance with their respective established mandates;

(b) implement the agreements and decisions of the ASEAN Summit under their respective purview;

(c) strengthen cooperation in their respective fields in support of ASEAN integration and community building; and

(d) submit reports and recommendations to their respective Community Councils.

2. Each ASEAN Sectoral Ministerial Body may have under its purview the relevant senior officials and subsidiary bodies to undertake its functions as contained in Annex 1. The Annex may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.

ARTICLE 11
SECRETARY-GENERAL OF ASEAN AND ASEAN SECRETARIAT

1. The Secretary-General of ASEAN shall be appointed by the ASEAN Summit for a non-renewable term of office of five years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, capability and professional experience, and gender equality.

2. The Secretary-General shall:

(a) carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices;

(b) facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit;

(c) participate in meetings of the ASEAN Summit, the ASEAN Community Councils, the ASEAN
Coordinating Council, and ASEAN Sectoral Ministerial Bodies and other relevant ASEAN meetings;

(d) present the views of ASEAN and participate in meetings with external parties in accordance with approved policy guidelines and mandate given to the Secretary-General; and

(e) recommend the appointment and termination of the Deputy Secretaries-General to the ASEAN Coordinating Council for approval.

3. The Secretary-General shall also be the Chief Administrative Officer of ASEAN.

4. The Secretary-General shall be assisted by four Deputy Secretaries-General with the rank and status of Deputy Ministers. The Deputy Secretaries-General shall be accountable to the Secretary-General in carrying out their functions.

5. The four Deputy Secretaries-General shall be of different nationalities from the Secretary-General and shall come from four different ASEAN Member States.

6. The four Deputy Secretaries-General shall comprise:

(a) two Deputy Secretaries-General who will serve a non-renewable term of three years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, qualifications, competence, experience and gender equality; and

(b) two Deputy Secretaries-General who will serve a term of three years, which may be renewed for another three years. These two Deputy Secretaries-General shall be openly recruited based on merit.

7. The ASEAN Secretariat shall comprise the Secretary-General and such staff as may be required.

8. The Secretary-General and the staff shall:

(a) uphold the highest standards of integrity, efficiency, and competence in the performance of their duties;

(b) not seek or receive instructions from any government or external party outside of ASEAN; and

(c) refrain from any action which might reflect on their position as ASEAN Secretariat officials responsible only to ASEAN.

9. Each ASEAN Member State undertakes to respect the exclusively ASEAN character of the responsibilities of the Secretary-General and the staff, and not to seek to influence them in the discharge of their responsibilities.

ARTICLE 12
COMMITTEE OF PERMANENT REPRESENTATIVES TO ASEAN

1. Each ASEAN Member State shall appoint a Permanent Representative to ASEAN with the rank of Ambassador based in Jakarta.

2. The Permanent Representatives collectively constitute a Committee of Permanent Representatives, which shall:
(a) support the work of the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

(b) coordinate with ASEAN National Secretariats and other ASEAN Sectoral Ministerial Bodies;

(c) liaise with the Secretary-General of ASEAN and the ASEAN Secretariat on all subjects relevant to its work;

(d) facilitate ASEAN cooperation with external partners; and

(e) perform such other functions as may be determined by the ASEAN Coordinating Council.

ARTICLE 13
ASEAN NATIONAL SECRETARIATS

Each ASEAN Member State shall establish an ASEAN National Secretariat which shall:

(a) serve as the national focal point;

(b) be the repository of information on all ASEAN matters at the national level;

(c) coordinate the implementation of ASEAN decisions at the national level;

(d) coordinate and support the national preparations of ASEAN meetings;

(e) promote ASEAN identity and awareness at the national level; and

(f) contribute to ASEAN community building.

ARTICLE 14
ASEAN HUMAN RIGHTS BODY

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

ARTICLE 15
ASEAN FOUNDATION

1. The ASEAN Foundation shall support the Secretary-General of ASEAN and collaborate with the relevant ASEAN bodies to support ASEAN community building by promoting greater awareness of the ASEAN identity, people-to-people interaction, and close collaboration among the business sector, civil society, academia and other stakeholders in ASEAN.

2. The ASEAN Foundation shall be accountable to the Secretary-General of ASEAN, who shall submit its report to the ASEAN Summit through the ASEAN Coordinating Council.
CHAPTER V
ENTITIES ASSOCIATED WITH ASEAN

ARTICLE 16
ENTITIES ASSOCIATED WITH ASEAN

1. ASEAN may engage with entities which support the ASEAN Charter, in particular its purposes and principles. These associated entities are listed in Annex 2.

2. Rules of procedure and criteria for engagement shall be prescribed by the Committee of Permanent Representatives upon the recommendation of the Secretary-General of ASEAN.

3. Annex 2 may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.

CHAPTER VI
IMMUNITIES AND PRIVILEGES

ARTICLE 17
IMMUNITIES AND PRIVILEGES OF ASEAN

1. ASEAN shall enjoy in the territories of the Member States such immunities and privileges as are necessary for the fulfilment of its purposes.

2. The immunities and privileges shall be laid down in separate agreements between ASEAN and the host Member State.

ARTICLE 18
IMMUNITIES AND PRIVILEGES OF THE SECRETARY-GENERAL OF ASEAN AND STAFF OF THE ASEAN SECRETARIAT

1. The Secretary-General of ASEAN and staff of the ASEAN Secretariat participating in official ASEAN activities or representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the independent exercise of their functions.

2. The immunities and privileges under this Article shall be laid down in a separate ASEAN agreement.

ARTICLE 19
IMMUNITIES AND PRIVILEGES OF THE PERMANENT REPRESENTATIVES AND OFFICIALS ON ASEAN DUTIES

1. The Permanent Representatives of the Member States to ASEAN and officials of the Member States participating in official ASEAN activities or representing ASEAN in the Member
States shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

2. The immunities and privileges of the Permanent Representatives and officials on ASEAN duties shall be governed by the 1961 Vienna Convention on Diplomatic Relations or in accordance with the national law of the ASEAN Member State concerned.

CHAPTER VII
DECISION-MAKING

ARTICLE 20
CONSULTATION AND CONSENSUS

1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.

2. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made.

3. Nothing in paragraphs 1 and 2 of this Article shall affect the modes of decision-making as contained in the relevant ASEAN legal instruments.

4. In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision.

ARTICLE 21
IMPLEMENTATION AND PROCEDURE

1. Each ASEAN Community Council shall prescribe its own rules of procedure.

2. In the implementation of economic commitments, a formula for flexible participation, including the ASEAN Minus X formula, may be applied where there is a consensus to do so.
CHAPTER VIII
SETTLEMENT OF DISPUTES

ARTICLE 22
GENERAL PRINCIPLES

1. Member States shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation.

2. ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation.

ARTICLE 23
GOOD OFFICES, CONCILIATION AND MEDIATION

1. Member States which are parties to a dispute may at any time agree to resort to good offices, conciliation or mediation in order to resolve the dispute within an agreed time limit.

2. Parties to the dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.

ARTICLE 24
DISPUTE SETTLEMENT MECHANISMS IN SPECIFIC INSTRUMENTS

1. Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments.

2. Disputes which do not concern the interpretation or application of any ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rules of procedure.

3. Where not otherwise specifically provided, disputes which concern the interpretation or application of ASEAN economic agreements shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

ARTICLE 25
ESTABLISHMENT OF DISPUTE SETTLEMENT MECHANISMS

Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments.

ARTICLE 26
UNRESOLVED DISPUTES

When a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision.

ARTICLE 27
COMPLIANCE

1. The Secretary-General of ASEAN, assisted by the ASEAN Secretariat or any other designated ASEAN body, shall monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, and submit a report to the ASEAN Summit.

2. Any Member State affected by non-compliance with the findings, recommendations or decisions resulting from an
ASEAN dispute settlement mechanism, may refer the matter to the ASEAN Summit for a decision.

ARTICLE 28
UNITED NATIONS CHARTER PROVISIONS AND OTHER RELEVANT INTERNATIONAL PROCEDURES

Unless otherwise provided for in this Charter, Member States have the right of recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations or any other international legal instruments to which the disputing Member States are parties.

CHAPTER IX
BUDGET AND FINANCE

ARTICLE 29
GENERAL PRINCIPLES

1. ASEAN shall establish financial rules and procedures in accordance with international standards.

2. ASEAN shall observe sound financial management policies and practices and budgetary discipline.

3. Financial accounts shall be subject to internal and external audits.

ARTICLE 30
OPERATIONAL BUDGET AND FINANCES OF THE ASEAN SECRETARIAT

1. The ASEAN Secretariat shall be provided with the necessary financial resources to perform its functions effectively.

2. The operational budget of the ASEAN Secretariat shall be met by ASEAN Member States through equal annual contributions which shall be remitted in a timely manner.

3. The Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

4. The ASEAN Secretariat shall operate in accordance with the financial rules and procedures determined by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.
CHAPTER X
ADMINISTRATION AND PROCEDURE

ARTICLE 31
CHAIRMAN OF ASEAN

1. The Chairmanship of ASEAN shall rotate annually, based on the alphabetical order of the English names of Member States.

2. ASEAN shall have, in a calendar year, a single Chairmanship by which the Member State assuming the Chairmanship shall chair:

   (a) the ASEAN Summit and related summits;
   
   (b) the ASEAN Coordinating Council;
   
   (c) the three ASEAN Community Councils;
   
   (d) where appropriate, the relevant ASEAN Sectoral Ministerial Bodies and senior officials; and
   
   (e) the Committee of Permanent Representatives.

ARTICLE 32
ROLE OF THE CHAIRMAN OF ASEAN

The Member State holding the Chairmanship of ASEAN shall:

   (a) actively promote and enhance the interests and well-being of ASEAN, including efforts to build an ASEAN Community through policy initiatives, coordination, consensus and cooperation;
   
   (b) ensure the centrality of ASEAN;
   
   (c) ensure an effective and timely response to urgent issues or crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns;
   
   (d) represent ASEAN in strengthening and promoting closer relations with external partners; and
   
   (e) carry out such other tasks and functions as may be mandated.

ARTICLE 33
DIPLOMATIC PROTOCOL AND PRACTICES

ASEAN and its Member States shall adhere to existing diplomatic protocol and practices in the conduct of all activities relating to ASEAN. Any changes shall be approved by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

ARTICLE 34
WORKING LANGUAGE OF ASEAN

The working language of ASEAN shall be English.
CHAPTER XI
IDENTITY AND SYMBOLS

ARTICLE 35
ASEAN IDENTITY

ASEAN shall promote its common ASEAN identity and a sense of belonging among its peoples in order to achieve its shared destiny, goals and values.

ARTICLE 36
ASEAN MOTTO

The ASEAN motto shall be: "One Vision, One Identity, One Community"

ARTICLE 37
ASEAN FLAG

The ASEAN flag shall be as shown in Annex 3.

ARTICLE 38
ASEAN EMBLEM

The ASEAN emblem shall be as shown in Annex 4.

ARTICLE 39
ASEAN DAY

The eighth of August shall be observed as ASEAN Day.

ARTICLE 40
ASEAN ANTHEM

ASEAN shall have an anthem.

CHAPTER XII
EXTERNAL RELATIONS

ARTICLE 41
CONDUCT OF EXTERNAL RELATIONS

1. ASEAN shall develop friendly relations and mutually beneficial dialogue, cooperation and partnerships with countries and sub-regional, regional and international organisations and institutions.

2. The external relations of ASEAN shall adhere to the purposes and principles set forth in this Charter.

3. ASEAN shall be the primary driving force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building.

4. In the conduct of external relations of ASEAN, Member States shall, on the basis of unity and solidarity, coordinate and endeavour to develop common positions and pursue joint actions.

5. The strategic policy directions of ASEAN's external relations shall be set by the ASEAN Summit upon the recommendation of the ASEAN Foreign Ministers Meeting.

6. The ASEAN Foreign Ministers Meeting shall ensure consistency and coherence in the conduct of ASEAN's external relations.

7. ASEAN may conclude agreements with countries or sub-regional, regional and international organisations and institutions. The procedures for concluding such agreements
shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.

ARTICLE 42
DIALOGUE COORDINATOR

1. Member States, acting as Country Coordinators, shall take turns to take overall responsibility in coordinating and promoting the interests of ASEAN in its relations with the relevant Dialogue Partners, regional and international organisations and institutions.

2. In relations with the external partners, the Country Coordinators shall, inter alia:
   
   (a) represent ASEAN and enhance relations on the basis of mutual respect and equality, in conformity with ASEAN’s principles;
   
   (b) co-chair relevant meetings between ASEAN and external partners; and
   
   (c) be supported by the relevant ASEAN Committees in Third Countries and International Organisations.

ARTICLE 43
ASEAN COMMITTEES IN THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

1. ASEAN Committees in Third Countries may be established in non-ASEAN countries comprising heads of diplomatic missions of ASEAN Member States. Similar Committees may be established relating to international organisations. Such Committees shall promote ASEAN’s interests and identity in the host countries and international organisations.

2. The ASEAN Foreign Ministers Meeting shall determine the rules of procedure of such Committees.

ARTICLE 44
STATUS OF EXTERNAL PARTIES

1. In conducting ASEAN’s external relations, the ASEAN Foreign Ministers Meeting may confer on an external party the formal status of Dialogue Partner, Sectoral Dialogue Partner, Development Partner, Special Observer, Guest, or other status that may be established henceforth.

2. External parties may be invited to ASEAN meetings or cooperative activities without being conferred any formal status, in accordance with the rules of procedure.

ARTICLE 45
RELATIONS WITH THE UNITED NATIONS SYSTEM AND OTHER INTERNATIONAL ORGANISATIONS AND INSTITUTIONS

1. ASEAN may seek an appropriate status with the United Nations system as well as with other sub-regional, regional, international organisations and institutions.

2. The ASEAN Coordinating Council shall decide on the participation of ASEAN in other sub-regional, regional, international organisations and institutions.

ARTICLE 46
ACCREDITATION OF NON-ASEAN MEMBER STATES TO ASEAN

Non-ASEAN Member States and relevant inter-governmental organisations may appoint and accredit Ambassadors to ASEAN. The ASEAN Foreign Ministers Meeting shall decide on such accreditation.
CHAPTER XIII
GENERAL AND FINAL PROVISIONS

ARTICLE 47
SIGNATURE, RATIFICATION, DEPOSITARY AND ENTRY INTO FORCE

1. This Charter shall be signed by all ASEAN Member States.
2. This Charter shall be subject to ratification by all ASEAN Member States in accordance with their respective internal procedures.
3. Instruments of ratification shall be deposited with the Secretary-General of ASEAN who shall promptly notify all Member States of each deposit.
4. This Charter shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 48
AMENDMENTS

1. Any Member State may propose amendments to the Charter.
2. Proposed amendments to the Charter shall be submitted by the ASEAN Coordinating Council by consensus to the ASEAN Summit for its decision.
3. Amendments to the Charter agreed to by consensus by the ASEAN Summit shall be ratified by all Member States in accordance with Article 47.
4. An amendment shall enter into force on the thirtieth day following the date of deposit of the last instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 49
TERMS OF REFERENCE AND RULES OF PROCEDURE

Unless otherwise provided for in this Charter, the ASEAN Coordinating Council shall determine the terms of reference and rules of procedure and shall ensure their consistency.

ARTICLE 50
REVIEW

This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit.

ARTICLE 51
INTERPRETATION OF THE CHARTER

1. Upon the request of any Member State, the interpretation of the Charter shall be undertaken by the ASEAN Secretariat in accordance with the rules of procedure determined by the ASEAN Coordinating Council.
2. Any dispute arising from the interpretation of the Charter shall be settled in accordance with the relevant provisions in Chapter VIII.
3. Headings and titles used throughout the Charter shall only be for the purpose of reference.
ARTICLE 52
LEGAL CONTINUITY

1. All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid.

2. In case of inconsistency between the rights and obligations of ASEAN Member States under such instruments and this Charter, the Charter shall prevail.

ARTICLE 53
ORIGINAL TEXT

The signed original text of this Charter in English shall be deposited with the Secretary-General of ASEAN, who shall provide a certified copy to each Member State.

ARTICLE 54
REGISTRATION OF THE ASEAN CHARTER

This Charter shall be registered by the Secretary-General of ASEAN with the Secretariat of the United Nations, pursuant to Article 102, paragraph 1 of the Charter of the United Nations.

ARTICLE 55
ASEAN ASSETS

The assets and funds of the Organisation shall be vested in the name of ASEAN.
Responsibility of international organizations: Texts and titles of draft articles 1 to 67 adopted by the Drafting Committee of the International Law Commission on second reading in 2011 (A/CN.4/L.778)
Responsibility of international organizations

Part One
Introduction

Article 1
Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.

2. The present draft 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 draft 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;
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 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 draft articles 6 to 8 shall nevertheless be considered an act of that organization under international law if the conduct exceeds the authority of that organ or agent or contravenes instructions.

**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 draft 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 draft 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 to and 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 draft article 41.

2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of draft article 41, nor render aid or assistance in maintaining that situation.

3. This draft 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 underlying obligation 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 draft 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 draft 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 draft 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 draft article 44, to fulfill 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 draft 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 draft 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) 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.

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 draft 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.
Statement of the Chairman of the Drafting Committee, International Law Commission, sixty-third session, 3 June 2011
Responsibility of international organizations

Statement of the Chairman of the Drafting Committee

3 June 2011

Mr. Chairman,

It is my pleasure, today, to introduce the second report of the Drafting Committee for the sixty-third session of the Commission. This report, which deals with the topic “Responsibility of international organizations”, is contained in document A/CN.4/L.778. The Committee had before it the entire set of draft articles on the responsibility of international organizations, as adopted on first reading, together with the recommendations of the Special Rapporteur contained in his eighth report, the suggestions made during the Plenary debate and the comments received from Governments and international organizations.

The Drafting Committee held 11 meetings from 29 April to 19 May on this topic. I am pleased to report that the Committee was able to complete the second reading of a set of 67 draft articles on the responsibility of international organizations, and decided to submit its report to the Plenary with the recommendation that the draft articles be adopted by the Commission, on second reading.

Mr. Chairman,

This is an historic moment for the International Law Commission. Today’s report signifies the drawing to a close of the Commission’s work on the subject of international responsibility, which was among the original topics selected in 1949 for consideration by the Commission. This work has been the subject of the Commission’s attention for nearly 60 years and is unquestionably one of its most important contributions to the codification and progressive development of international law. Following the successful conclusion in 2001 of the articles on State responsibility, the Commission turned its attention to the question of the responsibility of international organizations, which has kept it busy for the better part of the last decade.

The Commission was particularly fortunate to have had at its disposal the services of extremely well qualified and experienced Special Rapporteurs who have put much of their energy and intellectual talent into conceptualizing and developing the international regime of responsibility for States and now for international organizations. The present Special Rapporteur, Prof. Giorgio Gaja, is no exception and has joined a select list of Special Rapporteurs who have made their mark on the contemporary understanding of international law. On behalf of the Drafting Committee, I wish to express my deep appreciation to the Special Rapporteur for his full cooperation and the efficient manner in which he approached the second reading of the draft articles. His mastery of the subject greatly facilitated the task of the Drafting Committee. I also wish to express my appreciation to the members of the Committee for their cooperation and their constructive manner, as well as the good spirit in which they discussed the articles. Furthermore, I wish to thank the Secretariat for its valuable assistance.

Mr. Chairman,

Before turning to the article by article discussion, I might add that the Committee considered matters of translation into all the languages of the United Nations, in order to align the various linguistic texts with the English original. I will not dwell on such matters today. However, through you, Mr. Chairman, I will request the members of the Commission who still notice some discrepancies in other language versions of the articles to inform the Secretariat.

Mr. Chairman,

The draft articles on the responsibility of international organizations, as adopted by the Drafting Committee, are structured into six parts.

Part One - Introduction

The Drafting Committee retained the title for Part One as “Introduction”. It is constituted of two draft articles.

Draft article 1

Mr. Chairman,

Draft article 1 pertains to the scope of the draft articles. Paragraph 1 was adopted as formulated on first reading, with the exception that the concluding phrase “act that is wrongful under international law” has been refined to “internationally wrongful act”.

The Drafting Committee refined paragraph 2 so as to more closely reflect the scope of the draft articles. In particular, it sought a formula which took into account the fact that the draft articles, in draft articles 60 [59] and 61 [60], also covered the scenario of State responsibility for acts committed by an international organization which were not wrongful acts of that organization. Various formulations were considered. At the same time, the formulation of the paragraph had to also cover the situation envisaged in draft article 62 [61] where a State is responsible not for its own wrongful acts, but for those of an international organization. The Committee drew inspiration from the title of Part Five by reformulating the concluding phrase of the paragraph as “...for an internationally wrongful act in connection with the conduct of an international organization”.

The Committee also considered including a specific mention to Part Five but decided against doing so since, although the provisions relating to State responsibility are grouped in Part Five, it is not only that Part which applies to State responsibility. Other Parts, such as Parts One and Six would also be relevant. The Committee considered linguistic options for trying to capture the manner in which the draft articles deal with the responsibility of States, including using terms such as “relates to”, “refers to”, “concerns”, but without success. Accordingly, it decided to retain the more general reference to the drafting articles applying to State responsibility.

The Committee further resorted to the indefinite article “an” (instead of “the internationally wrongful act”) so as to align the formulation with that adopted in paragraph 1.

The title of draft article 1 remains “Scope of the present draft articles”.

Draft article 2

Mr. Chairman,

Draft article 2 pertains to the use of terms. The version being proposed for consideration at second reading contains the definitions of four phrases, as opposed to three in the first reading text.

Subparagraphs (a) and (b), defining “international organization” and “rules of the organization”, respectively, have been retained in the version adopted on first reading, save for
Mr. Chairman,

I now draw your attention to Part Two of the draft articles, the title of which has been retained as "The Internationally wrongful act of an international organization." The Part is made up of five chapters.

Chapter I: The internationally wrongful act of an international organization.

Mr. Chairman,

Other than a technical refinement to change the second reference to "the internationally wrongful act of an international organization," in both draft articles 3 and 4, to "that international organization," in both draft articles 3 and 4, to "that international organization," the Part is made up of five chapters.

The same technical refinement has been made in a number of places throughout the draft articles. On subparagraph (b), the Drafting Committee also decided not to accept a suggestion to emphasize those rules which are part of international law, out of recognition that there also existed other rules of an organization which were not necessarily rules determining competence or the grant of consent. Nor did it consider it appropriate to include a hierarchy of rules, since such hierarchy could vary, or as a matter of policy, the Committee felt that the draft articles should not allow for such an interpretation.

As already mentioned, draft article 5 is new. It arose out of the discussion held in the context of draft article 4 (6) on the principle of "ex se praeteritum," and in particular whether that provision could be interpreted as implying that an act is lawful under international law. As a matter of policy, the Committee felt that the draft articles should not allow for such an interpretation.

Accordingly, new draft article 5 deals with the characterization of an act of an international organization as internationally wrongful. It adopts, with the necessary modifications, the formulation of the first sentence of article 2 of the 2001 articles on State responsibility which establishes the principle that it is international law that decides whether an act of an international organization is internationally wrongful or not.

Draft article 5

Accordingly, new draft article 5 deals with the characterization of an act of an international organization as internationally wrongful. It adopts, with the necessary modifications, the formulation of the first sentence of article 2 of the 2001 articles on State responsibility which establishes the principle that it is international law that decides whether an act of an international organization is internationally wrongful or not.

The reference to "person or entity," in draft article 5, is included out of recognition of the practice of international organizations, delegating their functions to other persons or entities, such as other international organizations or companies.

Draft article 2 remains "Use of terms."
the proposed new provision as a second paragraph to draft article 4, but decided to include it as a separate provision since it dealt with a different set of issues to those covered by draft article 4.

The title of draft article 5 is “Characterization of an act of an international organization as internationally wrongful”, which is based on that of article 3 of the 2001 articles on State responsibility.

Chapter II

Mr. Chairman,

Chapter II continues to consist of four draft articles. The title adopted on first reading, namely “Attribution of conduct to an international organization” was retained.

Draft article 6 [5]

Mr. Chairman,

Draft article 6 [5] covers the issue of the conduct of organs or agents of an international organization. The provision has been retained largely in the form adopted on first reading, with some drafting suggestions. In paragraph 1, the word “as” in “as an act” of the first reading version, was deleted to align the text closer to the 2001 articles on State responsibility.

The Committee took into account a suggestion that it be specified that the conduct in question be undertaken under the instruction and control of the organization, or in an official capacity. However, it decided not to include such an element out of concern not to create the impression of establishing an additional requirement. The issue has been resolved through an amendment to draft article 8 [7].

Paragraph 2 was also refined through an amendment of the opening phrase which now reads “[t]he rules of the organization apply in the determination”. This was done to make it clearer that the rules of the organization are not the exclusive basis for determining the functions of the organ or agent, a point that is made in the commentary, but which was not clear in the first reading version of the draft articles. On the one hand, the international organization should not be allowed to rely on the fact that the attribution of functions to an agent went beyond its rules to deny the attribution of the conduct of the agent to it. On the other hand, it was recognized that the rules of the organization would normally apply in the determination of the functions of its organs and agents. The shift from “shall apply to” to “apply in” is intended to indicate this nuance in the meaning of the provision.

The title of draft article 6 [5] has been changed to “Conduct of organs or agents of an international organization” which was considered clearer, and corresponds to the 2001 articles on State responsibility.

Draft article 7 [6]

Mr. Chairman,

The Drafting Committee noted that many of the comments on draft article 7 [6] were addressed to the commentaries. The Committee considered a proposal made by a State to introduce a qualification that the organs placed at the disposal of the international organization were being used to carry out its functions. The Committee did not consider it necessary to specify this in the draft article. The draft article was, accordingly, adopted in the version adopted on first reading.

The title of draft article 7 [6] was amended to read “Conduct of organs or agents of an international organization placed at the disposal of another international organization”, in order to align it closer with the text.

Draft article 8 [7]

Mr. Chairman,

Draft article 8 [7] has been amended through the deletion of the indefinite article “an” before “agent of an international organization” so as to harmonize it with the formula adopted throughout the draft articles. The Committee further decided to replace the first reading reference to “in that capacity” with “in an official capacity and within the overall functions of that organization”. The word “and” was included so as to make it clear that these are two distinct issues. This new qualifier was introduced in order to align the text with the practice of international organizations, even though there existed the concern in the Drafting Committee that this would unnecessarily limit the ability of victims to seek recourse against international organizations. On this latter point, the view of the Committee was that the question of the wrongful conduct of an international organization, if any, for failure to control its organs or agents, was a matter for draft article 6 [5].

In the concluding clause, the phrase “even though” has been changed to “even if”, which is the formulation used in the corresponding article of the 2001 articles on State responsibility.

The title of draft article 8 [7] remains “Excess of authority or contravention of instructions”.

Draft article 9 [8]

Mr. Chairman,

Draft article 9 [8] concerns the question of conduct acknowledged and adopted by an international organization as its own. The provision elicited no changes other than the technical refinement of replacing the phrase “the preceding draft articles” with “draft articles 6 to 8” and deleting the second reference to “international” before “organization”, for reasons mentioned earlier.

The title of draft article 9 [8] remains “Conduct acknowledged and adopted by an international organization as its own”.

Chapter III

Mr. Chairman,

Chapter III also continues to consist of four draft articles. The title adopted on first reading, namely “Breach of an international obligation” was retained.
Draft article 10 [9]

Mr. Chairman,

Draft article 10 [9] deals with the existence of a breach of an international obligation. As regards paragraph 1, the Drafting Committee took note of a suggestion made by an international organization that it make it clearer in the draft article that breaches of the rules of an organization are not as such breaches of international law. The Committee considered making this nuance clearer by replacing “international obligation” with “obligation under international law”, but decided against it as it would have meant introducing such a change in other draft articles which could have led to unnecessary a contrario interpretations arising from the difference between the present draft articles and those on State responsibility. The commentary will clarify that what is meant by “international obligation” are obligations arising under international law. The Committee further focused on amending the concluding clause which in the first reading version read “regardless of its origin and character”. In particular, the Committee considered the use of the pronoun “its” to be confusing, and decided to reformulate the phrase as “regardless of the origin or character of the obligation concerned”. The earlier version “origin and character” has been rendered as “origin or character”, so as to align with the formulation in the 2001 articles on State responsibility.

The matter was also considered in paragraph 2, where the Drafting Committee changed the phrase “breach of an international obligation” to “breach of any international obligation” so as to suggest that by no means all obligations may arise under the rules of the organization would be international obligations. The Committee further discussed alternative formulations for the words “that may arise”, including “on the basis of”, “under”, and “arising out of”. However, it decided to retain the first reading formulation as an indication that, while the rules of the organization might not per se be rules of international law, they nonetheless may serve as the basis of obligations which arise under international law.

The Drafting Committee also introduced the phrase “for an international organization towards its members”, after “international obligation that may arise” as a reminder that the rules of the organization constrain the organization primarily in its relations with its members. Obligations in relation to non-members arising out of the rules of the organization are not likely to be obligations under international law. In short, the phrase serves to confirm what is also said in draft article 32 [31] (and what is implied in draft article 5), namely that the rules of the organization cannot be relied upon as a way of justifying the non-application or modification of rules of international law which would otherwise be applicable to the organization.

The title of draft article 10 [9] remains “Existence of a breach of an international obligation”.


Mr. Chairman,

The texts and titles of draft articles 11 [10], 12 [11] and 13 [12] were adopted in the same versions as on first reading, with minor technical adjustments. In draft article 11 [10], the second “international” before “organization” was deleted, in line with the practice already described. Similarly, in draft article 12 [11], paragraph 2, the concluding reference to “the international obligation” has been replaced by “that obligation”. There is also no longer a comma between the words “wrongful” and “occurs” in paragraph 1 of draft article 13 [12].

Chapter IV

Mr. Chairman,

Chapter IV of Part One is entitled “Responsibility of an international organization in connection with the act of a State or another international organization” and is constituted of six draft articles. The Drafting Committee decided to make no changes to the texts and titles of draft articles 14 [13], 15 [14], 16 [15], 18 [17] and 19 [18] as adopted on first reading, other than a technical refinement in subparagraphs (a) of draft articles 14 [13] and 15 [14], replacing the words “that organization” with “the former organization”. Accordingly, draft article 17 [16] was the only draft article in this Chapter that was the subject of modification.

Before proceeding to draft article 17 [16], allow me to state for the record that the Drafting Committee did consider, under draft article 14 [13], the question of whether the element of intention should be added to that of “knowledge of the circumstances of the act”. The commentary to the corresponding article in the State responsibility articles makes reference to the element of intention, and the issue was whether the same thing should be done in the commentary to draft article 14 [13]. The Special Rapporteur, in the commentary to the first reading text, had declined to reproduce the reference to the criterion of intention out of concern that this would give rise to a discrepancy with the draft article, which does not include such element. While there was support in the Drafting Committee for the inclusion of the criterion of intention in the draft article, the Committee decided against doing this as it would imply a reorientation of the concept of responsibility being employed, which could also have implications for the 2001 articles on State responsibility.

Draft article 17 [16]

Mr. Chairman,

I now draw your attention to draft article 17 [16], which was the subject of some discussion in the Drafting Committee. As you can see, the provision has been significantly restructured. Before describing the draft article paragraph by paragraph, allow me to dispose of one matter. The Special Rapporteur had proposed making the provision subject to what is now draft articles 14 [13] to 16 [15] by including a phrase to that effect at the beginning of what was paragraph 1. This would serve to remove any overlap between those provisions and draft article 17 [16] (which had been pointed out in some of the comments received) and would make it clear that draft article 17 [16] was an additional basis for establishing responsibility. The Drafting Committee decided that such precision was strictly not necessary, and that it could be explained in the commentary.

The central issue for the Drafting Committee, as in the Plenary debate, was whether the provision should, in principle, extend to cover circumvention through recommendations. If you recall, the Special Rapporteur had proposed to delete paragraph 2 of the first reading text entirely, so as to limit the draft article to responsibility for binding decisions. The Committee also had before it an intermediate proposal which retained the first reading text, including paragraph 2, but deleted references to the organization incurring responsibility for the recommendations it adopts, leaving the concept of responsibility for authorizations. The Committee also had before it a proposal that included the element of a recommendation causing members to commit such an act. It, however, decided not to pursue such approach, preferring instead to base itself on the proposal to limit responsibility for non-binding acts to authorizations granted by an organization. The view
Draft article 22.11 deals with the characterization of the resort to countermeasures as a circumstance precluding wrongfulness. As in the Planetary debate, the provision was the subject of some debate in the Drafting Committee. As will be described shortly, this provision was the subject of a certain amount of disagreement and conflict among members of the Committee, with the goal of the definition being to differentiate circumstances that truly preclude wrongfulness from those that do not. It was agreed that in order to achieve the recognition of the Committee that different organizations ascribed different meanings (and legal consequences) to the notion of “recommendations.” This would be in effect what mattered: whether, by making a recommendation the organization intended its members to act in a particular manner. In other words, the concept of “authorization” included within the definition should not encourage the organization to act in a certain manner. This was the approach taken by the Drafting Committee. Working on first reading, the key difference being that the concept of “circumvention” is given greater prominence by being located at the beginning of the formulation adopted for both paragraphs 1 and 2. Paragraph 1, therefore, maintains the thrust of that adopted on first reading, establishing the general scenario of the resort to countermeasures being taken by an international organization against one of its member States. The Drafting Committee accepted the working hypothesis suggested during the Plenary debate that it was possible to distinguish between countermeasures taken against a member for breaches of obligations unrelated to membership, and those against a member for obligations binding on the international organization itself. The focus of the Committee’s consideration thus was on seeking to qualify the possibility of countermeasures taken against a member State for breaches of obligations unrelated to membership, so as to preserve the relationship between member and international organization against its member State for breaches of obligations binding on the international organization itself. Paragraph 2 covers the situation where countermeasures are taken against a member State or international organization by authorizing its members to commit the act which would be wrongful for the organization if it had committed the act. The additional concept, previously in subparagraph (b) in former paragraph 2, of the act actually having been performed by the members, has been retained and strengthened by linking it to the authorization in the new words “and the act in question is committed because of that authorization.” The idea is of abuse by the international organization of its separate legal personality.

Paragraph 3 is retained substantially in the form adopted on first reading. The only change is to add the words “subject to paragraph 2.” The Drafting Committee also decided to replace the term “circumvention” with “countermeasure.” Paragraph 3 applies to situations where countermeasures are taken against a member State or international organization by authorizing its members to commit the act which would be wrongful by the organization if it had committed the act. The additional concept, previously in subparagraph (b) in former paragraph 2, of the act actually having been performed by the members, has been retained and strengthened by linking it to the authorization in the new words “and the act in question is committed because of that authorization.” The idea is of abuse by the international organization of its separate legal personality.

Chapter V

The title of draft article 17 [16] has been amended to read “Circumstances precluding wrongfulness.” Of the eight draft articles in the chapter, the Drafting Committee made changes only to two. Accordingly, it adopted the texts and title of draft articles 20 [19], 21 [20], 22 [21], 23 [22], 24 [23], 25 [24] and 26 [25]. Paragraph 1 applies to situations where countermeasures are taken against a member State or international organization by authorizing its members to commit the act which would be wrongful by the organization if it had committed the act. The additional concept, previously in subparagraph (b) in former paragraph 2, of the act actually having been performed by the members, has been retained and strengthened by linking it to the authorization in the new words “and the act in question is committed because of that authorization.” The idea is of abuse by the international organization of its separate legal personality.
Draft article 25 [24] concerns the invocation of necessity as a circumstance precluding wrongfulness. The Drafting Committee retained the first reading formulation with refinements in subparagraphs (a) and (b) of paragraph 1. In particular, the Committee amended the scope of subparagraph (a) so as to add to the list of essential interests being safeguarded by the international organization the “interest of its member States”. If you recall, the first reading version was limited to the safeguarding against a grave and imminent peril an essential interest of the international community as a whole. The Committee was of the view that the first reading version potentially excluded many international organizations whose functions did not involve protecting the interest of the international community as a whole. In addition, a comma was inserted after “international community as a whole” and the final clause of subparagraph (a) was changed from “the function to protect that interest” to “the function to protect the interest in question”, by way of making the provision clearer.

A change was introduced in subparagraph (b) through the addition of the word “international” before “obligation”. There was a concern in the Committee that the introduction of a reference to the interests of the members of the international organization in subparagraph (a) meant that subparagraph (b) was no longer in balance with (a). The Drafting Committee felt that making reference to an “international obligation” helped clarify that that part of the subparagraph was referring to the interests of the State or States, including non-member States, against which the circumstance precluding wrongfulness was being invoked.

The Committee further considered but rejected a proposal to also refer to the interests of the international organization itself, in subparagraph (b), on the grounds that such interests were not provided for in subparagraph (a). The rationale is that international organizations do not have “essential interests” on which they can base an invocation of necessity as a circumstance precluding wrongfulness, or on which they can rely to prevent another entity from invoking necessity against them. The Committee decided to retain this policy, which was agreed to during the first reading, since changing it would have meant broadening the concept of “essential interest”.

The title of draft article 25 [24] remains “Necessity”.

Part Three

Mr. Chairman,

I wish to now turn to Part Three of the draft articles, the title of which has been retained as “Content of the international responsibility of an international organization”. The Part is made up of three chapters.

Chapter 1

Chapter 1 of Part Three continues to be entitled “General principles” and is constituted of six draft articles, of which the texts and titles of the first four, namely draft articles 28 [27] to 31 [30] were adopted without any change to the first reading formulation.

Draft article 31 [30]

Mr. Chairman,

As regards draft article 31 [30], the Drafting Committee considered the possibility of replacing the reference “caused by the internationally wrongful act”, with “caused by its internationally wrongful act” but decided against it for fear of inadvertently changing the concept. The Committee further agreed to reflect in the commentary the point that international organizations can negotiate bilateral agreements to regulate the form and extent of reparation as a means of mitigating the possible impact of the requirement of full reparation.

As already mentioned, draft article 31 [30], which remains entitled “Reparation”, was adopted without change.

Draft article 32 [31]

Draft article 32 [31] has its roots in the corresponding provision in the 2001 articles on State responsibility. Paragraph 1 corresponds to article 32 of the 2001 articles, and establishes the position that the responsible international organization cannot, as a general proposition, rely on its rules as a justification for failure to comply with its obligations under Part Two. The rules of the organization are not opposes to non-member States or organizations unless those third States or organizations have accepted them as governing their relations with the international organization or they apply as a matter of customary international law. Unless the latter conditions exist, the rules of the international organization cannot be relied upon to justify the breach of an international obligation owed to those entities.

The Commission had, during the first reading, accepted the view that this did not fully reflect the prevailing position and that, in the relations between the international organization and its members, the organization’s rules may indeed derogate from what is provided in paragraph 1. This flows from draft article 10 [9] where it is recognized that some rules of the organization may give rise to obligations under international law. Paragraph 2, accordingly, is addressed only to the situation of the relations between the international organization and its members, and recognizes that the rules of the organization may play a role in the operation of Part Three.

During its consideration of draft article 32 [31], the Drafting Committee considered a proposal to include a general statement of principle as to the applicability of the rules of the organization corresponding to that in article 3 of the 2001 articles, but decided to consider this at a later stage. As I have already mentioned, the Committee subsequently did insert a new provision as draft article 5, which replicated the first part of article 3 of the 2001 articles. It, however, refrained from saying anything about the characterization by the rules of the organization of an act as wrongful or not, out of recognition that international law and the rules of the international organization are to some extent intertwined in the relations between members and the organization, and that the rules of the organization could apply as part of international law.

The Drafting Committee decided to keep draft article 32 [31] as being applicable to the specific situation of the content of international responsibility as provided for in Part Three.

The Drafting Committee made no change to paragraph 1. The Committee considered a proposal to insert “as such” after “may not rely on its rules” as an indication of the nuanced role that the rules of the organization play. However, the Committee decided against doing so since it could suggest that there may be situations where the rules of the organization could apply to non-members, which is not the case.

As regards paragraph 2, the Drafting Committee decided to replace the concluding clause, which read in the first reading text “of the responsibility of the organization towards its member States and organizations”, with “of the relations between the organization and its member States and organizations”. This was done to make the provision clearer, and to convey the idea that paragraph 2 is only carving out an exception to paragraph 1 for purposes of the present Part of the draft articles.
The earlier version of the title of draft article 32 [31] was “Irrelevance of the rules of the organization”. After considering various options for amending the title, the Committee settled on inverting the title so as to read “relevance” since paragraph 2 was less about the “irrelevance” of the rules and more about their “relevance” in relation to Part Three. The title of draft article 32 [31] was thus amended to read “Relevance of the rules of the organization”. In doing so, it should be noted, for the record, that the Committee was not reversing the position of the State responsibility articles, but was rather reflecting the operation, in the context of the responsibility of international organizations, of the exception in paragraph 2 in relation to the general proposition in paragraph 1.

Draft article 33 [32]

Draft article 33 [32] deals with the question of the scope of international obligations set out in Part Three. The only change introduced was in paragraph 1, in the manner in which the possible groupings of States and international organizations is described. One suggestion was to render the phrase in the first reading text “to one or more other organizations, to one or more States, or to the international community as a whole” as “to a State or another international organization, to several States or international organizations, or to the international community as a whole”, which is closer to the formulation in draft article 47 [46] as well as that employed in the 2001 articles on State responsibility. The Drafting Committee felt that the proposal added an unnecessary element of imprecision and preferred to work on the basis of the first reading formulation. Other ideas were to add “or combination thereof” or “singly or jointly” to suggest that there are multiple possible combinations of groupings that are envisaged, but neither proposal garnered sufficient support in the Committee. The Committee settled for “to one or more States, to one or more other organizations, or to the international community as a whole”, which is the first reading text with the reference to States and international organizations reversed as it is the practice to refer to States first.

The title of draft article 33 [32] remains “Scope of international obligations set out in this Part”.

Chapter II

Mr. Chairman,

Chapter II of Part Three, which continues to be entitled “Reparation for injury”, is constituted of seven draft articles. The Drafting Committee adopted text and titles of draft articles 34 [33] to 39 [38] without change to the first reading formulation. Therefore, in this Chapter, I will only discuss draft article 40 [39], which has been modified.

Draft article 40 [39]

Draft article 40 [39] concerns the question of the fulfillment of the obligation to make reparation. If you recall, the Special Rapporteur presented a revised text in his eighth report which combined that adopted on first reading, slightly revised and presented as a new paragraph 1, together with a further text proposed during the debate on the first reading text in 2009 but which had not been adopted by the Drafting Committee. That provision was included as a new paragraph 2 in the Special Rapporteur’s proposal.

The Drafting Committee noted that this course of action had been supported in the Plenary, and, therefore, agreed to work on that basis. The Committee accepted a suggestion to reverse the order of the paragraphs in order to present the obligation on the international organization first, and then draft article 39 as adopted on first reading, which deals with the obligations of members of the organization, appears now as paragraph 2.

The title of draft article 40 [39] is “Ensuring the fulfillment of the obligation to make reparation”. This is an amended version of the first reading title. The earlier reference to “effective performance” has been replaced by “fulfillment” so as to align the title with the text of the draft article. Furthermore, the first reading phrase “obligation of reparation” has now been refined to “obligation to make reparation”.

Chapter III

Mr. Chairman,

The last chapter of Part Three is Chapter III, which continues to be entitled “Serious breaches of obligations under peremptory norms of general international law”. The texts and titles of draft articles 41 [40] and 42 [41] were adopted by the Drafting Committee without change.

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Part Four

Mr. Chairman,

I propose now to turn to Part Four of the draft articles, which remains entitled “The implementation of the international responsibility of an international organization”. The Part continues to be divided into two chapters.

Chapter I

Chapter I, which continues to be entitled “Invocation of the responsibility of an international obligation”, is constituted of 8 draft articles. The text and titles of draft articles 43 [42], 44 [43], 46 [45] and 47 [46] were adopted without change to the first reading formulations. Modifications were introduced in draft articles 45 [44], 48 [47] to 50 [49].

Draft article 45 [44]

Draft article 45 [44] deals with the admissibility of claims. The text adopted is substantially that agreed to on first reading. The only modifications made are the inclusion of the definite article “the” before “nationality of claims” at the end of the first paragraph. In the second paragraph, the reference in the first line to “[w]hen a rule requiring” has been replaced by “[w]hen the rule of”. Furthermore, the clause “provided by that organization” towards the end of paragraph 2 was deleted. The Drafting Committee considered refining that phrase to “provided by the rules of that organization”, but felt that that would be too restrictive since it is possible, for example, for an international organization to simply not assert its immunities. It is not clear that such possibility would necessarily be undertaken in accordance with the rules of the organization. At the same time, there was a concern that the reference to “provided by the rules of that organization” could be read as being discretionary which is not what is intended. The solution was to delete the reference, which also had the benefit of aligning the text with the State responsibility articles.
It should be noted that, in the case of the invocation of responsibility by a State or international organization other than an injured State or organization, under draft article 49 [48], paragraph 5, only paragraph 2 of draft article 45 [44] is applicable. In other words, in such cases, there would be no nationality of claims requirement.

The title of draft article 45 [44] remains “Admissibility of claims”.

**Draft article 47 [46]**

Turning to draft article 47 [46], the Committee considered proposals for refining the text by way of finding a better formula for expressing the possible combinations of States and international organizations which may be injured by the same internationally wrongful act. This included using the word “plurality” which is in the title. As already mentioned, the Committee decided not to make any changes to the text or title, noting that the question of the potential constellations of arrangements was covered by the phrase “each injured State or international organization may separately”.

**Draft article 48 [47]**

Draft article 48 [47] deals with the situation where there exists a plurality of responsible States or international organizations. In paragraph 1, the Drafting Committee once again considered the manner in which the collectivity of entities was expressed. In this case, it recognized that the formula used in some of the previous draft articles was not appropriate here since this draft article dealt with the situation where one international organization is responsible together with one or more States or international organizations. Accordingly, it retained the formulation as adopted on first reading with the minor refinement of adding the word “international” before “organizations” in the first line, and deleting “international” before “organization” in the last line.

Regarding paragraph 2, the Committee took note of the Special Rapporteur’s intention to clarify in the commentary the question of the sequencing of the invocation of subsidiary responsibility in relation to that of primary responsibility. It will be made clear that having a temporal sequence is not a rigid requirement. The Committee considered a proposal to try say as much in the text itself by replacing “has not led to reparation” with “does not lead to reparation” or “has not resulted in reparation”, but decided to retain the first reading formulation.

The first reading version included a reference to what is now draft article 62 [61]. The Committee considered different formulations for that cross-reference, including “as in the case provided for in”, but eventually decided to delete it since it implied that subsidiary responsibility was provided for in other draft articles. It was also not strictly necessary to provide an example in the text of the draft article, and as a general policy, the Drafting Committee preferred to avoid forward cross-references.

The title of draft article 48 [47] has been revised to now read “Responsibility of an international organization and one or more States or international organizations”. This was done to more clearly align the title with the text of paragraph 1.

**Draft article 49 [48]**

Draft article 49 [48] concerns the question of the invocation of responsibility by a State or an international organization other than an injured State or international organization. The Drafting Committee focused its consideration on paragraph 3. It added the words “as a whole” after “international community”, so as to align the text with the standard phrase “international community as a whole”. The Drafting Committee further considered a proposal to word the final clause of the paragraph 3 as “and such invocation is within the powers and functions of the international organization invoking responsibility”. However, there was opposition in the Committee to introduce the concept of “powers” in the draft articles, and the Committee settled for replacing “is included among the functions” with “is within the functions”, which it felt was clearer. The present formulation therefore allows an international organization which has the task to promote a certain interest to invoke the responsibility for breaches of obligations in the area covered by that interest.

As already discussed in the context of my introduction to draft article 45 [44], paragraph 5 of draft article 49 [48] limits the requirements for the invocation of responsibility by interested non-injured States or international organizations by excluding the applicability of the nationality of claims rule for such types of claims. The Drafting Committee recalled that there had been a suggestion in the Plenary to make this clearer, but considered the first reading formulation to be satisfactory, and, therefore, decided to retain paragraph 5 as adopted on first reading.

The title of draft article 49 [48] remains “Invocation of responsibility by a State or an international organization other than an injured State or international organization”.

**Draft article 50 [49]**

Draft article 50 [49] concerns the scope of Chapter I. If you recall, the first reading version presented the provision as describing the scope of the entire Part Three. The Drafting Committee focused on whether this saving clause applied also to Chapter II of the Part, dealing with “countermeasures”. The sense was that it did not, since draft article 50 [49] dealt with the entitlement to invoke the responsibility. Making it applicable to the entire Part implied a recognition of the right of persons or entities other than a State or international organization to take countermeasures, which was not what was intended by the provision. This will be made clear in the commentary. Accordingly, the Committee decided to limit the provision by replacing “Part” with “Chapter”.

The title of draft article 50 [49] was similarly modified to read “Scope of this Chapter”.

**Chapter II**

Mr. Chairman,

Chapter II continues to be entitled “Countermeasures”. It is constituted of 7 draft articles. The text and titles of draft articles 51 [50], 54 [53], 55 [54] and 56 [55] were adopted without change to the first reading formulations, except for the addition of the words “of countermeasures” in the title of draft article 54 [53], so that it now reads “Proportionality of countermeasures”. Modifications were introduced in draft articles 52 [51], 53 [52] and 57 [56], which I will now discuss.

**Draft article 52 [51]**

Draft article 52 [51] pertains to the conditions for the taking of countermeasures by members of an international organization. The Drafting Committee modified the provision in order to align it with what was decided in connection with draft article 22 [21]. In particular, it introduced the same distinction drawn there, namely between obligations which arise generally for members of an international organization independently of the rules of the organization and those which are based on the rules of the organization. This necessitated the inclusion of an
additional paragraph, with the former scenario captured in paragraph 1, and the latter in new paragraph 2. This two-tiered arrangement is established by making paragraph 1 subject to new paragraph 2.

As regards the chapeau in paragraph 1, in addition to the introduction of the qualifying clause at the beginning already referred to, the Drafting Committee moved the reference, in the first reading version, to “under the conditions set out in the present chapter” down as new subparagraph (a) and redrafted it as “the conditions referred to in draft article 51 are met”. This was done to align the text with what was adopted in draft article 22 [21].

Subparagraph (b) retains the text of former subparagraph (a).

Subparagraph (c) is based on the first reading version of subparagraph (b), but has been rewritten in order to follow the formulation adopted in paragraph 2(c) of draft article 22 [21]. As already mentioned, paragraph 2 is new. The formulation that you have before you is based on that adopted for paragraph 3 of draft article 22 [21], with some necessary adjustments.

The Drafting Committee considered different options for the title of draft article 52 [51], including “countermeasures by members of an international organization”. The Committee settled for “Conditions for taking countermeasures by members of an international organization”.

Draft article 53 [52]

Draft article 53 [52] concerns the types of obligations which are not affected by countermeasures. The provision was adopted substantially with the same formulation as adopted on first reading with the following modifications.

Concerning, paragraph 1, subparagraph (b), the Drafting Committee took into account the comments made by Governments and in the Plenary that the reference to “fundamental human rights” was not in line with the contemporary practice of referring to human rights. After some discussion, the Committee decided to delete the word “fundamental”, so as to now render the phrase as “protection of human rights” on the understanding that it will be explained in the commentary that, in doing so, the Committee did not intend to widen the scope of draft article 53 [52], thereby commensurately limiting the possibility of the taking of countermeasures. Instead, it was introducing the change merely by way of resorting to the more contemporary way of referring to human rights, including in the Commission’s own work elsewhere. Concerning paragraph 2, subparagraph (a), the Drafting Committee decided to simplify the text by replacing the phrase in the first reading text, “the injured State or international organization” with the pronoun “it”.

The Drafting Committee further considered a suggestion received from an international organization to redraft paragraph 2, subparagraph (b), so as to reflect the privileges and immunities of international organizations. It, however, declined to do so because it did not feel that it was the function of subparagraph (b) to list the types of privileges and immunities which international organizations enjoy. Rather the concern was to exclude from the ambit of countermeasures the issues for which international organizations might be most vulnerable through the taking of countermeasures. The proposed change could also not be accepted because not all international organizations falling within the scope of the draft articles enjoy privileges and immunities to the same degree. The Committee considered changing the word “any” to “the”, but decided against it since it suggested that there is a general rule that all the organs and agents enjoy privileges and immunities, which is not the case. Some organizations have no immunities at all. It will be explained in the commentary that the word “any” means wherever such privileges and immunities exist.

The only change made to subparagraph (b) was to change “agents” to “organs or agents”, as a consequence of the introduction of the new definition of “organs of an international organization” in draft article 2.

The title of draft article 53 [52] remains “Obligations not affected by countermeasures”.

Draft article 57 [56]

Draft article 57 [56] is a without prejudice clause dealing with measures taken by a State or international organization other than an injured State or organization. It finds its origin in the corresponding provision of the 2001 articles on State responsibility. The Drafting Committee focused on improving the formulation of the text without making changes in substance.

The reference in the first reading text to “is without prejudice to the right” has been refined to “does not prejudice the right”. Furthermore, the words “responsibility of an international organization” now appears as “responsibility of another international organization”. Similarly, the phrase “measures against the latter international organizations” has been refined to “measures against that organization”. Finally, the words “injured party” are now presented as “injured State or organization”. Such changes were also introduced to bring the draft article closer into line with the formulation of the corresponding provision in the 2001 articles on State responsibility.

The title of draft article 57 [56] has been amended to now read “Measures taken by States or international organizations other than an injured State or organization” to more closely track the content of the draft article.

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Part Five

Mr. Chairman,

I turn now to Part Five of the draft articles, the title of which was changed to “Responsibility of a State in connection with the conduct of an international organization”. The Part contains six draft articles. The text and title of draft article 60 [59] was adopted without change. Modifications were introduced in draft articles 58 [57], 59 [58], 61 [60], 62 [61] and 63 [62], which I will now introduce.

Draft article 58 [57]

Draft article 58 [57] provides for State responsibility when the State aids or assists an international organization in the commission of an internationally wrongful act. Other than a drafting refinement to subparagraph (a) modifying “that State” to “the State”, the Drafting Committee retained the text of the first reading provision as new paragraph 1 of draft article 58 [57].

The focus of the discussion in the Drafting Committee was what is now presented as a new paragraph 2. The Committee took note of the fact that several Governments had called upon the Commission to draw a clearer distinction between participation in the decision-making process within an international organization, as distinct from aiding or assisting the organization in the commission of an internationally wrongful act. While this issue was raised in the Special Rapporteur’s eighth report in the context of a possible clarification in the commentary, the Committee nonetheless decided to include an indication in the text of the draft article itself.

As was done in the context of countermeasures, the Drafting Committee drew a basic conceptual distinction between member States acting qua members and member States acting in a capacity other than a member. It felt that the possibility of responsibility for aid or assistance in
As already indicated, the text of draft articles 60 [59] and 61 [60] was adopted in the same form as that adopted on first reading with the exception of drafting refinements in subparagraph (b) to replace "that organization" with "the coercing State".

Draft article 61 [60] concerns the question of the responsibility of a member State for the commission of an internationally wrongful act by an international organization. This article is to be seen in the context of related provisions of paragraphs 1 and 2 of draft articles 58 [57] to 60 [59]. In particular, the Drafting Committee was unable to agree on a definition of the international responsibility of a member State in relation to the subject-matter of one of the State's international obligations. As a result, the Drafting Committee adopted a revised version of paragraph 1 as follows:

"Draft article 61 [60].—A member State shall not be considered responsible for an internationally wrongful act committed by an international organization if the organization has competence in relation to the subject-matter of one of the State's international obligations."

The new text is intended to replace the former paragraph 1, which stated: "A member State shall not be considered responsible for an internationally wrongful act committed by an international organization if the organization has competence in relation to the subject-matter of one of the State's international obligations, and the act was committed in such a manner as to indicate that the member State was responsible for the act of the organization." This was to avoid the possibility of the member State being held responsible for acts committed by the international organization in a way that could be deemed responsible for the organization itself.

Draft article 62 [61] concerns the question of the responsibility of a member State for the commission of an internationally wrongful act by an international organization. This article is to be seen in the context of related provisions of paragraphs 1 and 2 of draft articles 58 [57] to 60 [59]. In particular, the Drafting Committee was unable to agree on a definition of the international responsibility of a member State in relation to the subject-matter of one of the State's international obligations. As a result, the Drafting Committee adopted a revised version of paragraph 1 as follows:

"Draft article 62 [61].—A member State shall not be considered responsible for an internationally wrongful act committed by an international organization if the organization has competence in relation to the subject-matter of one of the State's international obligations."

The new text is intended to replace the former paragraph 1, which stated: "A member State shall not be considered responsible for an internationally wrongful act committed by an international organization if the organization has competence in relation to the subject-matter of one of the State's international obligations, and the act was committed in such a manner as to indicate that the member State was responsible for the act of the organization." This was to avoid the possibility of the member State being held responsible for acts committed by the international organization in a way that could be deemed responsible for the organization itself.
I turn now to the drafting of the draft articles, namely Part Six, which continues the title "General provisions", but decided against it. The text and titles of draft articles 65 to 67 were adopted without change to the first reading formulations. Modifications were introduced on some of the issues raised in draft article 64.

Draft article 64 ([63]) deals with the "lex specialis" principle. The Drafting Committee decided, in line with paragraph 1, to delete the qualifying clause "without prejudice to the...", so as to clarify that acceptance by a State or international organization involving responsibility was to be made clear in the text that acceptance needs to operate in a residual manner, so as to align the English with the French text. The Drafting Committee also decided to cover the point in the commentary. Another proposal, there should always be a responsible subject, as it felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.

As regards the chapeau of paragraph 1, the Drafting Committee took into account a recommendation that it be made clear in the text, since acceptance could also be understood as involving conduct, in accordance with "the international responsibility" to "any international responsibility". The second sentence was further refined by the Committee as to align the English with the French text. The Drafting Committee further decided to suppress the phrase, in the English text, "in accordance with" with "under" so as to align the English with the French text. The Drafting Committee also decided to suppress the phrase, in the English text, "entailed in accordance with" with "under" so as to align the English with the French text. The Drafting Committee further understood paragraph 2 as implying that the responsibility of a State or international organization remains unaffected if the responsible subject, namely the State or international organization, is not aware of the responsibility of the international organization. The Committee considered a proposal to expand the scope of the new paragraph 2, so as to be applicable to the relations between the organization and its members. This proposal was not accepted, however, as it was felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.

The Drafting Committee accordingly limited itself to refining the first reading text. Two modifications were introduced. The phrase "or a State for an internationally wrongful act of an international organization" is now rendered as "or of a State in connection with the conduct of an international organization". The Committee further refined the text of paragraph 2 by replacing the phrase, in the English text, "which is entailed in accordance with" with "under" so as to align the English with the French text. The Drafting Committee further understood paragraph 2 as implying that the responsibility of a State or international organization remains unaffected if the responsible subject, namely the State or international organization, is not aware of the responsibility of the international organization. The Committee considered a proposal to expand the scope of the new paragraph 2, so as to be applicable to the relations between the organization and its members. This proposal was not accepted, however, as it was felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.

The Committee considered a proposal to expand the scope of the new paragraph 2, so as to be applicable to the relations between the organization and its members. This proposal was not accepted, however, as it was felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.

As a consequence of this discussion, the Drafting Committee considered the possibility of deleting the phrase, in the English text, "without prejudice to the...", so as to align the English with the French text. The Drafting Committee also decided to cover the point in the commentary. Another proposal, there should always be a responsible subject, as it felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.

With regard to paragraph 2, the Drafting Committee took into account a recommendation that it be made clear in the text, since acceptance could also be understood as involving conduct, in accordance with "the international responsibility" to "any international responsibility". The Committee further refined the text of paragraph 2 by replacing the phrase, in the English text, "entailed in accordance with" with "under" so as to align the English with the French text. The Drafting Committee also decided to suppress the phrase, in the English text, "in accordance with" with "under" so as to align the English with the French text. The Drafting Committee further understood paragraph 2 as implying that the responsibility of a State or international organization remains unaffected if the responsible subject, namely the State or international organization, is not aware of the responsibility of the international organization. The Committee considered a proposal to expand the scope of the new paragraph 2, so as to be applicable to the relations between the organization and its members. This proposal was not accepted, however, as it was felt that such a general proposal could not be sustained. The Committee also did not accept a proposal to add a second sentence dealing with the rules of an international organization.
Draft article 67 [66] is a saving clause preserving the Charter of the United Nations. As already alluded to, the Drafting Committee decided to retain the formulation of the draft article, and its title, as adopted on first reading. It understood that the provision should not be interpreted as meaning that the United Nations, as an international organization, was exempt from the draft articles.

Furthermore, the Committee considered a proposal to include a reference to the draft articles having to be interpreted in conformity with the Charter, as can be found in the commentary to the equivalent provision in the 2001 articles on State responsibility. It, however, decided against recommending such clarification in either the provision itself or the commentary because it felt that it was easier to sustain such an assertion in the context of State responsibility than in that of the responsibility of international organizations. Contrary to States, international organizations are not capable of becoming parties to the Charter of the United Nations, and as such cannot become members of the Organization. Nor are they necessarily bound by the provisions of the Charter or even the decisions of the organs of the United Nations. The preference, therefore, was for a provision that merely preserved the Charter of the United Nations without taking a position on whether or not it is binding on international organizations generally. A proposal to make this clearer by adding the words “to any obligations arising under” before “the Charter of the United Nations”, did not succeed in the Committee, out of concern that modifying the formulation as had been adopted in the 2001 articles on State responsibility could have unintended consequences.

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Mr. Chairman,

This concludes my introduction of the second report of the Drafting Committee this year. It is my sincere hope that the Plenary will be in a position to adopt the draft articles on the responsibility of international organizations, on second reading, as presented.

Thank you.
Chart of the United Nations System
Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, I.C.J. Reports 1948
INTERNATIONAL COURT OF JUSTICE

YEAR 1948.

May 28th, 1948.

CONDITIONS OF ADMISSION OF A STATE TO MEMBERSHIP IN THE UNITED NATIONS (ARTICLE 4 OF THE CHARTER)

Request for advisory opinion in virtue of Resolution of General Assembly of United Nations of November 17th, 1947.—Request does not refer to actual vote but to statements made by a Member concerning the vote.—Request limited to the question whether the conditions in Article 4, paragraph 1, of the Charter are exhaustive.—Legal or political character of the question.—Competence of the Court to deal with questions in abstract terms.—Competence of the Court to interpret Article 4 of the Charter.—Legal character of the rules in Article 4.—Interpretation based on the natural meaning of terms.—Considerations extraneous to the conditions of Article 4. Considerations capable of being connected with these conditions.—Procedural character of paragraph 2 of Article 4.—Subordination of political organs to treaty provisions which govern them. Article 24 of the Charter.—Demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.—Individual consideration of every application for admission on its own merits.

ADVISORY OPINION.

Present: President Guerrero; Vice-President Basdevant; Judges Alvarez, Fabela, Hackworth, Winziarski, Zoriédo, De Visscher, Sir Arnold McNair, Klaestad, Badawi Pasha, Krylov, Read, Hsu Mo, Azevedo.

The Court, composed as above, gives the following advisory opinion:

On November 17th, 1947, the General Assembly of the United Nations adopted the following Resolution:

“The General Assembly,

Considering Article 4 of the Charter of the United Nations,

Considering the exchange of views which has taken place in the Security Council at its Two hundred and fourth, Two hundred and fifth and Two hundred and sixth Meetings, relating to the admission of certain States to membership in the United Nations,

Considering Article 96 of the Charter,

Requests the International Court of Justice to give an advisory opinion on the following question:

Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependant on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?

Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council.”

By a note dated November 24th, 1947, and filed in the Registry on November 29th, the Secretary-General of the United Nations transmitted to the Registrar a copy of the Resolution of the General Assembly. In a telegram sent on December 10th, the Secretary-General informed the Registrar that the note of November 24th was to be regarded as the official notification and that certified true copies of the Resolution had been despatched. These copies reached the Registry on December 12th, and the question was then entered in the General List under No. 3.

The same day, the Registrar gave notice of the request for an opinion to all States entitled to appear before the Court, in accordance with paragraph 1 of Article 66 of the Statute. Furthermore,
as the question put mentioned Article 4 of the Charter, the Registrar informed the Governments of Members of the United Nations, by means of a special and direct communication as provided in paragraph 2 of Article 66, that the Court was prepared to receive from them written statements on the question before February 9th, 1948, the date fixed by an Order made on December 12th, 1947, by the President, as the Court was not sitting.

By the date thus fixed, written statements were received from the following States: China, El Salvador, Guatemala, Honduras, India, Canada, United States of America, Greece, Yugoslavia, Belgium, Iraq, Ukraine, Union of Soviet Socialist Republics, and Australia. These statements were communicated to all Members of the United Nations, who were informed that the President had fixed April 15th, 1948, as the opening date of the oral proceedings. A statement from the Government of Siam, dated January 30th, 1948, which was received in the Registry on February 14th, i.e., after the expiration of the time-limit, was accepted by decision of the President and was also transmitted to the other Members of the United Nations.

By its Resolution the General Assembly instructed the Secretary-General to place at the disposal of the Court the records of certain meetings of the Security Council. In accordance with these instructions and with paragraph 2 of Article 65 of the Statute, where it is laid down that every question submitted for an opinion shall be accompanied by all documents likely to throw light upon it, the Secretary-General sent to the Registry the documents which are enumerated in Section I of the list annexed to the present opinion. A part of these documents reached the Registry on February 10th, 1948, and the remainder on March 20th. The Secretary-General also announced by a letter of February 12th, 1948, that he had designated a representative, authorized to present any written and oral statements which might facilitate the Court’s task.

Furthermore, the Governments of the French Republic, of the Federal People’s Republic of Yugoslavia, of the Kingdom of Belgium, of the Czechoslovak Republic, and of the Republic of Poland announced that they had designated representatives to present oral statements before the Court.

By decision of the Court, the opening of the oral proceedings was postponed from April 15th to April 22nd, 1948. In the course of public sittings held on April 22nd, 23rd and 24th, the Court heard the oral statements presented

on behalf of the Secretary-General of the United Nations, by its representative, Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department;

on behalf of the Government of the French Republic, by its representative, M. Georges Scelle, Professor at the Faculty of Law of Paris;

on behalf of the Government of the Federal People’s Republic of Yugoslavia, by its representative, Mr. Milan Bartoš, Minister Plenipotentiary;

on behalf of the Government of the Kingdom of Belgium, by its representative, M. Georges Kaeckenbeeck, D.C.L., Minister Plenipotentiary, Head of the Division for Peace Conferences and International Organization at the Ministry for Foreign Affairs, Member of the Permanent Court of Arbitration;

on behalf of the Government of the Republic of Czechoslovakia, by its representative, Mr. Vladimir Vochč, Professor of International Law in Charles University at Prague;

on behalf of the Government of the Republic of Poland, by its representative, Mr. Manfred Lachs, Professeur agrégé of International Law at the University of Warsaw.

In the course of the hearings, new documents were filed by the representatives accredited to the Court. These documents are enumerated in Section II of the list annexed to the present opinion.

Before examining the request for an opinion, the Court considers it necessary to make the following preliminary remarks:

The question put to the Court is divided into two parts, of which the second begins with the words “In particular”, and is presented as an application of a more general idea implicit in the first.

The request for an opinion does not refer to the actual vote. Although the Members are bound to conform to the requirements of Article 4 in giving their votes, the General Assembly can hardly be supposed to have intended to ask the Court’s opinion as to the reasons which, in the mind of a Member, may prompt its vote. Such reasons, which enter into a mental process, are obviously subject to no control. Nor does the request concern a Member’s freedom of expressing its opinion. Since it concerns a condition or conditions on which a Member “makes its consent dependent”, the question can only relate to the statements made by a Member concerning the vote it proposes to give.

It is clear from the General Assembly’s Resolution of November 17th, 1947, that the Court is not called upon either to define the meaning and scope of the conditions on which admission is made dependent, or to specify the elements which may serve in a concrete case to verify the existence of the requisite conditions.

1 See page 116.
ARTICLE 4 OF THE CHARTER OF THE UNITED NATIONS

The clause of the General Assembly's Resolution, referring to "the exchange of views which has taken place...", is not understood as an invitation to the Court to say whether the views thus referred to are well founded or otherwise. The abstract form in which the question is stated precludes such an interpretation.

The question put is in effect confined to the following point only: are the conditions stated in paragraph 1 of Article 4 exhaustive in character in the sense that an affirmative reply would lead to the conclusion that a Member is not legally entitled to make admission dependent on conditions not expressly provided for in that Article, while a negative reply would, on the contrary, authorize a Member to make admission dependent also on other conditions.

* * *

Understood in this light, the question, in its two parts, is and can only be a purely legal one. To determine the meaning of a treaty provision—to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein—is a problem of interpretation and consequently a legal question.

It has nevertheless been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court. The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired the request, nor with the considerations which, in the concrete cases submitted for examination to the Security Council, formed the subject of the exchange of views which took place in that body. It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it; nothing which is said in the present opinion refers, either directly or indirectly, to concrete cases or to particular circumstances.

It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.

Lastly, it has also been maintained that the Court cannot reply to the question put because it involves an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, "the principal judicial organ of the United Nations", to exercise, in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers.

Accordingly, the Court holds that it is competent, on the basis of Article 96 of the Charter and Article 65 of the Statute, and considers that there are no reasons why it should decline to answer the question put to it.

In framing this answer, it is necessary first to recall the "conditions" required, under paragraph 1 of Article 4, of an applicant for admission. This provision reads as follows:

"Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."

The requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.

All these conditions are subject to the judgment of the Organization. The judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4, and, in the last analysis, that of its Members. The question put is concerned with the individual attitude of each Member called upon to pronounce itself on the question of admission.

Having been asked to determine the character, exhaustive or otherwise, of the conditions stated in Article 4, the Court must in the first place consider the text of that Article. The English and French texts of paragraph 1 of Article 4 have the same meaning, and it is impossible to find any conflict between them. The text of this paragraph, by the enumeration which it contains and the choice of its terms, clearly demonstrates the intention of its authors to establish a legal rule which, while it fixes the conditions of admission, determines also the reasons for which admission may be refused; for the text does not differentiate between these two cases and any attempt to restrict it to one of them would be purely arbitrary.

The terms "Membership in the United Nations is open to all other peace-loving States which..." and "Pouvoient devenir Membres des Nations unies tous autres États pacifiques", indicate that States which fulfill the conditions stated have the qualifications requisite for admission. The natural meaning of the words used leads to the conclusion that these conditions constitute an exhaustive enumeration and are not merely stated by way of guidance or example. The provision would lose its significance and weight, if other conditions, unconnected with those laid down, could be demanded. The conditions stated in paragraph 1 of Article 4 must therefore be regarded not merely as the necessary conditions, but also as the conditions which suffice.

Nor can it be argued that the conditions enumerated represent only an indispensable minimum, in the sense that political considerations could be superimposed upon them, and prevent the admission of an applicant which fulfills them. Such an interpreta-
tion would be inconsistent with the terms of paragraph 2 of Article 4, which provide for the admission of "tout État remplissant ces conditions"—"any such State". It would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions. Such a power would be inconsistent with the very character of paragraph 1 of Article 4 which, by reason of the close connexion which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States. To warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established.

Moreover, the spirit as well as the terms of the paragraph preclude the idea that considerations extraneous to these principles and obligations can prevent the admission of a State which complies with them. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording.

The Court considers that the text is sufficiently clear; consequently, it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself.

The Court furthermore observes that Rule 60 of the Provisional Rules of Procedure of the Security Council is based on this interpretation. The first paragraph of this Rule reads as follows:

"The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership."

It does not, however, follow from the exhaustive character of paragraph 1 of Article 4 that an appreciation is precluded of such circumstances of fact as would enable the existence of the requisite conditions to be verified.

Article 4 does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor—that is to say, none connected with the conditions of admission—is excluded.

It has been sought to deduce either from the second paragraph of Article 4, or from the political character of the organ recommending or deciding upon admission, arguments in favour of an interpretation of paragraph 1 of Article 4, to the effect that the fulfilment of the conditions provided for in that Article is necessary before the admission of a State can be recommended or decided upon, but that it does not preclude the Members of the Organization from advancing considerations of political expediency, extraneous to the conditions of Article 4.

But paragraph 2 is concerned only with the procedure for admission, while the preceding paragraph lays down the substantive law. This procedural character is clearly indicated by the words "will be effected", which, by linking admission to the decision, point clearly to the fact that the paragraph is solely concerned with the manner in which admission is effected, and not with the subject of the judgment of the Organization, nor with the nature of the appreciation involved in that judgment, these two questions being dealt with in the preceding paragraph. Moreover, this paragraph, in referring to the "recommendation" of the Security Council and the "decision" of the General Assembly, is designed only to determine the respective functions of these two organs which consist in pronouncing upon the question whether or not the applicant State shall be admitted to membership after having established whether or not the prescribed conditions are fulfilled.

The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, the limits of this freedom are fixed by Article 4 and allow for a wide liberty of appreciation. There is therefore no conflict between the functions of the political organs, on the one hand, and the exhaustive character of the prescribed conditions, on the other.

It has been sought to base on the political responsibilities assumed by the Security Council, in virtue of Article 24 of the Charter, an argument justifying the necessity for according to the Security Council as well as to the General Assembly complete freedom of appreciation in connexion with the admission of new Members. But Article 24, owing to the very general nature of its terms, cannot, in the absence of any provision, affect the special rules for admission which emerge from Article 4.

The foregoing considerations establish the exhaustive character of the conditions prescribed in Article 4.

* * *

The second part of the question concerns a demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.
ARTICLE 4 OF THE CHARTER OF THE UNITED NATIONS

Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand clearly constitutes a new condition, since it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category from those conditions, since it makes admission dependent, not on the conditions required of applicants, qualifications which are supposed to be fulfilled, but on an extraneous consideration concerning States other than the applicant State.

The provisions of Article 4 necessarily imply that every application for admission should be examined and voted on separately and on its own merits; otherwise it would be impossible to determine whether a particular applicant fulfils the necessary conditions. To subject an affirmative vote for the admission of an applicant State to the condition that other States be admitted with that State would prevent Members from exercising their judgment in each case with complete liberty, within the scope of the prescribed conditions. Such a demand is incompatible with the letter and spirit of Article 4 of the Charter.

FOR THESE REASONS,

THE COURT,

by nine votes to six,

is of opinion that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article;

and that, in particular, a Member of the Organization cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State.

The present opinion has been drawn up in French and in English, the French text being authoritative.

Done at the Peace Palace, The Hague, this twenty-eighth day of May, one thousand nine hundred and forty-eight, in two copies, one of which shall be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) J. G. Guerrero,
President.

(Signed) E. Hambro,
Registrar.

Judges Alvarez and Azevedo, whilst concurring in the opinion of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the opinion a statement of their individual opinion.

Judges Basdevant, Winiarski, McNaught, Read, Zorić and Krylov, declaring that they are unable to concur in the opinion of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the opinion a statement of their dissenting opinion.

(Initialled) J. G. G.
(Initialled) E. H.
INTERNATIONAL COURT OF JUSTICE

YEAR 1949.

April 11th, 1949.

REPARATION FOR INJURIES SUFFERED IN THE SERVICE OF THE UNITED NATIONS

Injuries suffered by agents of United Nations in course of performance of duties.—Damage to United Nations.—Damage to agents. —Capacity of United Nations to bring claims for reparation due in respect of both.—International personality of United Nations.—Capacity as necessary implication arising from Charter and activities of United Nations.—Functional protection of agents.—Claim against a Member of the United Nations.—Claim against a non-member.—Reconciliation of claim by national State and claim by United Nations, —Claim by United Nations against agent’s national State.

ADVISORY OPINION.

Present: President Basdevant; Vice-President Guerrero; Judges Alvarez, Fabelo, Hackworth, Winiarski, Zoricic, De Visscher, Sir Arnold McNair, Klaestad, Badawi Pasha, Krylov, Read, Hsu Mo, Azevedo.

1949.
April 11th.
General List.
No. 4.

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THE COURT, composed as above,
gives the following advisory opinion:

On December 3rd, 1948, the General Assembly of the United Nations adopted the following Resolution:

"Whereas the series of tragic events which have lately befallen agents of the United Nations engaged in the performance of their duties raises, with greater urgency than ever, the question of the arrangements to be made by the United Nations with a view to ensuring to its agents the fullest measure of protection in the future and ensuring that reparation be made for the injuries suffered; and

Whereas it is highly desirable that the Secretary-General should be able to act without question as efficaciously as possible with a view to obtaining any reparation due; therefore

The General Assembly

Decides to submit the following legal questions to the International Court of Justice for an advisory opinion:

‘I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?

II. If the Court gives an affirmative reply to point I (b), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national?"

Instructs the Secretary-General, after the Court has given its opinion, to prepare proposals in the light of that opinion, and to submit them to the General Assembly at its next regular session."

In a letter of December 4th, 1948, filed in the Registry on December 7th, the Secretary-General of the United Nations forwarded to the Court a certified true copy of the Resolution of the General Assembly. On December 10th, in accordance with paragraph 1 of Article 66 of the Statute, the Registrar gave notice of the Request to all States entitled to appear before the Court. On December 11th, by means of a special and direct communication as provided in paragraph 2 of Article 66, he informed these States that, in an Order made on the same date, the Court had
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stated that it was prepared to receive written statements on the questions before February 14th, 1949, and to hear oral statements on March 7th, 1949.

Written statements were received from the following States: India, China, United States of America, United Kingdom of Great Britain and Northern Ireland, and France. These statements were communicated to all States entitled to appear before the Court and to the Secretary-General of the United Nations. In the meantime, the Secretary-General of the United Nations, having regard to Article 65 of the Statute (paragraph 2 of which provides that every question submitted for an opinion shall be accompanied by all documents likely to throw light upon it), had sent to the Registrar the documents which are enumerated in the list annexed to this Opinion.

Furthermore, the Secretary-General of the United Nations and the Governments of the French Republic, of the United Kingdom and of the Kingdom of Belgium informed the Court that they had designated representatives to present oral statements.

In the course of public sittings held on March 7th, 8th and 9th, 1949, the Court heard the oral statements presented

on behalf of the Secretary-General of the United Nations by Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department as his Representative, and by Mr. A. H. Feller, Principal Director of that Department, as Counsel;

on behalf of the Government of the Kingdom of Belgium, by M. Georges Kaeckenhove, D.C.L., Minister Plenipotentiary of His Majesty the King of the Belgians, Head of the Division for Peace Conferences and International Organization at the Ministry for Foreign Affairs, Member of the Permanent Court of Arbitration;

on behalf of the Government of the French Republic, by M. Charles Chaumont, Professor of Public International Law at the Faculty of Law, Nancy; Legal Adviser to the Ministry for Foreign Affairs;

on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland by Mr. G. G. Fitzmaurice, Second Legal Adviser to the Foreign Office.

* * *

The first question asked of the Court is as follows:

"In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?"

It will be useful to make the following preliminary observations:

(a) The Organization of the United Nations will be referred to usually, but not invariably, as "the Organization".

(b) Questions I (a) and I (b) refer to "an international claim against the responsible de jure or de facto government". The Court understands that these questions are directed to claims against a State, and, will, therefore, in this opinion, use the expression "State" or "defendant State".

(c) The Court understands the word "agent" in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions—in short, any person through whom it acts.

(d) As this question assumes an injury suffered in such circumstances as to involve a State's responsibility, it must be supposed, for the purpose of this Opinion, that the damage results from a failure by the State to perform obligations of which the purpose is to protect the agents of the Organization in the performance of their duties.

(e) The position of a defendant State which is not a member of the Organization is dealt with later, and for the present the Court will assume that the defendant State is a Member of the Organization.

* * *

The questions asked of the Court relate to the "capacity to bring an international claim"; accordingly, we must begin by defining what is meant by that capacity, and consider the characteristics of the Organization, so as to determine whether, in general, these characteristics do, or do not, include for the Organization a right to present an international claim.

Competence to bring an international claim is, for those possessing it, the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims. Among these methods may be mentioned protest, request for an enquiry, negotiation, and request for submission to an arbitral tribunal or to the Court in so far as this may be authorized by the Statute.

This capacity certainly belongs to the State; a State can bring an international claim against another State. Such a claim takes the form of a claim between two political entities, equal in law, similar
in form, and both the direct subjects of international law. It is dealt with by means of negotiation, and cannot, in the present state of the law as to international jurisdiction, be submitted to a tribunal, except with the consent of the States concerned.

When the Organization brings a claim against one of its Members, this claim will be presented in the same manner, and regulated by the same procedure. It may, when necessary, be supported by the political means at the disposal of the Organization. In these ways the Organization would find a method for securing the observance of its rights by the Member against which it has a claim.

But, in the international sphere, has the Organization such a nature as involves the capacity to bring an international claim? In order to answer this question, the Court must first enquire whether the Charter has given the Organization such a position that it possesses, in regard to its Members, rights which it is entitled to ask them to respect. In other words, does the Organization possess international personality? This is no doubt a doctrinal expression, which has sometimes given rise to controversy. But it will be used here to mean that if the Organization is recognized as having that personality, it is an entity capable of availing itself of obligations incumbent upon its Members.

To answer this question, which is not settled by the actual terms of the Charter, we must consider what characteristics it was intended thereby to give to the Organization.

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable.

The Charter has not been content to make the Organization created by it merely a centre "for harmonizing the actions of nations in the attainment of these common ends" (Article 1, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5), and to accept and carry out the decisions of the Security Council; by authorizing the General Assembly to make recommendations to the Members;

by giving the Organization legal capacity and privileges and immunities in the territory of each of its Members; and by providing for the conclusion of agreements between the Organization and its Members. Practice—in particular the conclusion of conventions to which the Organization is a party—has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. It must be added that the Organization is a political body, charged with political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1); and in dealing with its Members it employs political means. The "Convention on the Privileges and Immunities of the United Nations" of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, Section 35). It is difficult to see how such a convention could operate except upon the international plane and as between parties possessing international personality.

In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a "super-State", whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

The next question is whether the sum of the international rights of the Organization comprises the right to bring the kind of international claim described in the Request for this Opinion. That is a claim against a State to obtain reparation in respect of the
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damage caused by the injury of an agent of the Organization in the course of the performance of his duties. Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice. The functions of the Organization are of such a character that they could not be effectively discharged if they involved the concurrent action, on the international plane, of fifty-eight or more Foreign Offices, and the Court concludes that the Members have endowed the Organization with capacity to bring international claims when necessitated by the discharge of its functions.

What is the position as regards the claims mentioned in the request for an opinion? Question I is divided into two points, which must be considered in turn.

* * *

Question I (a) is as follows:

"In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations...?"

The question is concerned solely with the reparation of damage caused to the Organization when one of its agents suffers injury at the same time. It cannot be doubted that the Organization has the capacity to bring an international claim against one of its Members which has caused injury to it by a breach of its international obligations towards it. The damage specified in Question I (a) means exclusively damage caused to the interests of the Organization itself, to its administrative machine, to its property and assets, and to the interests of which it is the guardian. It is clear that the Organization has the capacity to bring a claim for this damage. As the claim is based on the breach of an international obligation on the part of the Member held responsible by the Organization, the Member cannot contend that this obligation is governed by municipal law, and the Organization is justified in giving its claim the character of an international claim.

When the Organization has sustained damage resulting from a breach by a Member of its international obligations, it is impossible to see how it can obtain reparation unless it possesses capacity to bring an international claim. It cannot be supposed that in such an event all the Members of the Organization, save the defendant State, must combine to bring a claim against the defendant for the damage suffered by the Organization.

The Court is not called upon to determine the precise extent of the reparation which the Organization would be entitled to recover. It may, however, be said that the measure of the reparation should depend upon the amount of the damage which the Organization has suffered as the result of the wrongful act or omission of the defendant State and should be calculated in accordance with the rules of international law. Amongst other things, this damage would include the reimbursement of any reasonable compensation which the Organization had to pay to its agent or to persons entitled through him. Again, the death or disablement of one of its agents engaged upon a distant mission might involve very considerable expenditure in replacing him. These are mere illustrations, and the Court cannot pretend to forecast all the kinds of damage which the Organization itself might sustain.

* * *

Question I (b) is as follows:

"..."has the United Nations, as an Organization, the capacity to bring an international claim ... in respect of the damage caused ... (b) to the victim or to persons entitled through him?"

In dealing with the question of law which arises out of Question I (b), it is unnecessary to repeat the considerations which led to an affirmative answer being given to Question I (a). It can now be assumed that the Organization has the capacity to bring a claim on the international plane, to negotiate, to conclude a special agreement and to prosecute a claim before an international tribunal. The only legal question which remains to be considered is whether, in the course of bringing an international claim of this kind, the Organization can recover "the reparation due in respect of the damage caused ... to the victim...?"

The traditional rule that diplomatic protection is exercised by the national State does not involve the giving of a negative answer to Question I (b).

In the first place, this rule applies to claims brought by a State. But here we have the different and new case of a claim that would be brought by the Organization.

In the second place, even in inter-State relations, there are important exceptions to the rule, for there are cases in which protection may be exercised by a State on behalf of persons not having its nationality.

In the third place, the rule rests on two bases. The first is that the defendant State has broken an obligation towards the national State in respect of its nationals. The second is that only the party
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to whom an international obligation is due can bring a claim in
terspect of its breach. This is precisely what happens when the
Organization, in bringing a claim for damage suffered by its agent,
does so by invoking the breach of an obligation towards itself.
Thus, the rule of the nationality of claims affords no reason against
recognizing that the Organization has the right to bring a claim for
the damage referred to in Question I (b). On the contrary, the
principle underlying this rule leads to the recognition of this capacity
as belonging to the Organization, when the Organization invokes, as
the ground of its claim, a breach of an obligation towards itself.

Nor does the analogy of the traditional rule of diplomatic protec
tion of nationals abroad justify itself in an affirmative reply. It
is not possible, by a strained use of the concept of allegiance,
to assimilate the legal bond which exists, under Article 100 of
the Charter, between the Organization on the one hand, and the
Secretary-General and the staff on the other, to the bond of
nationality existing between a State and its nationals.

The Court is here faced with a new situation. The questions
to which it gives rise can only be solved by realizing that the situa
tion is dominated by the provisions of the Charter considered in
the light of the principles of international law.

The question lies within the limits already established; that is
to say it presupposes that the injury for which the reparation is
demanded arises from a breach of an obligation designed to help an
agent of the Organization in the performance of its duties. It is
not a case in which the wrongful act or omission would merely
constitute a breach of the general obligations of a State concerning
the position of aliens; claims made under this head would be within
the competence of the national State and not, as a general rule,
within that of the Organization.

The Charter does not expressly confer upon the Organization
the capacity to include, in its claim for reparation, damage caused
to the victim or to persons entitled through him. The Court must
therefore begin by enquiring whether the provisions of the Charter
concerning the functions of the Organization, and the part played
by its agents in the performance of those functions, imply for
the Organization power to afford its agents the limited protection
that would consist in the bringing of a claim on their behalf for
reparation for damage suffered in such circumstances. Under
international law, the Organization must be deemed to have those
powers which, though not expressly provided in the Charter, are
conferred upon it by necessary implication as being essential to
the performance of its duties. This principle of law was applied
by the Permanent Court of International Justice to the International
Labour Organization in its Advisory Opinion No. 13 of July 23rd,
1926 (Series B., No. 13, p. 18), and must be applied to the United
Nations.

Having regard to its purposes and functions already referred to,
the Organization may find it necessary, and has in fact found
it necessary, to entrust its agents with important missions to
be performed in disturbed parts of the world. Many missions,
from their very nature, involve the agents in unusual dangers
to which ordinary persons are not exposed. For the same reason,
the injuries suffered by its agents in these circumstances will
sometimes have occurred in such a manner that their national
State would not be justified in bringing a claim for reparation
on the ground of diplomatic protection, or, at any rate, would
not feel disposed to do so. Both to ensure the efficient and
independent performance of these missions and to afford effective
support to its agents, the Organization must provide them with
adequate protection.

This need of protection for the agents of the Organization,
as a condition of the performance of its functions, has already
been realized, and the Preamble to the Resolution of December 3rd,
1948 (supra, p. 175), shows that this was the unanimous view of
the General Assembly.

For this purpose, the Members of the Organization have entered
into certain undertakings, some of which are in the Charter and
others in complementary agreements. The content of these
undertakings need not be described here; but the Court must
stress the importance of the duty to render to the Organization
“every assistance” which is accepted by the Members in Article 2,
paragraph 5, of the Charter. It must be noted that the effective
working of the Organization—the accomplishment of its task,
and the independence and effectiveness of the work of its agents—
require that these undertakings should be strictly observed.
For that purpose, it is necessary that, when an infringement
occurs, the Organization should be able to call upon the responsible
State to remedy its default, and, in particular, to obtain from
the State reparation for the damage that the default may have
causd to its agent.

In order that the agent may perform his duties satisfactorily,
he must feel that this protection is assured to him by the Organiza
tion, and that he may count on it. To ensure the independence
of the agent, and, consequently, the independent action of the
Organization itself, it is essential that in performing his duties
he need not have to rely on any other protection than that of
the Organization (save of course for the more direct and immediate
protection due from the State in whose territory he may be).
In particular, he should not have to rely on the protection of his
own State. If he had to rely on that State, his independence
might well be compromised, contrary to the principle applied
by Article 100 of the Charter. And lastly, it is essential that—
whether the agent belongs to a powerful or to a weak State; to one more affected or less affected, by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent—he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.

Upon examination of the character of the functions entrusted to the Organization and of the nature of the missions of its agents, it becomes clear that the capacity of the Organization to exercise a measure of functional protection of its agents arises by necessary intendment out of the Charter.

The obligations entered into by States to enable the agents of the Organization to perform their duties are undertaken not in the interest of the agents, but in that of the Organization. When it claims redress for a breach of these obligations, the Organization is invoking its own right, the right that the obligations due to it should be respected. On this ground, it asks for reparation of the injury suffered, for "it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form"; as was stated by the Permanent Court in its Judgment No. 8 of July 26th, 1927 (Series A., No. 9, p. 21). In claiming reparation based on the injury suffered by its agent, the Organization does not represent the agent, but is asserting its own right, the right to secure respect for undertakings entered into towards the Organization.

Having regard to the foregoing considerations, and to the undeniable right of the Organization to demand that its Members shall fulfil the obligations entered into by them in the interest of the good working of the Organization, the Court is of the opinion that, in the case of a breach of these obligations, the Organization has the capacity to claim adequate reparation, and that in assessing this reparation it is authorized to include the damage suffered by the victim or by persons entitled through him.

* * *

The question remains whether the Organization has "the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him" when the defendant State is not a member of the Organization.

In considering this aspect of Question I (a) and (b), it is necessary to keep in mind the reasons which have led the Court to give an affirmative answer to it when the defendant State is a Member of the Organization. It has now been established that the Organization has capacity to bring claims on the international plane, and that it possesses a right of functional protection in respect of its agents. Here again the Court is authorized to assume that the damage suffered involves the responsibility of a State, and it is not called upon to express an opinion upon the various ways in which that responsibility might be engaged. Accordingly the question is whether the Organization has capacity to bring a claim against the defendant State to recover reparation in respect of that damage or whether, on the contrary, the defendant State, not being a member, is justified in raising the objection that the Organization lacks the capacity to bring an international claim.

On this point, the Court's opinion is that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims.

Accordingly, the Court arrives at the conclusion that an affirmative answer should be given to Question I (a) and (b) whether or not the defendant State is a Member of the United Nations.

* * *

Question II is as follows:

"In the event of an affirmative reply on point I (b), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national?"

The affirmative reply given by the Court on point I (b) obliges it now to examine Question II. When the victim has a nationality, cases can clearly occur in which the injury suffered by him may engage the interest both of his national State and of the Organization. In such an event, competition between the State's right of diplomatic protection and the Organization's right of functional protection might arise, and this is the only case with which the Court is invited to deal.

In such a case, there is no rule of law which assigns priority to the one or to the other, or which compels either the State or the Organization to refrain from bringing an international claim.
The Court sees no reason why the parties concerned should not find solutions inspired by goodwill and common sense, and as between the Organization and its Members it draws attention to their duty to render "every assistance" provided by Article 2, paragraph 5, of the Charter.

Although the bases of the two claims are different, that does not mean that the defendant State can be compelled to pay the reparation due in respect of the damage twice over. International tribunals are already familiar with the problem of a claim in which two or more national States are interested, and they know how to protect the defendant State in such a case.

The risk of competition between the Organization and the national State can be reduced or eliminated either by a general convention or by agreements entered into in each particular case. There is no doubt that in due course a practice will be developed, and it is worthy of note that already certain States whose nationals have been injured in the performance of missions undertaken for the Organization have shown a reasonable and co-operative disposition to find a practical solution.

* * *

The question of reconciling action by the Organization with the rights of a national State may arise in another way; that is to say, when the agent bears the nationality of the defendant State.

The ordinary practice whereby a State does not exercise protection on behalf of one of its nationals against a State which regards him as its own national, does not constitute a precedent which is relevant here. The action of the Organization is in fact based not upon the nationality of the victim but upon his status as agent of the Organization. Therefore it does not matter whether or not the State to which the claim is addressed regards him as its own national, because the question of nationality is not pertinent to the admissibility of the claim.

In law, therefore, it does not seem that the fact of the possession of the nationality of the defendant State by the agent constitutes any obstacle to a claim brought by the Organization for a breach of obligations towards it occurring in relation to the performance of his mission by that agent.

For these reasons,

The Court is of opinion

On Question I (a):

(i) unanimously,

That, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a Member State, the United Nations as an Organization has the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the United Nations.

(ii) unanimously,

That, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State which is not a member, the United Nations as an Organization has the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the United Nations.

On Question I (b):

(i) by eleven votes against four,

That, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a Member State, the United Nations as an Organization has the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the victim or to persons entitled through him.

(ii) by eleven votes against four,

That, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State which is not a member, the United Nations as an Organization has the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the victim or to persons entitled through him.
On Question II:

By ten votes against five,

When the United Nations as an Organization is bringing a claim for reparation of damage caused to its agent, it can only do so by basing its claim upon a breach of obligations due to itself; respect for this rule will usually prevent a conflict between the action of the United Nations and such rights as the agent’s national State may possess, and thus bring about a reconciliation between their claims; moreover, this reconciliation must depend upon considerations applicable to each particular case, and upon agreements to be made between the Organization and individual States, either generally or in each case.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this eleventh day of April, one thousand nine hundred and forty-nine, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Basdevant,
President.

(Signed) E. Hambro,
Registrar.

Judge Winiarski states with regret that he is unable to concur in the reply given by the Court to Question I (b). In general, he shares the views expressed in Judge Hackworth’s dissenting opinion.

Judges Alvarez and Azevedo, whilst concurring in the Opinion of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the Opinion statements of their individual opinion.

Judges Hackworth, Badawi Pasha and Krylov, declaring that they are unable to concur in the Opinion of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the Opinion statements of their dissenting opinion.

(Initialled) J. B.
(Initialled) E. H.
INTERNATIONAL COURT OF JUSTICE

YEAR 1960
8 June 1960

CONSTITUTION OF THE MARITIME SAFETY COMMITTEE OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Interpretation of Convention for Establishment of Inter-Governmental Maritime Consultative Organization.—Conditions for election to Maritime Safety Committee.—“Largest ship-owning nations”.—“Important interest in maritime safety”.—Compliance with latter qualification implied in case of largest ship-owning nations.—Meaning of “elected” in Article 28 (a) of Convention.—Words connoting objective test excluding discretionary choice.—Registered gross tonnage as criterion.

ADVISORY OPINION

Present: President KLAESTAD; Vice-President ZAFRULLA KHAN; Judges BASDEVANT, HACKWORTH, WINIAKSKI, BADAWI, ARMAND-UGON, KOJEVNIKOV, MORENO QUINTANA, CORDOVA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER, ALFARO; Deputy-Registrar GARNIER-GOIGNET.

MARITIME SAFETY COMMITTEE (OPINION OF 8 VI 60)

In the matter of the Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization,

The Court,

composed as above,

gives the following Advisory Opinion:

By a letter dated 23 March 1959, filed in the Registry on 25 March, the Secretary-General of the Inter-Governmental Maritime Consultative Organization informed the Court that, by a Resolution adopted on 19 January 1959, a certified true copy of which was transmitted with the Secretary-General’s letter, the Assembly of the Inter-Governmental Maritime Consultative Organization had decided to request the Court to give an Advisory Opinion on the question set out in the Resolution, which was in the following terms:

“The Assembly
Considering that differences of opinion have arisen as to the interpretation of Article 28 (a) of the Convention for the Establishment of the Inter-Governmental Maritime Consultative Organization;

Considering that the Convention provides in Article 56 that questions of law may be referred to the International Court of Justice for an advisory opinion;

Resolves
To submit to the International Court of Justice, in accordance with Article 65, paragraph 2, of its Statute, a request for an advisory opinion on the following question of law:

Is the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15 January 1950, constituted in accordance with the Convention for the Establishment of the Organization?

Instructs the Secretary-General to place at the disposal of the Court the relevant records of the First Assembly of the Organization and its Committees; and in accordance with Article IX of the Agreement between the United Nations and the Inter-Governmental Maritime Consultative Organization to inform the Economic and Social Council of the United Nations of the present resolution.”

In accordance with Article 66, paragraph 1, of the Statute of the Court, notice of the request for an Advisory Opinion was on 9 April 1959 given to all States entitled to appear before the Court.

The Secretary-General of the Inter-Governmental Maritime Consultative Organization having on 14 July 1959 transmitted to
the Court the documents likely to throw light upon the question, and the President considering that the States Members of the Organization as well as the Organization itself were likely to be able to furnish information on the question, those States and the Organization were on 5 August 1959 informed in accordance with Article 66, paragraph 2, of the Statute that the Court would be prepared to receive written statements from them within a time-limit, fixed by an Order of the same date, at 5 December 1959. Written statements were received on behalf of the Governments of Belgium, France, Liberia, the United States of America, the Republic of China, Panama, Switzerland, Italy, Denmark, the United Kingdom of Great Britain and Northern Ireland, Norway, the Netherlands, and India.

These written statements were communicated to the Inter-Governmental Maritime Consultative Organization and to the States Members of the Organization. Public hearings were held on 26, 27, 28 and 29 April, and on 2, 3 and 4 May 1960, when the Court was addressed by the following:

The Honourable Rocheforte L. Weeks, former Assistant Attorney-General, President of the University of Liberia, and

The Honourable Edward R. Moore, Assistant Attorney-General, representing the Government of Liberia;

Dr. Octavio Fábrega, President of the National Council of Foreign Affairs, in the capacity of Ambassador Extraordinary and Plenipotentiary on Special Mission, representing the Government of Panama;

The Honourable Eric H. Hager, Legal Adviser of the Department of State, representing the Government of the United States of America;

M. Riccardo Monaco, Professor of the University of Rome, Chief of the Department of Contentious Matters of the Ministry for Foreign Affairs, representing the Government of Italy;

Mr. W. Riphagen, Professor of International Law at Rotterdam, Legal Adviser of the Ministry for Foreign Affairs, representing the Government of the Netherlands;

Mr. Finn Seyersted, Director of Legal Affairs in the Norwegian Ministry for Foreign Affairs, representing the Government of Norway;

Mr. F. A. Vallat, Deputy Legal Adviser to the Foreign Office, representing the Government of the United Kingdom of Great Britain and Northern Ireland.

* * *

The question submitted to the Court in the Request for an Advisory Opinion, cast though it is in a general form, is directed to a particular case, and may be formulated in the following manner: has the Assembly, in not electing Liberia and Panama to the Maritime Safety Committee, exercised its electoral power in a manner in accordance with the provisions of Article 28 (a) of the Convention of 6 March 1948 for the Establishment of the Inter-Governmental Maritime Consultative Organization?

The Statements submitted to the Court have shown that linked with the question put to it there are others of a political nature. The Court as a judicial body is however bound, in the exercise of its advisory function, to remain faithful to the requirements of its judicial character.

* * *

The Convention referred to in the Request for an Advisory Opinion establishes a body known as the Inter-Governmental Maritime Consultative Organization (hereinafter called "the Organization"). Its purposes are set out in Article 1 of the Convention, the most important of which is concerned with maritime safety and efficiency of navigation.

The Organization consists of an Assembly, a Council, a Maritime Safety Committee and such subsidiary organs as the Organization may at any time consider necessary, and a Secretariat.

The Assembly consists of all the Members of the Organization meeting in regular session once every two years. Among its functions is "to elect ... the Maritime Safety Committee as provided in Article 28" (Art. 16 (a)).

The Council consists of sixteen Members. Its principal functions are to receive the recommendations of the Maritime Safety Committee, and to transmit them to the Assembly or to the Members when the Assembly is not in session, together with its own comments and recommendations. Matters within the scope of the duties of the Maritime Safety Committee may be considered by the Council only after obtaining the views of that Committee thereon (Art. 22).

The Maritime Safety Committee's principal duties are set out in Article 29. They include the consideration of any matter within the scope of the Organization and concerned with aids to navigation, construction and equipment of vessels, Manning from a safety standpoint, rules for prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements and any other matters directly affecting maritime safety. It is called upon to maintain close relationship with such other inter-governmental bodies concerned with transport and communications as may further the object of the Organization in promoting maritime safety.
The composition of the Committee and the mode of designating its Members are governed by Article 28 (a) which reads as follows:

"The Maritime Safety Committee shall consist of fourteen Members elected by the Assembly from the Members, governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be elected so as to ensure adequate representation of Members, governments of other nations with an important interest in maritime safety, such as nations interested in the supply of large numbers of crews or in the carriage of large numbers of berthed and unberthed passengers, and of major geographical areas."

* * *

The Court is called upon to appreciate whether, in not electing Liberia and Panama to the Maritime Safety Committee, the Assembly complied with that provision. For this purpose, the Court must, in the first place, recall the circumstances in which the Assembly proceeded to the election of the Committee and asked for an advisory opinion.

The Assembly began its consideration of the election of members of the Maritime Safety Committee on 14 January 1959. It had before it a working paper prepared by the Secretary-General of the Organization, headed as follows:

"Election of Members of the Maritime Safety Committee, as provided in Article 28 of the Convention. Merchant fleet of the IMCO Members according to the Lloyd's Register of Shipping Statistical tables 1958."

Thereunder were set out, in descending order of total gross registered tonnage, the names of Members with the figures of their registered tonnage. On this list Liberia was third and Panama eighth.

The Assembly also had before it a draft United Kingdom resolution which was in the following terms:

"The Assembly,
Desiring to elect the eight Members of the Maritime Safety Committee which shall be the largest ship-owning nations,
Having taken note of the list prepared by the Secretary-General (doc. IMCO/A. 1/Working Paper 5) showing the registered tonnage of each Member of the Organization

Resolves
that a separate vote shall be taken for each of the eight places on the Committee;
that the voting shall be in the order in which the nations appear in the Secretary-General's list, and
that those eight nations which first receive a majority of votes in favour shall be declared elected."

The representative of the Government of Liberia submitted both a separate draft Resolution and an amendment to that of the United Kingdom, to the effect that for the purposes of Article 28 (a) the eight largest ship-owning nations should be determined by reference to the figures for gross registered tonnage as they appeared in Lloyd's Register of Shipping current at the date of the election. He submitted that Article 28 (a) laid down the rules to be followed for electing members of the Committee and that these rules had to be strictly observed. Under Article 28 (a) the Assembly had to elect the eight largest ship-owning nations. That, he submitted, was not an election in the usual sense of the word, for once those eight nations had been determined, the Assembly was bound to elect them. The representative of Panama supported these submissions.

There was no challenge that the figures in the Secretary-General's Working Paper, which were identical with the figures shown in the latest issue of Lloyd's Register of Shipping and which set out country by country the gross registered tonnage of each nation, were in any way incorrect.

The Government of the United States submitted a proposal to defer the election of the Committee until the Assembly's second regular session and in the meantime to establish a provisional Committee open to all the Members of the Assembly.

The Liberian Government's amendment to the United Kingdom's draft resolution was replaced by a joint amendment of that Government and the United States of America which was essentially in the same terms. Neither the proposal of the United States nor the joint amendment was adopted by the Assembly.

At the meeting of 15 January 1959, the Assembly adopted the United Kingdom draft resolution, thus expressing, according to the terms of the Resolution, its desire "to elect the eight Members of the Maritime Safety Committee which shall be the largest ship-owning nations". The President asked the Assembly to vote on the eight countries to be elected under Article 28(a) country by country in the order given in the Lloyd's Register of Shipping Statistical Tables 1958. Liberia and Panama failed to be elected, the votes being, respectively, eleven in favour and fourteen against, with three abstentions, and nine in favour and fourteen against, with five abstentions. Liberia and Panama abstained on the latter vote,
on the ground that from the moment Liberia failed to be elected they considered the election was null and void.

At its next meeting, held the same day, the Assembly elected the other six Members of the Committee.

After the election had taken place, the Assembly proceeded to consider a draft resolution by Liberia to the effect that the Assembly should request an advisory opinion from this Court on the legal issues which had arisen in connection with the interpretation of Article 28 (a), and should ask a Committee to formulate the questions to be put to the Court and refer the matter back to the Assembly for approval. The draft Liberian resolution was approved in principle. On 19 January 1959 the Assembly adopted the Resolution set out in the Request for an Opinion.

* * *

The debates which took place prior to the election revealed a wide divergence of views on the relevant requirements of Article 28 (a).

The United Kingdom representative, speaking at the seventh meeting of the Assembly, held on 14 January 1959, stated:

"The United Kingdom delegation felt it would be wrong for the Assembly ... to pretend to ignore the essential difficulty, namely, the special position of Liberia and Panama. There was clearly no question of dealing with the problem of flags of convenience, which lay outside the limits of discussion. What the Assembly had to do was to choose eight countries which, on the one hand, had an important interest in maritime safety and, on the other hand, were the largest ship-owning nations, as these were the criteria laid down in Article 28 of the Convention."

"... What the Assembly had to do was to consider how far governments were interested in maritime questions and to see to what extent they were able to make a contribution in various fields connected with safety. It was obvious that in all those fields neither Liberia nor Panama was, at the moment, in a position to make any important contribution to maritime safety..."

"As to the second criterion he had mentioned, namely, relative importance as a ship-owning nation, he would emphasize that that expression was being used for the first time, but it was perfectly clear. Vessels had really to belong to the countries in question, which was obviously not the case with Panama and Liberia."

"Thus, neither from the point of view of interest in maritime safety nor from that of tonnage could Liberia or Panama be included amongst the eight maritime countries referred to in Article 28 (a) of the Convention."

He added that according to the Convention those eight places should be allotted to the largest ship-owning nations, but that did not necessarily mean those countries whose fleets represented the largest gross registered tonnage. The names and nationalities of the owners or shareholders of the shipping companies should not be taken into account in that connection, as that would introduce an unnecessarily complicated criterion.

The representative of the Netherlands stated that the concept of the largest ship-owning nations was not necessarily identical with that of the nations having the largest registered tonnage; on the contrary, a country's registered tonnage might in no way reflect its actual importance as a ship-owning nation.

The argument was also put forward that the members to be elected to the Maritime Safety Committee "on the strength of their tonnage" should be those nations which were in a position to make a contribution to the work of the Committee through their knowledge and experience in the field of maritime safety, which requirement Liberia and Panama did not fulfil.

For his part, the representative of the United States of America explained the way in which that country interpreted Article 28 (a). He stated:

"That Article called on the Assembly to elect from among the Member Governments which had an important interest in maritime safety the eight nations which were the largest shipowners, as shown by the statistical tables in Lloyd's Register... Article 28 stipulated that no less than eight should be 'the largest ship-owning nations' and not merely 'large ship-owning nations'... they should be elected automatically.'"

Later he said that he could not accept the argument advanced by the United Kingdom representative to the effect that the ability of countries to contribute to the work of the Maritime Safety Committee by their expert knowledge and experience was a criterion of eligibility separate from that of status as one of the largest ship-owning nations. In no circumstances should the two nations whose combined registered tonnage represented 15 per cent. of the active fleet of the entire world be excluded from membership of the Committee.

Other States, Members of the Assembly, participated in the debate, but in so far as they expressed any views on the interpretation to be placed upon Article 28 (a) these appear to be reflected in the statements above referred to.

It is in these circumstances that the question whether the Maritime Safety Committee was constituted in accordance with Article 28 (a) comes before the Court.

* * *

The Court will now proceed to consider the answer which should be given to the question submitted to it.
One of the functions of the Assembly is, in accordance with Article 16 (d) of the Convention, "to elect the Members ... on the Maritime Safety Committee as provided in Article 28". The scope and character of this function of the Assembly are accordingly to be found in Article 28. This function can only be exercised under the conditions laid down by that Article.

Article 28 (a) provides that the fourteen Members of the Committee shall be elected by the Assembly from the Members, Governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations. The remainder of the members are to be elected so as to ensure adequate representation of other nations with an important interest in maritime safety such as nations interested in supplying large numbers of crews or in the carriage of large numbers of passengers and of major geographical areas.

It has been contended before the Court that the Assembly was entitled to refuse to elect Liberia and Panama, by virtue of a discretion claimed to be vested in it under Article 28 (a). The substance of the argument is as follows: The Assembly is vested with a discretionary power to determine which Members of the Organization have "an important interest in maritime safety" and consequently in discharging its duty to elect the eight largest ship-owning nations, it is empowered to exclude as unqualified for election those nations that in its judgment do not have such an interest. Furthermore, it was submitted that this discretionary power extended also to the determination of which nations were or were not "the largest ship-owning nations".

In the first place, it was sought to find in the expression "elected", which applies to all Members of the Committee, a notion of choice which was said to imply an individual judgment on each member to be elected and a free appraisal as to the qualifications of that member. This was said to apply to both the election of the eight largest ship-owning nations and to that of the remainder of six. The contention assumes a meaning to be accorded to the word "elected" and then applies that meaning to Article 28 (a) and interprets its provisions accordingly. In so doing it places in a subordinate position the specific provision of the Article in relation to the eight "largest ship-owning nations".

The meaning of the word "elected" in the Article cannot be determined in isolation by recourse to its usual or common meaning and attaching that meaning to the word where used in the Article. The word obtains its meaning from the context in which it is used. If the context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires.

An example is provided in Articles 16 (d) and 17 (c) and (d), where the words "elect" and "elected" are also used. Whatever the margin of choice or individual appraisal which exists in the Assembly in relation to the election of any Member of the Council, that margin of choice or appraisal is one which is no greater than is permitted by the terms of those Articles read with Article 18. The words "elect" and "elected" are construed accordingly.

So, too, in relation to the word "elected" in Article 28, where first therein appearing. Here it is used for the designation of all fourteen Members of the Committee, that is to say, of the two categories of Members, and for the first of these the words employed are "shall be" which, on their face, are mandatory. If these words involve an obligatory designation, to which question the Court will hereafter direct itself, there is an evident contrast between, on the one hand, such a designation and, on the other hand, a free choice.

If the words "of which not less than eight shall be the largest ship-owning nations" do involve an obligatory designation of such nations that satisfy that qualification, the use of the word "elected" to cover the designation of two categories, one of which would be determined on the basis of a definite and pre-established criterion whilst the other would be a matter of choice, cannot convert the designation of the eight nations into an elective procedure which would be contrary to the pre-established criterion.

In the second place it is contended that "having an important interest in maritime safety" is a dominant condition in the qualification for membership on the Committee and being one of the "eight largest ship-owning nations" is a subordinate condition. These two conditions are said to be of a cumulative character with the possession of "an important interest" as the controlling requirement. According to this view fulfilment alone of the condition by any State of being one of the eight largest ship-owning nations does not by itself confer eligibility on a Member State to be appointed to the Committee inasmuch as, it is contended, the word "elected" connotes a discretion in the Assembly to choose from among those qualified under the condition of having an important interest in maritime safety.

It is further claimed that the words "ship-owning nations" have a meaning which embraces consideration of many factors, and that the Assembly was, in the exercise of its discretion, entitled to take those factors into account in the election of the Committee.

* * *

The words of Article 28 (a) must be read in their natural and ordinary meaning, in the sense which they would normally have in their context. It is only if, when this is done, the words of the
Article are ambiguous in any way that resort need be had to other methods of construction. (Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950, P. 8.)

From the terms of Article 28(a) it is clear that the draftsmen deliberately contemplated that the preponderant control of the Committee was in all circumstances to be vested in "the largest ship-owning nations". This control was to be secured by the provision that not less than eight of the fourteen seats had to be filled by them. The language employed—"of which not less than eight shall be the largest ship-owning nations"—in its natural and ordinary meaning conveys this intent of the draftsmen.

The words "having an important interest in maritime safety" clearly express a qualification for membership on the Committee which is required of each group referred to in Article 28(a). But, in the context of the whole provision, possession of this interest is implied in relation to the eight largest ship-owning nations as a consequence of the language employed. This particular condition of being one of the eight such nations describes the nature of the required interest in maritime safety and constitutes that interest.

This interpretation accords with the structure of the Article. Having provided that "not less than eight shall be the largest ship-owning nations", the Article goes on to provide that the remainder shall be elected so as to ensure adequate representation of "other nations" with an important interest in maritime safety—nations other than the eight largest ship-owning nations, "such as nations interested in the supply of large numbers of crews" etc., as contrasted with "the largest ship-owning nations". The use of the words "other nations" and "such as" in their context confirms this interpretation.

The argument based on discretion would permit the Assembly, in use only of its discretion, to decide through its vote which nations have or do not have an important interest in maritime safety and to deny membership on the Committee to any State regardless of the size of its tonnage or any other qualification. The effect of such an interpretation would be to render superfluous the greater part of Article 28(a) and to erect the discretion of the Assembly as the supreme rule for the constitution of the Maritime Safety Committee. This would in the opinion of the Court be incompatible with the principle underlying the Article.

The underlying principle of Article 28(a) is that the largest ship-owning nations shall be in predominance on the Committee. No interpretation of the Article which is not consonant with this principle is admissible.

It was to express this principle that the words "of which not less than eight shall be the largest ship-owning nations" were written into the Article. These words cannot be construed as if they read "of which not less than eight shall represent (or be representative of) the largest ship-owning nations". Whichever were the largest ship-owning nations they were necessarily to be appointed to the Committee; that they each possessed an important interest in maritime safety was accepted as axiomatic; it was inherent in their status of the eight largest ship-owning nations.

The history of the Article and the debate which took place upon the drafts of the same in the United Maritime Consultative Council, which at the request of the Economic and Social Council of the United Nations drew up the text of the Convention for recommendation to Member Governments, confirm the principle indicated above.

The first draft of the Article underwent a number of changes as it evolved. As drafted in July 1946 by a Committee which met in London, it read as follows:

"The Maritime Safety Committee shall consist of twelve Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety and owning substantial amounts of merchant shipping, of which no less than nine shall be the largest ship-owning nations and the remainder shall be selected so as to ensure representation for the major geographical areas. The Maritime Safety Committee shall have power to adjust the number of its members with the approval of the Council."

The nine largest ship-owning nations were self-evidently nations owning substantial amounts of merchant shipping. The first nine largest ship-owning nations were to be on the Committee in any event. In this respect the use in the original English text of the definite article "the", which is maintained throughout each draft and finds expression in Article 28(a), has a significance which cannot be ignored. It was inserted with evident deliberation. This accords with the record of the various drafts and the discussions which took place on them.

The three nations representative of major geographical areas comprising the "remainder" had to satisfy the dual qualification
both of having an important interest in maritime safety and also owning a substantial amount of shipping.

At this stage there was a deliberate intention on the part of the drafters to confine the membership of the Committee to a very limited number of nations and to have it controlled by the nine largest ship-owning nations. This is apparent in the Report of the Drafting Committee. This Report stated that the proposed Committee “will include the largest ship-owning nations” (as distinct from nations owning substantial amounts of merchant shipping) and that this “is of great importance to its successful operation”. Provision was also made, it continued, “for representation of other ship-owning nations from all parts of the world” (other, as distinct from the nine largest), “thus giving recognition to the world-wide interest in the problems involved”.

To have suggested that, although a nation was the largest or one of the nine largest ship-owning nations it was within the discretion of the Assembly to determine that it was not a nation “owning substantial amounts of merchant shipping” or did not have an “important interest in maritime safety” would have been unreal. Those qualifications were patently inherent in a nation being one of the nine largest ship-owning nations.

The second draft was submitted by the United States at the Conference of the United Maritime Consultative Council held in Washington in 1946. It followed the form of the first draft. Apart from substituting the word “having” for “owning” substantial amounts of merchant shipping, the substantive alteration was to omit the provision in the Drafting Committee’s draft which enabled the Maritime Safety Committee to adjust the number of its Members with the approval of the Council. The proportion between the largest ship-owning nations and the remainder was to be unchangeable. There was to be no freedom for the Members of the Assembly to depart from what were contemplated to be clear provisions governing the proportion between the two.

This predominance on the Committee of the nine did not seem acceptable to some Members of the Conference, India especially, which had put forward to the Drafting Committee its own proposal which, however, that Committee had not felt empowered to substitute for the original wording of the Article because it invoked a matter of principle.

A third draft was then put forward by the Drafting Committee, which was in two versions. The first was based on the United States’ draft and, in fact, followed it word for word. It sought to restrict the whole of the membership to nations having both important interests in maritime safety and substantial amounts of shipping. The nine largest ship-owning nations spoke for themselves in terms of both these criteria but the remainder of three would have to satisfy the Assembly that they qualified under both. The intention of this draft was to confine the whole Committee to nations having substantial amounts of shipping.

The alternative draft (submitted by the Drafting Committee after discussion of the amendment proposed by India) is of special importance. It reflects the struggle of those who sought to reduce the predominance in the Maritime Safety Committee of the nine largest ship-owning nations, and to prevent it from being under the exclusive control of nations “having substantial amounts of shipping”. The Indian delegate was to point out during the debate on the drafts, which took place in the United Maritime Consultative Council on 28 October 1946, that other countries “who did not actually own or have a large number of merchant vessels” had also important interests in maritime safety.

The alternative draft accordingly struck out the words “and having substantial amounts of shipping”, retained the total membership at twelve, but altered the ratio between “the largest ship-owning nations” and the remainder from nine and three to seven and five.

This was the subject of debate at the meeting of the United Maritime Consultative Council on 28 October 1946.

Objection was taken by the representative of Denmark to the Indian proposal, on the ground that it meant that the Maritime Safety Committee would be composed of twelve Member Governments of which not less than seven “would have to be the largest ship-owning nations”. He could not agree unless the total number were increased to fourteen, “of which nine would have to be the largest ship-owning nations”. The Indian representative considered that a ratio of seven (largest ship-owning nations) to five (other nations) was a fair ratio. The United States representative said that “the underlying principle which was generally accepted by all” was that “the largest ship-owning nations should be in predominance in the Maritime Safety Committee”. In the result, the matter was held in abeyance for informal discussions between maritime experts from the United Kingdom and the United States of America and representatives of Denmark and India.
There emerged a final draft which followed the alternative draft, and which increased the total membership to fourteen, of which not less than eight were to be the largest ship-owning nations. This draft was in the following terms:

"The Maritime Safety Committee shall consist of fourteen Member Governments selected by the Assembly from the Governments of those nations having an important interest in maritime safety, of which not less than eight shall be the largest ship-owning nations, and the remainder shall be selected so as to ensure adequate representation of other nations with important interests in maritime safety and of major geographical areas..."

This was the draft which came before the United Nations Maritime Conference at Geneva, held in February and March 1948, and a working party on Maritime Safety was set up on 27 February. At the meeting of the Working Party held on 28 February 1948, a proposal was made by India to fashion the draft along the lines of the present Article 17. It met with opposition and was rejected.

India then proposed the addition to the draft article of words to the effect of those now appearing in the text of Article 28 (a), namely, "such as nations interested in the supply of large numbers of crews or in the carriage of large numbers...of passengers". This proposal was also rejected by the Working Party but was subsequently incorporated in Article 28 (a) after the words "of other nations with an important interest in maritime safety". The present text in all essential aspects was adopted on 1 March 1948 "subject...to drafting changes". No further discussions are recorded and the text which presently appears in the Convention was finally adopted on 5 March 1948.

Under the first three drafts of the Article, the nine largest ship-owning nations had in any event to be on the Committee. When the subsequent drafts increased the total membership to fourteen, altered the ratio on the Committee between the largest ship-owning nations and other countries, and effected the other amendments already indicated, the intention that it should be obligatory upon the Assembly to appoint to the Committee a predominating number of the largest ship-owning nations remained constant; instead, however, of being at least the nine largest, it was to be at least the eight largest.

The determination to retain the predominance of the largest ship-owning nations finds expression in Article 28 (a), the terms of which exclude the possibility of an interpretation which would authorize the Assembly to refuse membership on the Committee to any one or more of the eight largest ship-owning nations.

It has been suggested that the word "elected" where it first appears in Article 28 (a) was deliberately chosen in order to confer on the Assembly a wide authority to appraise the qualifications of Member States for election to the Committee. The fact is, however, that this word found its way into the Article at some time between 1 March 1948, when the Article was adopted "subject...to drafting changes", and four days after, namely, on 5 March 1948. It replaced the word "selected" which had appeared in every draft of the Article since 1946.

There was apparently no explanation for, or any discussion on, the alteration. It was a mere drafting change. If the word "elected" had the special significance sought to be attached to it, it seems unlikely that the word would have found its way into the Article in this manner. What Article 28 (a) requires the Assembly to do is to determine which of its Members are the eight "largest ship-owning nations" within the meaning which these words bear. That is the sole content of its function in relation to them. The words of the Article "of which not less than eight shall be the largest ship-owning nations" have a mandatory and imperative sense and precisely carry out the intention of the framers of the Convention.

* * *

The Court must now consider the meaning of the words "the largest ship-owning nations".

In the opinion of the Netherlands Government, set out in its Written Statement, "the term 'ship-owning nations' is...not suitable for legal analysis; it cannot be decomposed into elements which have any specific legal connotation...even the fact that the merchant fleet, flying the flag of a particular State, is owned by nationals of that State cannot in itself qualify that State as a ship-owning nation". Registration and the right to fly the flag and national ownership of merchant vessels "may, together with other factors", it contended, "be relevant for the determination by the Assembly whether or not a State can be considered as a 'ship-owning nation'"., but "they do not either separately or jointly impress upon a State the quality required...".

The view of the Government of the United Kingdom, which appears to express the common view of that Government and that of the Netherlands, is set out in the Written Statement of the United Kingdom as follows:
"The expression ‘the largest ship-owning nations’ has no apparent clear-cut or technical meaning... It is submitted that the intention of those words was to enable the Assembly in the process of election to look at the realities of the situation and to determine according to its own judgment, whether or not candidates for election to the Maritime Safety Committee could properly be regarded as the ‘largest ship-owning nations’ in a real and substantial sense... these words, while intended to guide the Assembly, were at the same time deliberately framed so as to enable the Assembly to deal with the matter on the basis of the true situation and the real interest in maritime safety of the State concerned."

This submission asserts an authority in the Assembly to appraise which nations are ship-owning nations and which are the largest among them, the words “the largest ship-owning nations” providing but a guide. The Assembly would be free “to look at the realities on the basis of “the true situation”, whatever in its opinion and that of its individual members these might be considered to be. It would be bound by no ascertainable criteria. Its members in casting their votes would be entitled to have regard to any considerations they might think relevant.

If Article 28 (a) were intended to confer upon the Assembly such an authority, enabling it to choose the eight largest ship-owning nations, uncontrolled by any objective test of any kind, whether it be that of tonnage registration or ownership by nationals or any other, the mandatory words “not less than eight shall be the largest ship-owning nations” would be left without significance. To give to the Article such a construction would mean that the structure built into the Article to ensure the predominance on the Committee of “the” largest ship-owning nations in the ratio of at least eight to six would be undermined and would collapse. The Court is unable to accept an interpretation which would have such a result.

In order to determine which nations are the largest ship-owning nations, it is apparent that some basis of measurement must be applied. The rationale of the situation is that when Article 28 (a) speaks of “the largest ship-owning nations”, it can only have in mind a comparative size vis-a-vis other nations owners of tonnage. There is no other practical means by which the size of ship-owning nations may be measured. The largest ship-owning nations are to be elected on the strength of their tonnage, the tonnage which is owned by or belongs to them. The only question is in what sense Article 28 (a) contemplates it should be owned by or belong to them.

A general opinion, shared by the Court, is that it is not possible to contend that the words “ship-owning nations” in Article 28 (a) mean that the ships have to be owned by the State itself.

There appear to be but two meanings which could demand serious consideration: either the words refer to the tonnage beneficially owned by the nationals of a State or they refer to the registered tonnage of a flag State regardless of its private or State ownership.

Liberia and Panama, supported by other States, have contended that the sole test is registered tonnage. On the other hand, it has been submitted by certain States that the proper interpretation of the Article requires that ships should belong to nationals of the State whose flag they fly. This submission was rather concretely expressed by the Government of Norway which suggested using the flag-tonnage as a point of departure, reducing this amount by the amount of tonnage not owned by nationals of the flag State and adding the tonnage which does belong to such nationals but is registered under a different flag.

*     *     *

An examination of certain Articles of the Convention and the actual practice which was followed in giving effect to them throws some light on the Court’s consideration of the question.

Article 60 providing for entry into force of the Convention, and which follows the form to be found in a number of multilateral treaties dealing with safety and working conditions at sea, states:

“The present Convention shall enter into force on the date when 21 States of which seven shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties to the Convention in accordance with Article 57.”

The required conditions having been fulfilled on 17 March 1958, the Convention came into force on that day. As is stated by Legal Counsel of the United Nations in a letter of 10 April 1959:

“In so far as concerns the requirement of Article 60 that seven among the States becoming parties should ‘each have a total tonnage’ of the stated amount, no question was raised, and no consideration was given, as to whether the total tonnage figure of any State then a party, as indicated by Lloyd’s Register, should be altered for any reason bearing upon the ownership of such tonnage.”

Article 60 has a special significance. In the English text this Article speaks of certain States which “have” a total tonnage, whilst in Article 28 (a) the reference is to nations “owning” ships.
In the French and Spanish texts however, which texts are equally authentic, the same verb "to own" or "to possess" is used in each Article. There can be, and indeed there is, no dispute that whether the reference in Article 60 is to States which "have" the specified tonnage—as in the English text—or whether it is to States which "own" or "possess" that specified tonnage—as in the French and Spanish texts—that reference is to registered tonnage and registered tonnage only and provides an automatic criterion to determine the point of time at which the Convention comes into force.

The practice followed by the Assembly in relation to other Articles reveals the reliance placed upon registered tonnage.

Thus in implementing Article 17 (c) of the Convention, which provides that two members of the Council "shall be elected by the Assembly from among the governments of nations having a substantial interest in providing international shipping services", the Assembly elected Japan and Italy. This was done after it had been reported to the Assembly that the representatives of the Members of the Council who were required under the terms of Article 18 to make their recommendation to the Assembly had "therefore examined the claims of countries having a substantial interest in providing international shipping services. They did not feel that they should propose to the Assembly a long list of candidates, as two countries clearly surpassed the others in size of their tonnage; they recommended the election of Japan (with tonnage of about 5,500,000 tons) and of Italy (with a tonnage of nearly 5,000,000)."

The tonnages mentioned are those recorded in the list of the Secretary-General of the Organization, which was before the Assembly in the election under Article 28 (a) and which is none other than a copy of Lloyd's Register of Shipping for 1958. The registered tonnages of the two countries were taken as the appropriate criterion, there was no suggestion of any other. There were only two Members to be elected under Article 17 (c) and there were only two recommendations to the Assembly.

The apportionment of the expenses of the Organization amongst its Members under the provisions of Article 41 of the Convention is also significant. Under Resolution A.20(I) adopted by the Assembly of the Organization on 19 January 1959, the assessment on each Member State was principally "determined by its respective gross registered tonnage as shown in the latest edition of Lloyd's Register of Shipping". Those States whose registered tonnages were the largest paid the largest assessments.

Furthermore, the Assembly, when proceeding to elect the eight largest ship-owning nations under Article 28 (a), took note of the Working Paper prepared by the Secretary-General of the Organiza-

This reliance upon registered tonnage in giving effect to different provisions of the Convention and the comparison which has been made of the texts of Articles 60 and 28 (a), persuade the Court to the view that it is unlikely that when the latter Article was drafted and incorporated into the Convention it was contemplated that any criterion other than registered tonnage should determine which were the largest ship-owning nations. In particular it is unlikely that it was contemplated that the test should be the nationality of stock-holders and of others having beneficial interests in every merchant ship; facts which would be difficult to catalogue, to ascertain and to measure. To take into account the names and nationalities of the owners or shareholders of shipping companies would, to adopt the words of the representative of the United Kingdom during the debate which preceded the election, "introduce an unnecessarily complicated criterion". Such a method of evaluating the ship-owning rank of a country is neither practical nor certain. Moreover, it finds no basis in international practice, the language of international jurisprudence, in maritime terminology, in international conventions dealing with safety at sea or in the practice followed by the Organization itself in carrying out the Convention. On the other hand, the criterion of registered tonnage is practical, certain and capable of easy application.

* * *

Moreover, the test of registered tonnage is that which is most consonant with international practice and with maritime usage.

Article 28 (a) was drawn up by maritime experts who might reasonably be expected to have been acquainted with previous and existing conventions concerned with shipping and dealing with safety at sea and allied subjects. In such conventions a ship has commonly been considered as belonging to a State if it is registered by that State.

The Load Line Convention of 1930 affords a suitable example. Article 3 thereof provides:

"(a) a ship is regarded as belonging to a country if it is registered by the Government of that country;

(b) the expression 'Administration' means the Government of the country to which the ship belongs..."."
A similar provision was to be found in Article 2 of the Convention for the Safety of Life at Sea, 1929.

Among other international conventions which acknowledge the same principles are the Brussels Conventions of 1910 respecting Collisions, and Assistance and Salvage at Sea; the Conventions for the Safety of Life at Sea of 1914 and 1948, and the Convention for Prevention of Pollution of the Sea by Oil, 1954. Numerous bilateral treaties also give expression to it.

The Court is unable to accept the view that when the Article was first drafted in 1946 and referred to "ship-owning nations" in the same context in which it referred to "nations owning substantial amounts of merchant shipping", the draftsmen were not speaking of merchant shipping belonging to a country in the sense used in international conventions concerned with safety at sea and cognate matters from 1910 onwards. It would, in its view, be quite unlikely, if the words "ship-owning nations" were intended to have any different meaning, that no attempt would have been made to indicate this. The absence of any discussion on their meaning as the draft Article developed strongly suggests that there was no doubt as to their meaning; that they referred to registered ship tonnage. It is, indeed, not without significance that about the time the draft Article was finally settled, *Lloyd's Register for 1948* listed as belonging to the various countries of the world the vessels registered in those countries and that under the heading "Countries where owned" there were given the number and gross tonnage of vessels which were the same as those registered under the flag of each nation indicated.

The conclusion the Court reaches is that where in Article 28 (a) "ship-owning nations" are referred to, the reference is solely to registered tonnage. The largest ship-owning nations are the nations having the largest registered ship tonnage.

The interpretation the Court gives to Article 28 (a) is consistent with the general purpose of the Convention and the special functions of the Maritime Safety Committee. The Organization established by the Convention is a consultative one only, and the Maritime Safety Committee is the body which has the duty to consider matters within the scope of the Organization and to recommending through the Council and the Assembly to Member States, proposals for maritime regulation. In order effectively to carry out these recommendations and to promote maritime safety in its numerous and varied aspects, the co-operation of those States who exercise jurisdiction over a large portion of the world's existing tonnage is essential. The Court cannot subscribe to an interpretation of "largest ship-owning nations" in Article 28 (a) which is out of harmony with the purposes of the Convention and which would empower the Assembly to refuse Membership of the Maritime Safety Committee to a State, regardless of the fact that it ranks among the first eight in terms of registered tonnage.

It was contended in the course of the arguments that the Assembly, in assessing the size, in relation to ship-owning, of each country, was entitled to take into consideration the notion of a genuine link which it was claimed should exist between ships and the countries in which they are registered. Article 5 of the unratified Geneva Convention on the High Seas of 1958 was invoked in support of this contention. That Article itself provides:

"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..."

The Court having reached the conclusion that the determination of the largest ship-owning nations depends solely upon the tonnage registered in the countries in question, any further examination of the contention based on a genuine link is irrelevant for the purpose of answering the question which has been submitted to the Court for an advisory opinion.

The Assembly elected to the Committee neither Liberia nor Panama, in spite of the fact that, on the basis of registered tonnage, these two States were included among the eight largest ship-owning nations. By so doing the Assembly failed to comply with Article 28 (a) of the Convention which, as the Court has established, must be interpreted as requiring the determination of the largest ship-owning nations to be made solely on the basis of registered tonnage.

For these reasons,

**The Court is of opinion,**

by nine votes to five,

that the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, which was elected on 15 January 1959, is not constituted in accordance with the Convention for the Establishment of the Organization.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighth day of June, one thousand nine hundred and sixty, in two copies, one of which will
be placed in the archives of the Court and the other transmitted to the Secretary-General of the Inter-Governmental Maritime Consultative Organization.

(Signed) Helge Klaestad,
President.

(Signed) Garnier-Coignet,
Deputy-Registrar.

President Klaestad and Judge Moreno Quintana append to the Opinion statements of their dissenting opinion.

(Initialled) H. K.
(Initialled) G.-C.
Certain Expenses of the United Nations 
(Article 17, paragraph 2, of the Charter), 
Advisory Opinion, I.C.J. Reports 1962
INTERNATIONAL COURT OF JUSTICE

YEAR 1962

20 July 1962

CERTAIN EXPENSES OF THE UNITED NATIONS
(ARTICLE 17, PARAGRAPH 2, OF THE CHARTER)

Resolution 1731 (XVI) of General Assembly requesting advisory opinion.—Objections to giving opinion based on proceedings in General Assembly.—Interpretation of meaning of “expenses of the Organization”—Article 17, paragraphs 1 and 2, of Charter.—Lack of justification for limiting terms “budget” and “expenses”—Article 17 in context of Charter.—Respective functions of Security Council and General Assembly.—Article 21, paragraph 2, in relation to budgetary powers of General Assembly.—Role of General Assembly in maintenance of international peace and security.—Agreements under Article 43.—Expenses incurred for purposes of United Nations.—Obligations incurred by Secretary-General acting under authority of Security Council or General Assembly.—Nature of operations of UNEF and ONUC.—Financing of UNEF and ONUC based on Article 17, paragraph 2.—Implementation by Secretary-General of Security Council resolutions.—Expenditures for UNEF and ONUC and Article 17, paragraph 2, of Charter.

ADVISORY OPINION

Present: President Winiarski; Vice-President Alfaro; Judges Basdevant, Badawi, Moreno Quintana, Wellington Koo, Spiropoulos, Sir Percy Spender, Sir Gerald Fitzmaurice, Koretsky, Tanaka, Bustamante y Rivero, Jessup, Morelli; Registrar Garnier-Coignet.

CERTAIN EXPENSES OF U.N. (OPINION OF 20 VII 62)

Concerning the question whether certain expenditures authorized by the General Assembly “constitute ‘expenses of the Organization’ within the meaning of Article 17, paragraph 2, of the Charter of the United Nations”,

The Court,

composed as above,

gives the following Advisory Opinion:

The request which laid the matter before the Court was formulated in a letter dated 21 December 1961 from the Acting Secretary-General of the United Nations to the President of the Court, received in the Registry on 27 December. In that letter the Acting Secretary-General informed the President of the Court that the General Assembly, by a resolution adopted on 20 December 1961, had decided to request the International Court of Justice to give an advisory opinion on the following question:


In the Acting Secretary-General’s letter was enclosed a certified copy of the aforementioned resolution of the General Assembly. At the same time the Acting Secretary-General announced that he would transmit to the Court, in accordance with Article 65 of the Statute, all documents likely to throw light upon the question.

Resolution 1731 (XVI) by which the General Assembly decided to request an advisory opinion from the Court reads as follows:

"The General Assembly,

Recognizing its need for authoritative legal guidance as to obligations of Member States under the Charter of the United Nations
in the matter of financing the United Nations operations in the Congo and in the Middle East,

1. Decides to submit the following question to the International Court of Justice for an advisory opinion:


2. Requests the Secretary-General, in accordance with Article 65 of the Statute of the International Court of Justice, to transmit the present resolution to the Court, accompanied by all documents likely to throw light upon the question."

* * *

On 27 December 1961, the day the letter from the Acting Secretary-General of the United Nations reached the Registry, the President, in pursuance of Article 66, paragraph 2, of the Statute, considered that the States Members of the United Nations were likely to be able to furnish information on the question and made an Order fixing 20 February 1962 as the time-limit within which the Court would be prepared to receive written statements from them and the Registrar sent them the special and direct communication provided for in that Article, recalling that resolution 1731 (XVI) and those referred to in the question submitted for opinion were already in their possession.

The notice to all States entitled to appear before the Court of the letter from the Acting Secretary-General and of the resolution therein enclosed, prescribed by Article 66, paragraph 1, of the Statute, was given by letter of 4 January 1962.

The following Members of the United Nations submitted statements, notes or letters setting forth their views: Australia, Bulgaria,
Before proceeding to give its opinion on the question put to it, the Court considers it necessary to make the following preliminary remarks:

The power of the Court to give an advisory opinion is derived from Article 65 of the Statute. The power granted is of a discretionary character. In exercising its discretion, the International Court of Justice, like the Permanent Court of International Justice, has always been guided by the principle which the Permanent Court stated in the case concerning the Status of Eastern Carelia on 23 July 1923: "The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court" (P.C.I.J., Series B, No. 5, p. 29). Therefore, and in accordance with Article 65 of its Statute, the Court can give an advisory opinion only on a legal question. If a question is not a legal one, the Court has no discretion in the matter; it must decline to give the opinion requested. But even if the question is a legal one, which the Court is undoubtedly competent to answer, it may nonetheless decline to do so. As this Court said in its Opinion of 30 March 1950, the permissive character of Article 65 "gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request" (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase), I.C.J. Reports 1950, p. 72). But, as the Court also said in the same Opinion, "the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused" (ibid., p. 71). Still more emphatically, in its Opinion of 23 October 1956, the Court said that only "compelling reasons" should lead it to refuse to give a requested advisory opinion (Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the Unesco, I.C.J. Reports 1956, p. 86).

The Court finds no "compelling reason" why it should not give the advisory opinion which the General Assembly requested by its resolution 1731 (XVI). It has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely, the interpretation of a treaty provision.

In the preamble to the resolution requesting this opinion, the General Assembly expressed its recognition of "its need for authenti-
The rejection of the French amendment does not constitute a directive to the Court to exclude from its consideration the question whether certain expenditures were “decided on in conformity with the Charter”, if the Court finds such consideration appropriate. It is not to be assumed that the General Assembly would thus seek to fetter or hamper the Court in the discharge of its judicial functions; the Court must have full liberty to consider all relevant data available to it in forming an opinion on a question posed to it for an advisory opinion. Nor can the Court agree that the rejection of the French amendment has any bearing upon the question whether the General Assembly sought to preclude the Court from interpreting Article 17 in the light of other articles of the Charter, that is, in the whole context of the treaty. If any deduction is to be made from the debates on this point, the opposite conclusion would be drawn from the clear statements of sponsoring delegations that they took it for granted the Court would consider the Charter as a whole.

* * *

Turning to the question which has been posed, the Court observes that it involves an interpretation of Article 17, paragraph 2, of the Charter. On the previous occasions when the Court has had to interpret the Charter of the United Nations, it has followed the principles and rules applicable in general to the interpretation of treaties, since it has recognized that the Charter is a multilateral treaty, albeit a treaty having certain special characteristics. In interpreting Article 4 of the Charter, the Court was led to consider “the structure of the Charter” and “the relations established by it between the General Assembly and the Security Council”; a comparable problem confronts the Court in the instant matter. The Court sustained its interpretation of Article 4 by considering the manner in which the organs concerned “have consistently interpreted the text” in their practice (Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950, pp. 8-9).

The text of Article 17 is in part as follows:

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

Although the Court will examine Article 17 in itself and in its relation to the rest of the Charter, it should be noted that at least three separate questions might arise in the interpretation of paragraph 2 of this Article. One question is that of identifying what are “the expenses of the Organization”; a second question might concern apportionment by the General Assembly; while a third question might involve the interpretation of the phrase “shall be borne by the Members”. It is the second and third questions which directly involve “the financial obligations of the Members”, but it is only the first question which is posed by the request for the advisory opinion. The question put to the Court has to do with a moment logically anterior to apportionment, just as a question of apportionment would be anterior to a question of Members’ obligation to pay.

It is true that, as already noted, the preamble of the resolution containing the request refers to the General Assembly’s “need for authoritative legal guidance as to obligations of Member States”, but it is to be assumed that in the understanding of the General Assembly, it would find such guidance in the advisory opinion which the Court would give on the question whether certain identified expenditures constitute “expenses of the Organization” within the meaning of Article 17, paragraph 2, of the Charter. If the Court finds that the indicated expenditures are such “expenses”, it is not called upon to consider the manner in which, or the scale by which, they may be apportioned. The amount of what are unquestionably “expenses of the Organization within the meaning of Article 17, paragraph 2” is not in its entirety apportioned by the General Assembly and paid for by the contributions of Member States, since the Organization has other sources of income. A Member State, accordingly, is under no obligation to pay more than the amount apportioned to it; the expenses of the Organization and the total amount in money of the obligations of the Member States may not, in practice, necessarily be identical.

The text of Article 17, paragraph 2, refers to “the expenses of the Organization” without any further explicit definition of such expenses. It would be possible to begin with a general proposition to the effect that the “expenses” of any organization are the amounts paid out to defray the costs of carrying out its purposes, in this case, the political, economic, social, humanitarian and other purposes of the United Nations. The next step would be to examine, as the Court will, whether the resolutions authorizing the operations here in question were intended to carry out the purposes of the United Nations and whether the expenditures were incurred in furthering these operations. Or, it might simply be said that the “expenses” of an organization are those which are provided for in its budget. But the Court has not been asked to give an abstract definition of the words “expenses of the Organization”. It has been asked to answer a specific question related to certain identified expenditures which have actually been made, but the Court would not adequately discharge the obligation incumbent on it unless it examined in some detail various problems raised by the question which the General Assembly has asked.
It is perhaps the simple identification of "expenses" with the items included in a budget, which has led certain arguments to link the interpretation of the word "expenses" in paragraph 2 of Article 17, with the word "budget" in paragraph 1 of that Article; in both cases, it is contended, the qualifying adjective "regular" or "administrative" should be understood to be implied. Since no such qualification is expressed in the text of the Charter, it could be read in, only if such qualification must necessarily be implied from the provisions of the Charter considered as a whole, or from some particular provision thereof which makes it unavoidable to do so in order to give effect to the Charter.

In the first place, concerning the word "budget" in paragraph 1 of Article 17, it is clear that the existence of the distinction between "administrative budgets" and "operational budgets" was not absent from the minds of the drafters of the Charter, nor from the consciousness of the Organization even in the early days of its history. In drafting Article 17, the drafters found it suitable to provide in paragraph 1 that "The General Assembly shall consider and approve the budget of the Organization". But in dealing with the function of the General Assembly in relation to the specialized agencies, they provided in paragraph 3 that the General Assembly "shall examine the administrative budgets of such specialized agencies". If it had been intended that paragraph 1 should be limited to the administrative budget of the United Nations organization itself, the word "administrative" would have been inserted in paragraph 1 as it was in paragraph 3. Moreover, had it been contemplated that the Organization would also have had another budget, different from the one which was to be approved by the General Assembly, the Charter would have included some reference to such other budget and to the organ which was to approve it.

Similarly, at its first session, the General Assembly in drawing up and approving the Constitution of the International Refugee Organization, provided that the budget of that Organization was to be divided under the headings "administrative", "operational" and "large-scale resettlement"; but no such distinctions were introduced into the Financial Regulations of the United Nations which were adopted by unanimous vote in 1950, and which, in this respect, remain unchanged. These regulations speak only of "the budget" and do not provide any distinction between "administrative" and "operational".

In subsequent sessions of the General Assembly, including the sixteenth, there have been numerous references to the idea of distinguishing an "operational" budget; some speakers have advocated such a distinction as a useful book-keeping device; some considered it in connection with the possibility of differing scales of assessment or apportionment; others believed it should mark a differentiation of activities to be financed by voluntary contribu-

It is a consistent practice of the General Assembly to include in the annual budget resolutions, provision for expenses relating to the maintenance of international peace and security. Annually, since 1947, the General Assembly has made anticipatory provision for "unforeseen and extraordinary expenses" arising in relation to the "maintenance of peace and security". In a Note submitted to the Court by the Controller on the budgetary and financial practices of the United Nations, "extraordinary expenses" are defined as "obligations and expenditures arising as a result of the approval by a council, commission or other competent United Nations body of new programmes and activities not contemplated when the budget appropriations were approved".

The annual resolution designed to provide for extraordinary expenses authorizes the Secretary-General to enter into commitments to meet such expenses with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, except that such concurrence is not necessary if the Secretary-
General certifies that such commitments relate to the subjects mentioned and the amount does not exceed $2 million. At its fifteenth and sixteenth sessions, the General Assembly resolved "that if, as a result of a decision of the Security Council, commitments relating to the maintenance of peace and security should arise in an estimated total exceeding $10 million" before the General Assembly was due to meet again, a special session should be convened by the Secretary-General to consider the matter. The Secretary-General is regularly authorized to draw on the Working Capital Fund for such expenses but is required to submit supplementary budget estimates to cover amounts so advanced. These annual resolutions on unforeseen and extraordinary expenses were adopted without a dissenting vote in every year from 1947 through 1959, except for 1952, 1953 and 1954, when the adverse votes are attributable to the fact that the resolution included the specification of a controversial item—United Nations Korean war decorations.

It is notable that the 1961 Report of the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations, while revealing wide differences of opinion on a variety of propositions, records that the following statement was adopted without opposition:

"22. Investigations and observation operations undertaken by the Organization to prevent possible aggression should be financed as part of the regular budget of the United Nations."

In the light of what has been stated, the Court concludes that there is no justification for reading into the text of Article 17, paragraph 1, any limiting or qualifying word before the word "budget."

* * *

Turning to paragraph 2 of Article 17, the Court observes that, on its face, the term "expenses of the Organization" means all the expenses and not just certain types of expenses which might be referred to as "regular expenses". An examination of other parts of the Charter shows the variety of expenses which must inevitably be included within the "expenses of the Organization" just as much as the salaries of staff or the maintenance of buildings.

For example, the text of Chapters IX and X of the Charter with reference to international economic and social cooperation, especially the wording of those articles which specify the functions and powers of the Economic and Social Council, anticipated the numerous and varied circumstances under which expenses of the Organ-
argument leads to an examination of the respective functions of the General Assembly and of the Security Council under the Charter, particularly with respect to the maintenance of international peace and security.

Article 24 of the Charter provides:

"In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security..."

The responsibility conferred is "primary", not exclusive. This primary responsibility is conferred upon the Security Council, as stated in Article 24, "in order to ensure prompt and effective action". To this end, it is the Security Council which is given a power to impose an explicit obligation of compliance if for example it issues an order or command to an aggressor under Chapter VII. It is only the Security Council which can require enforcement by coercive action against an aggressor.

The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. Article 14 authorizes the General Assembly to "recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations". The word "measures" implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so. Thus while it is the Security Council which, exclusively, may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations; they are not merely hortatory. Article 18 deals with "decisions" of the General Assembly "on important questions". These "decisions" do indeed include certain recommendations, but others have dispositive force and effect. Among these latter decisions, Article 18 includes suspension of rights and privileges of membership, expulsion of Members, "and budgetary questions". In connection with the suspension of rights and privileges of membership and expulsion from membership under Articles 5 and 6, it is the Security Council which has only the power to recommend and it is the General Assembly which decides and whose decision determines status; but there is a close collaboration between the two organs. Moreover, these powers of decision of the General Assembly under Arti-

By Article 17, paragraph 1, the General Assembly is given the power not only to "consider" the budget of the Organization, but also to "approve" it. The decision to "approve" the budget has a close connection with paragraph 2 of Article 17, since thereunder the General Assembly is also given the power to apportion the expenses among the Members and the exercise of the power of apportionment creates the obligation, specifically stated in Article 17, paragraph 2, of each Member to bear that part of the expenses which is apportioned to it by the General Assembly. When those expenses include expenditures for the maintenance of peace and security, which are not otherwise provided for, it is the General Assembly which has the authority to apportion the latter amounts among the Members. The provisions of the Charter which distribute functions and powers to the Security Council and to the General Assembly give no support to the view that such distribution excludes from the powers of the General Assembly the power to provide for the financing of measures designed to maintain peace and security.

The argument supporting a limitation on the budgetary authority of the General Assembly with respect to the maintenance of international peace and security relies especially on the reference to "action" in the last sentence of Article 11, paragraph 2. This paragraph reads as follows:

"The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such question to the State or States concerned or to the Security Council, or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not merely to general questions relating to peace and security, but also to specific cases brought before the General Assembly by a State under Article 35, in its first sentence empowers the General Assembly, by means of recommendations to States or to the Security Council, or to both, to organize peacekeeping operations, at the request, or with the consent, of the States concerned. This power of the General Assembly is a special power which in no way derogates from its general powers under Article 10
or Article 14, except as limited by the last sentence of Article II, paragraph 2. This last sentence says that when "action" is necessary the General Assembly shall refer the question to the Security Council. The word "action" must mean such action as is solely within the province of the Security Council. It cannot refer to recommendations which the Security Council might make, as for instance under Article 38, because the General Assembly under Article II has a comparable power. The "action" which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely "Action with respect to threats to the peace, breaches of the peace, and acts of aggression". If the word "action" in Article II, paragraph 2, were interpreted to mean that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the General Assembly may make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article II, paragraph 2, has no application where the necessary action is not enforcement action.

The practice of the Organization throughout its history bears out the foregoing elucidation of the term "action" in the last sentence of Article II, paragraph 2. Whether the General Assembly proceeds under Article II or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity—action—in connection with the maintenance of international peace and security. Such implementation is a normal feature of the functioning of the United Nations. Such committees, commissions or other bodies or individuals, constitute, in some cases, subsidiary organs established under the authority of Article 22 of the Charter. The functions of the General Assembly for which it may establish such subsidiary organs include, for example, investigation, observation and supervision, but the way in which such subsidiary organs are utilized depends on the consent of the State or States concerned.

The Court accordingly finds that the argument which seeks, by reference to Article II, paragraph 2, to limit the budgetary authority of the General Assembly in respect of the maintenance of international peace and security, is unfounded.

* * *

It has further been argued before the Court that Article 43 of the Charter constitutes a particular rule, a lex specialis, which derogates from the general rule in Article 17, whenever an expenditure for the maintenance of international peace and security is involved. Article 43 provides that Members shall negotiate agreements with the Security Council on its initiative, stipulating what "armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security", the Member State will make available to the Security Council on its call. According to paragraph 2 of the Article:

"Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided."

The argument is that such agreements were intended to include specifications concerning the allocation of costs of such enforcement actions as might be taken by direction of the Security Council, and that it is only the Security Council which has the authority to arrange for meeting such costs.

With reference to this argument, the Court will state at the outset that, for reasons fully expounded later in this Opinion, the operations known as UNEF and ONUC were not enforcement actions within the compass of Chapter VII of the Charter and that therefore Article 43 could not have any applicability to the cases with which the Court is here concerned. However, even if Article 43 were applicable, the Court could not accept this interpretation of its text for the following reasons.

There is nothing in the text of Article 43 which would limit the discretion of the Security Council in negotiating such agreements. It cannot be assumed that in every such agreement the Security Council would insist, or that any Member State would be bound to agree, that such State would bear the entire cost of the "assistance" which it would make available including, for example, transport of forces to the point of operation, complete logistical maintenance in the field, supplies, arms and ammunition, etc. If, during negotiations under the terms of Article 43, a Member State would be entitled (as it would be) to insist, and the Security Council would be entitled (as it would be) to agree, that some part of the expense should be borne by the Organization, then such expense would form part of the expenses of the Organization and would fall to be apportioned by the General Assembly under Article 17. It is difficult to see how it could have been contemplated that all potential expenses could be envisaged in such agreements concluded perhaps long in advance. Indeed, the difficulty or impossibility of anticipating the entire financial impact of enforcement measures on Member States is brought out by the terms of Article 50 which provides that a State, whether a Member of the United Nations or not, "which finds itself confronted with special economic problems arising from the carrying out of those [preventive or enforcement] measures, shall have
the right to consult the Security Council with regard to a solution of those problems. Presumably in such a case the Security Council might determine that the overburdened State was entitled to some financial assistance; such financial assistance, if afforded by the Organization, as it might be, would clearly constitute part of the "expenses of the Organization". The economic problems could not have been covered in advance by a negotiated agreement since they would be unknown until after the event and in the case of non-Member States, which are also included in Article 50, no agreement at all would have been negotiated under Article 43.

Moreover, an argument which insists that all measures taken for the maintenance of international peace and security must be financed through agreements concluded under Article 43, would seem to exclude the possibility that the Security Council might act under some other Article of the Charter. The Court cannot accept so limited a view of the powers of the Security Council under the Charter. It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.

Articles of Chapter VII of the Charter speak of "situations" as well as disputes, and it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a State. The costs of actions which the Security Council is authorized to take constitute "expenses of the Organization within the meaning of Article 17, paragraph 2".

* * *

The Court has considered the general problem of the interpretation of Article 17, paragraph 2, in the light of the general structure of the Charter and of the respective functions assigned by the Charter to the General Assembly and to the Security Council, with a view to determining the meaning of the phrase "the expenses of the Organization". The Court does not find it necessary to go further in giving a more detailed definition of such expenses. The Court will, therefore, proceed to examine the expenditures enumerated in the request for the advisory opinion. In determining whether the actual expenditures authorized constitute "expenses of the Organization within the meaning of Article 27, paragraph 2, of the Charter", the Court agrees that such expenditures must be tested by their relationship to the purposes of the United Nations in the sense that if an expenditure were made for a purpose which is not one of the purposes of the United Nations, it could not be considered an "expense of the Organization".

The purposes of the United Nations are set forth in Article 1 of the Charter. The first two purposes as stated in paragraphs 1 and 2, may be summarily described as pointing to the goal of international peace and security and friendly relations. The third purpose is the achievement of economic, social, cultural and humanitarian goals and respect for human rights. The fourth and last purpose is: "To be a center for harmonizing the actions of nations in the attainment of these common ends."

The primary place ascribed to international peace and security is natural, since the fulfillment of the other purposes will be dependent upon the attainment of that basic condition. These purposes are broad indeed, but neither they nor the powers conferred to effectuate them are unlimited. Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action. But when the Organization takes action which warrants the assertion that it was appropriate for the fulfillment of one of the stated purposes of the United Nations, the presumption is that such action is not ultra vires the Organization.

If it is agreed that the action in question is within the scope of the functions of the Organization but it is alleged that it has been initiated or carried out in a manner not in conformity with the division of functions among the several organs which the Charter prescribes, one moves to the internal plane, to the internal structure of the Organization. If the action was taken by the wrong organ, it was irregular as a matter of that internal structure, but this would not necessarily mean that the expense incurred was not an expense of the Organization. Both national and international law contemplate cases in which the body corporate or politic may be bound, as to third parties, by an ultra vires act of an agent.

In the legal systems of States, there is often some procedure for determining the validity of even a legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted; the opinion which the Court is in course of rendering is an advisory opinion. As anticipated in 1945, therefore, each organ must, in the first place at least, determine its own jurisdiction. If the Security Council, for example, adopts a resolution purportedly for the maintenance of international peace and security and if, in accordance with a mandate or authorization in such resolution, the Secretary-General incurs financial obligations, these amounts must be presumed to constitute "expenses of the Organization".

The Financial Regulations and Rules of the United Nations, adopted by the General Assembly, provide:

"Regulation 41: The appropriations voted by the General Assembly shall constitute an authorization to the Secretary-
CERTAIN EXPENSES OF U.N. (OPINION OF 20 VII 62)

General to incur obligations and make payments for the purposes for which the appropriations were voted and up to the amounts so voted."

Thus, for example, when the General Assembly in resolution 1619 (XV) included a paragraph reading:

"3. Decides to appropriate an amount of $100 million for the operations of the United Nations in the Congo from 1 January to 31 October 1961;"

this constituted an authorization to the Secretary-General to incur certain obligations of the United Nations just as clearly as when in resolution 1590 (XV) the General Assembly used this language:

"3. Authorizes the Secretary-General ... to incur commitments in 1961 for the United Nations operations in the Congo up to the total of $24 million..."

On the previous occasion when the Court was called upon to consider Article 17 of the Charter, the Court found that an award of the Administrative Tribunal of the United Nations created an obligation of the Organization and with relation thereto the Court said that:

"the function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it; for some part of that expenditure arises out of obligations already incurred by the Organization, and to this extent the General Assembly has no alternative but to honour these engagements". (Effects of awards of compensation made by the United Nations Administrative Tribunal, I.C.J. Reports 1954, p. 59.)

Similarly, obligations of the Organization may be incurred by the Secretary-General, acting on the authority of the Security Council or of the General Assembly, and the General Assembly "has no alternative but to honour these engagements".

The obligation is one thing: the way in which the obligation is met—that is from what source the funds are secured—is another. The General Assembly may follow any one of several alternatives: it may apportion the cost of the item according to the ordinary scale of assessment; it may apportion the cost according to some special scale of assessment; it may utilize funds which are voluntarily contributed to the Organization; or it may find some other method or combination of methods for providing the necessary funds. In this context, it is of no legal significance whether, as a matter of book-keeping or accounting, the General Assembly chooses to have the item in question included under one of the standard established sections of the "regular" budget or whether it is separately listed in some special account or fund. The significant fact is that the item is an expense of the Organization and under

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Article 17, paragraph 2, the General Assembly therefore has authority to apportion it.

The reasoning which has just been developed, applied to the resolutions mentioned in the request for the advisory opinion, might suffice as a basis for the opinion of the Court. The Court finds it appropriate, however, to take into consideration other arguments which have been advanced.

* * *

The expenditures enumerated in the request for an advisory opinion may conveniently be examined first with reference to UNEF and then to ONUC. In each case, attention will be paid first to the operations and then to the financing of the operations.

In considering the operations in the Middle East, the Court must analyze the functions of UNEF as set forth in resolutions of the General Assembly. Resolution 998 (ES-I) of 4 November 1956 requested the Secretary-General to submit a plan "for the setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities in accordance with all the terms of" the General Assembly's previous resolution 997 (ES-I) of 2 November 1956. The verb "secure" as applied to such matters as halting the movement of military forces and arms into the area and the conclusion of a cease-fire, might suggest measures of enforcement, were it not that the Force was to be set up "with the consent of the nations concerned".

In his first report on the plan for an emergency international Force the Secretary-General used the language of resolution 998 (ES-I) in submitting his proposals. The same terms are used in General Assembly resolution 1000 (ES-I) of 5 November in which operative paragraph 1 reads:

"Establishes a United Nations Command for an emergency international Force to secure and supervise the cessation of hostilities in accordance with all the terms of General Assembly resolution 997 (ES-I) of 2 November 1956."

This resolution was adopted without a dissenting vote. In his second and final report on the plan for an emergency international Force of 6 November, the Secretary-General, in paragraphs 9 and 10, stated:

"While the General Assembly is enabled to establish the Force with the consent of those parties which contribute units to the Force, it could not request the Force to be stationed or operate on the territory of a given country without the consent of the Govern-

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ment of that country. This does not exclude the possibility that the Security Council could use such a Force within the wider margins provided under Chapter VII of the United Nations Charter. I would not for the present consider it necessary to elaborate this point further, since no use of the Force under Chapter VII, with the rights in relation to Member States that this would entail, has been envisaged.

10. The point just made permits the conclusion that the setting up of the Force should not be guided by the needs which would have existed had the measure been considered as part of an enforcement action directed against a Member country. There is an obvious difference between establishing the Force in order to secure the cessation of hostilities, with a withdrawal of forces, and establishing such a Force with a view to enforcing a withdrawal of forces."

Paragraph 12 of the Report is particularly important because in resolution 1001 (ES-I) the General Assembly, again without a dissenting vote, "Concurs in the definition of the functions of the Force as stated in paragraph 12 of the Secretary-General's report". Paragraph 12 reads in part as follows:

"the functions of the United Nations Force would be, when a cease-fire is being established, to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the other terms established in the resolution of 2 November 1956. The Force obviously should have no rights other than those necessary for the execution of its functions, in co-operation with local authorities. It would be more than an observers' corps, but in no way a military force temporarily controlling the territory in which it is stationed; nor, moreover, should the Force have military functions exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict take all necessary steps for compliance with the recommendations of the General Assembly."

It is not possible to find in this description of the functions of UNEF, as outlined by the Secretary-General and concurred in by the General Assembly without a dissenting vote, any evidence that the Force was to be used for purposes of enforcement. Nor can such evidence be found in the subsequent operations of the Force, operations which did not exceed the scope of the functions ascribed to it.

It could not therefore have been patent on the face of the resolution that the establishment of UNEF was in effect "enforcement action" under Chapter VII which, in accordance with the Charter, could be authorized only by the Security Council.

On the other hand, it is apparent that the operations were undertaken to fulfil a prime purpose of the United Nations, that is, to promote and to maintain a peaceful settlement of the situation. This being true, the Secretary-General properly exercised the authority given him to incur financial obligations of the Organization and expenses resulting form such obligations must be considered "expenses of the Organization within the meaning of Article 17, paragraph 2".

Apropos what has already been said about the meaning of the word "action" in Article 11 of the Charter, attention may be called to the fact that resolution 997 (ES-I), which is chronologically the first of the resolutions concerning the operations in the Middle East mentioned in the request for the advisory opinion, provides in paragraph 5:

"Requests the Secretary-General to observe and report promptly on the compliance with the present resolution to the Security Council and to the General Assembly, for such further action as they may deem appropriate in accordance with the Charter."

The italicized words reveal an understanding that either of the two organs might take "action" in the premises. Actually, as one knows, the "action" was taken by the General Assembly in adopting two days later without a dissenting vote, resolution 998 (ES-I) and, also without a dissenting vote, within another three days, resolutions 1000 (ES-I) and 1001 (ES-I), all providing for UNEF.

The Court notes that these "actions" may be considered "measures" recommended under Article 14, rather than "action" recommended under Article 11. The powers of the General Assembly stated in Article 14 are not made subject to the provisions of Article 11, but only of Article 12. Furthermore, as the Court has already noted, the word "measures" implies some kind of action. So far as concerns the nature of the situations in the Middle East in 1956, they could be described as "likely to impair ... friendly relations among nations", just as well as they could be considered to involve "the maintenance of international peace and security". Since the resolutions of the General Assembly in question do not mention upon which article they are based, and since the language used in most of them might imply reference to either Article 14 or Article 11, it cannot be excluded that they were based upon the former rather than the latter article.

* * *

The financing of UNEF presented perplexing problems and the debates on these problems have even led to the view that the General Assembly never, either directly or indirectly, regarded the
expenses of UNEF as “expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter”. With this interpretation the Court cannot agree. In paragraph 15 of his second and final report on the plan for an emergency international Force of 6 November 1956, the Secretary-General said that this problem required further study. Provisionally, certain costs might be absorbed by a nation providing a unit, “while all other costs should be financed outside the normal budget of the United Nations”. Since it was “obviously impossible to make any estimate of the costs without a knowledge of the size of the corps and the length of its assignment”, the “only practical course … would be for the General Assembly to vote a general authorization for the cost of the Force on the basis of general principles such as those here suggested”.

Paragraph 5 of resolution 1001 (ES-I) of 7 November 1956 states that the General Assembly “Approves provisionally the basic rule concerning the financing of the Force laid down in paragraph 15 of the Secretary-General’s report”.

In an oral statement to the plenary meeting of the General Assembly on 26 November 1956, the Secretary-General said:

“… I wish to make it equally clear that while funds received and payments made with respect to the Force are to be considered as coming outside the regular budget of the Organization, the operation is essentially a United Nations responsibility, and the Special Account to be established must, therefore, be construed as coming within the meaning of Article 17 of the Charter”.

At this same meeting, after hearing this statement, the General Assembly in resolution 1122 (XI) noted that it had “provisionally approved the recommendations made by the Secretary-General concerning the financing of the Force”. It then authorized the Secretary-General “to establish a United Nations Emergency Force Special Account to which funds received by the United Nations, outside the regular budget, for the purpose of meeting the expenses of the Force shall be credited and from which payments for this purpose shall be made”. The resolution then provided that the initial amount in the Special Account should be $10 million and authorized the Secretary-General “pending the receipt of funds for the Special Account, to advance from the Working Capital Fund such sums as the Special Account may require to meet any expenses chargeable to it”. The establishment of a Special Account does not necessarily mean that the funds in it are not to be derived from contributions of Members as apportioned by the General Assembly.

The next of the resolutions of the General Assembly to be considered is 1089 (XI) of 21 December 1956, which reflects the uncertainties and the conflicting views about financing UNEF. The divergencies are duly noted and there is ample reservation concerning possible future action, but operative paragraph 1 follows the recommendation of the Secretary-General “that the expenses relating to the Force should be apportioned in the same manner as the expenses of the Organization”. The language of this paragraph is clearly drawn from Article 17:

“1. Decides that the expenses of the United Nations Emergency Force, other than for such pay, equipment, supplies and services as may be furnished without charge by Governments of Member States, shall be borne by the United Nations and shall be apportioned among the Member States, to the extent of $10 million, in accordance with the scale of assessments adopted by the General Assembly for contributions to the annual budget of the Organization for the financial year 1957”.

This resolution, which was adopted by the requisite two-thirds majority, must have rested upon the conclusion that the expenses of UNEF were “expenses of the Organization” since otherwise the General Assembly would have had no authority to decide that they “shall be borne by the United Nations” or to apportion them among the Members. It is further significant that paragraph 3 of this resolution, which established a study committee, charges this committee with the task of examining “the question of the apportionment of the expenses of the Force in excess of $10 million … and the principle or the formulation of scales of contributions different from the scale of contributions by Member States to the ordinary budget for 1957”. The italicized words show that it was not contemplated that the Committee would consider any method of meeting these expenses except through some form of apportionment although it was understood that a different scale might be suggested.

The report of this study committee again records differences of opinion but the draft resolution which it recommended authorized further expenditures and authorized the Secretary-General to advance funds from the Working Capital Fund and to borrow from other funds if necessary; it was adopted as resolution 1090 (XI) by the requisite two-thirds majority on 27 February 1957. In paragraph 4 of that resolution, the General Assembly decided that it would at its twelfth session “consider the basis for financing any costs of the Force in excess of $10 million not covered by voluntary contributions”.

Resolution 1151 (XII) of 22 November 1957, while contemplating the receipt of more voluntary contributions, decided in paragraph 4 that the expenses authorized “shall be borne by the Members of the United Nations in accordance with the scales of assessments
adopted by the General Assembly for the financial years 1957 and 1958 respectively”.

Almost a year later, on 14 November 1958, in resolution 1253 (XIII) the General Assembly, while “noting with satisfaction the effective way in which the Force continues to carry out its function”, requested the Fifth Committee “to recommend such action as may be necessary to finance this continuing operation of the United Nations Emergency Force”.

After further study, the provision contained in paragraph 4 of the resolution of 22 November 1957 was adopted in paragraph 4 of resolution 1337 (XIII) of 13 December 1958. Paragraph 5 of that resolution requested “the Secretary-General to consult with the Governments of Member States with respect to their views concerning the manner of financing the Force in the future, and to submit a report together with the replies to the General Assembly at its fourteenth session”. Thereafter a new plan was worked out for the utilization of any voluntary contributions, but resolution 1441 (XIV) of 5 December 1959, in paragraph 2: “Decides to assess the amount of $20 million against all Members of the United Nations on the basis of the regular scale of assessments” subject to the use of credits drawn from voluntary contributions. Resolution 1575 (XV) of 20 December 1960 is practically identical.

The Court concludes that, from year to year, the expenses of UNEF have been treated by the General Assembly as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter.

* * *

The operations in the Congo were initially authorized by the Security Council in the resolution of 14 July 1960 which was adopted without a dissenting vote. The resolution, in the light of the appeal from the Government of the Congo, the report of the Secretary-General and the debate in the Security Council, was clearly adopted with a view to maintaining international peace and security. However, it is argued that that resolution has been implemented, in violation of provisions of the Charter inasmuch as under the Charter it is the Security Council that determines which States are to participate in carrying out decisions involving the maintenance of international peace and security, whereas in the case of the Congo the Secretary-General himself determined which States were to participate with their armed forces or otherwise.

By paragraph 2 of the resolution of 14 July 1960 the Security Council “Decides to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary”. Paragraph 3 requested the Secretary-General “to report to the Security Council as appropriate”. The Secretary-General made his first report on 18 July and in it informed the Security Council which States he had asked to contribute forces or matériel, which ones had complied, the size of the units which had already arrived in the Congo (a total of some 3,500 troops), and some detail about further units expected.

On 22 July the Security Council by unanimous vote adopted a further resolution in which the preamble states that it had considered this report of the Secretary-General and appreciated “the work of the Secretary-General and the speed with which he had given it to all Member States invited by him to give assistance”. In operative paragraph 3, the Security Council “Considers the Secretary-General for the prompt action he has taken to carry out resolution S/4387 of the Security Council, and for his first report”.

On 9 August the Security Council adopted a further resolution without a dissenting vote in which it took note of the second report and of an oral statement of the Secretary-General and in operative paragraph 1: “Considers the authority given to the Secretary-General by the Security Council resolutions of 14 July and 22 July 1960 and requests him to continue to carry out the responsibility placed on him thereby”. This emphasis is further supported by operative paragraphs 5 and 6 by which all Member States were called upon “to afford mutual assistance” and the Secretary-General was requested “to implement this resolution and to report further to the Council as appropriate”.

The Security Council resolutions of 14 July, 22 July and 9 August 1960 were noted by the General Assembly in its resolution 1474 (ES-IV) of 20 September, adopted without a dissenting vote, in which it “fully supports these resolutions. Again without a dissenting vote, on 21 February 1961 the Security Council reaffirmed its three previous resolutions “and the General Assembly resolution 1474 (ES-IV) of 20 September 1960” and reminded “all States of their obligations under these resolutions”.

Again without a dissenting vote on 24 November 1961 the Security Council, once more recalling the previous resolutions, reaffirmed “the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out” in those resolutions. Operative paragraphs 4 and 5 of this resolution renew the authority to the Secretary-General to continue the activities in the Congo.

In the light of such a record of reiterated consideration, confirmation, approval and ratification by the Security Council and by the General Assembly of the actions of the Secretary-General in
implementing the resolution of 14 July 1960, it is impossible to
reach the conclusion that the operations in question usurped or
impinged upon the prerogatives conferred by the Charter on the
Security Council. The Charter does not forbid the Security Council
to act through instruments of its own choice; under Article 29 it
may establish such subsidiary organs as it deems necessary for
the performance of its functions"; under Article 98 it may entrust
"other functions" to the Secretary-General.

It is not necessary for the Court to express an opinion as to which
article or articles of the Charter were the basis for the resolutions
of the Security Council, but it can be said that the operations of
ONUC did not include a use of armed force against a State which
the Security Council, under Article 39, determined to have com-
mitted an act of aggression or to have breached the peace. The
armed forces which were utilized in the Congo were not authorized
to take military action against any State. The operation did not
involve "preventive or enforcement measures" against any State
under Chapter VII and therefore did not constitute "action" as that
term is used in Article 17.

For the reasons stated, financial obligations which, in accordance
with the clear and reiterated authority of both the Security Council
and the General Assembly, the Secretary-General incurred on
behalf of the United Nations, constitute obligations of the Organiza-
tion for which the General Assembly was entitled to make pro-
vision under the authority of Article 17.

* * *

In relation to ONUC, the first action concerning the financing of
the operation was taken by the General Assembly on 20 December
1960, after the Security Council had adopted its resolutions of
14 July, 22 July and 9 August, and the General Assembly had
adopted its supporting resolution of 20 September. This resolution
1583 (XV) of 20 December referred to the report of the Secretary-
General on the estimated cost of the Congo operations from 14 July
to 31 December 1960, and to the recommendations of the Advisory
Committee on Administrative and Budgetary Questions. It decided
to establish an *ad hoc* account for the expenses of the United
Nations in the Congo. It also took note of certain waivers of cost
claims and then decided to apportion the sum of $48.5 million among
the Member States "on the basis of the regular scale of assessment",
subject to certain exceptions. It made this decision because in the
preamble it had already recognized:

"that the expenses involved in the United Nations operations in
the Congo for 1960 constitute 'expenses of the Organization' within

the meaning of Article 17, paragraph 2, of the Charter of the
United Nations and that the assessment thereof against Member
States creates binding legal obligations on such States to pay their
assessed shares".

By its further resolution 1590 (XV) of the same day, the General
Assembly authorized the Secretary-General "to incur commitments
in 1961 for the United Nations operations in the Congo up to the
total of $24 million for the period from 1 January to 31 March 1961".
On 3 April 1961, the General Assembly authorized the Secretary-
General to continue until 21 April "to incur commitments for the
United Nations operations in the Congo at a level not to exceed
$8 million per month".

Importance has been attached to the statement included in the
preamble of General Assembly resolution 1619 (XV) of 21 April 1961
which reads:

"Bearing in mind that the extraordinary expenses for the United
Nations operations in the Congo are essentially different in nature
from the expenses of the Organization under the regular budget
and that therefore a procedure different from that applied in the
case of the regular budget is required for meeting these extraordinary
expenses."

However, the same resolution in operative paragraph 4:

"Decides further to apportion as expenses of the Organization
the amount of $100 million among the Member States in accordance
with the scale of assessment for the regular budget subject to the
provisions of paragraph 8 below [paragraph 8 makes certain adjust-
ments for Member States assessed at the lowest rates or who receive
certain designated technical assistance], pending the establishment
of a different scale of assessment to defray the extraordinary
expenses of the Organization resulting from these operations."

Although it is not mentioned in the resolution requesting the
advisory opinion, because it was adopted at the same meeting of
the General Assembly, it may be noted that the further resolution
1732 (XVI) of 20 December 1961 contains an identical paragraph
in the preamble and a comparable operative paragraph 4 on apportioning
$80 million.

The conclusion to be drawn from these paragraphs is that the
General Assembly has twice decided that even though certain
expenses are "extraordinary" and "essentially different" from those
under the "regular budget", they are none the less "expenses of the
Organization" to be apportioned in accordance with the powers
granted to the General Assembly by Article 17, paragraph 2. This
conclusion is strengthened by the concluding clause of paragraph 4
of the two resolutions just cited which states that the decision
therein to use the scale of assessment already adopted for the
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regular budget is made "pending the establishment of a different scale of assessment to defray the extraordinary expenses". The only alternative—and that means the "different procedure"—contemplated was another scale of assessment and not some method other than assessment. "Apportionment" and "assessment" are terms which relate only to the General Assembly's authority under Article 17.

* * *

At the outset of this opinion, the Court pointed out that the text of Article 17, paragraph 2, of the Charter could lead to the simple conclusion that "the expenses of the Organization" are the amounts paid out to defray the costs of carrying out the purposes of the Organization. It was further indicated that the Court would examine the resolutions authorizing the expenditures referred to in the request for the advisory opinion in order to ascertain whether they were incurred with that end in view. The Court has made such an examination and finds that they were so incurred. The Court has also analyzed the principal arguments which have been advanced against the conclusion that the expenditures in question should be considered as "expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter of the United Nations", and has found that these arguments are unfounded. Consequently, the Court arrives at the conclusion that the question submitted to it in General Assembly resolution 1731 (XVI) must be answered in the affirmative.

For these reasons,

the Court is of opinion,

by nine votes to five,


Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of July, one thousand nine hundred and sixty-two, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) B. Winiarski,
President.

(Signed) Garnier-Coignet,
Registrar.

Judge Spiropoulos makes the following declaration:

While accepting the Court’s conclusion, I cannot agree with all the views put forward in the Advisory Opinion. In particular, I consider that the affirmative reply to the request for an opinion is justified by the argument that the resolutions of the General Assembly authorizing the financing of the United Nations operations in the Congo and the Middle East, being resolutions designed to meet expenditure concerned with the fulfillment of the purposes of the United Nations, which were adopted by two-thirds of the Members of the General Assembly present and voting, create obligations for the Members of the United Nations.

I express no opinion as to the conformity with the Charter of the resolutions relating to the United Nations operations in the Congo and the Middle East, for the following reasons:

The French delegation had proposed to the General Assembly the acceptance of an amendment to the text, finally adopted by it, according to which amendment the question put to the Court would have become: "Were the expenditures authorized, etc. . . . decided on in conformity with the provisions of the Charter and, if so, do they constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations?"

On 20 December 1961, in the course of the meeting of the General Assembly, this amendment was accompanied by a statement by the
French delegation justifying the submission of the French amendment and which, among other things, said:

"In the opinion of the French delegation, the question put to the Court does not enable the latter to give a clear-cut opinion on the juridical basis for the financial obligations of Member States. The Court cannot, in fact, appraise the scope of those resolutions without determining what obligations they may create for Member States under the Charter.

It is for this reason that the French delegation is submitting to the Assembly an amendment [A/L. 378] the adoption of which would enable the Court to determine whether or not the Assembly resolutions concerning the financial implications of the United Nations operations in the Congo and the Middle East are in conformity with the Charter. Only thus, if the matter is referred to the Court, will it be done in such a way as to take into account the scope and nature of the problems raised in the proposal to request an opinion."

The French amendment was rejected.

The rejection of the French amendment by the General Assembly seems to me to show the desire of the Assembly that the conformity or non-conformity of the decisions of the Assembly and of the Security Council concerning the United Nations operations in the Congo and the Middle East should not be examined by the Court. It seems natural, indeed, that the General Assembly should not have wished that the Court should pronounce on the validity of resolutions which have been applied for several years. In these circumstances, I have felt bound to refrain from pronouncing on the conformity with the Charter of the resolutions relating to the United Nations operations in the Congo and the Middle East.

Judges Sir Percy Spender, Sir Gerald Fitzmaurice and Morelli append to the Opinion of the Court statements of their Separate Opinions.

President Winiarski and Judges Basdevant, Moreno Quintana, Koretsky and Bustamante y Rivero append to the Opinion of the Court statements of their Dissenting Opinions.

(Initialled) B. W.
(Initialled) G.-C.
Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980
INTERPRETATION OF THE AGREEMENT OF 25 MARCH 1951 BETWEEN THE WHO AND EGYPT

Determination by the Court of the meaning and implications of question submitted for advisory opinion — Need for Court to ascertain and formulate legal questions really in issue.

International organizations and host States — Respective powers of the organization and the host State with regard to seat of headquarters or regional offices of organization — Mutual obligations of co-operation and good faith resulting from a State’s membership of organization as well as from relations between organization and host State — Legal principles and rules applicable on transfer of office of organization from territory of host State concerning conditions and modalities for effecting transfer — Duty to consult — Consideration of provisions of host agreements and of Vienna Convention on the Law of Treaties — Application of principles and rules of general international law — Mutual obligation to co-operate in good faith to promote the objectives and purposes of the Organization.

ADVISORY OPINION

Present: President Sir Humphrey Waldoek; Vice-President Elias; Judges Forster, Gros, Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara; Registrar Torres Bernárdez.


The Court, composed as above,
gives the following Advisory Opinion:

1. The questions upon which the advisory opinion of the Court has been requested were laid before the Court by a letter dated 21 May 1980, received in the Registry on 28 May 1980, addressed by the Director-General of the World Health Organization to the Registrar. In that letter the Director-General informed the Court of resolution WHA33.16 adopted by the World Health Assembly on 20 May 1980, in accordance with Article 96, paragraph 2, of the Charter of the United Nations, Article 76 of the Constitution of the World Health Organization, and Article X, paragraph 2, of the Agreement between the United Nations and the World Health Organization, by which the Organization had decided to submit two questions to the Court for advisory opinion. The text of that resolution is as follows:

“The Thirty-third World Health Assembly,

Having regard to proposals which have been made to remove from Alexandria the Regional Office for the Eastern Mediterranean Region of the World Health Organization,

Taking note of the differing views which have been expressed in the World Health Assembly on the question of whether the World Health Organization may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951,

Noting further that the Working Group of the Executive Board has been unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement,

Decides, prior to taking any decision on removal of the Regional Office, and pursuant to Article 76 of the Constitution of the World Health Organization and Article X of the Agreement between the United Nations and the World Health Organization approved by the General Assembly of the United Nations on 15 November 1947, to submit to the International Court of Justice for its Advisory Opinion the following questions:

1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?

2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?”

2. By letters dated 6 June 1980, the Registrar, pursuant to Article 66, paragraph 1, of the Statute of the Court, gave notice of the request for advisory opinion to all States entitled to appear before the Court.

3. The President of the Court, having decided pursuant to Article 66, paragraph 2, of the Statute, that those States Members of the World Health Organization who were also States entitled to appear before the Court, and the Organization itself, were likely to be able to furnish information on the question submitted to the Court, made an Order on 6 June 1980 fixing 1 September 1980 as the time-limit within which written statements might be submitted by those States. Accordingly, the special and direct communication provided for in
Article 66, paragraph 2, of the Statute was included in the above-mentioned letters of 6 June 1980 addressed to those States, and a similar communication was addressed to the WHO.

4. The following States submitted written statements to the Court within the time-limit fixed by the Order of 6 June 1980: Bolivia, Egypt, Iraq, Jordan, Kuwait, Syrian Arab Republic, United Arab Emirates, United States of America. The texts of these statements were transmitted to the States to which the special and direct communication had been sent, and to the WHO.

5. Pursuant to Article 65, paragraph 2, of the Statute and Article 104 of the Rules of Court, the Director-General of the WHO transmitted to the Court a dossier of documents likely to throw light upon the questions. This dossier was received in the Registry on 11 June 1980; it was not accompanied by a written statement, a synopsis of the case or an index of the documents. In response to requests by the President of the Court, the WHO supplied the Court, for its information, with a number of additional documents, and the International Labour Organisation supplied the Court with documents of that Organisation regarded as likely to throw light on the questions before the Court.

6. By a letter of 15 September 1980, the Registrar requested the States Members of the WHO entitled to appear before the Court to inform him whether they intended to submit an oral statement at the public sittings to be held for that purpose, the date fixed for which was notified to them at the same time.

7. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements submitted to the Court accessible to the public, with effect from the opening of the oral proceedings.

8. In the course of three public sittings held on 21, 22 and 23 October 1980, oral statements were addressed to the Court by the following representatives:

For the United Arab Emirates: Mr. Mustafa Kamal Yasseen, Special Counsellor of the Mission of the United Arab Emirates at Geneva.

For the Republic of Tunisia: Mr. Abdelhak Chérif, Counsellor, Embassy of Tunisia at The Hague.

For the United States of America: Mr. Stephen M. Schwamb, Deputy Legal Adviser, Department of State.

For the Syrian Arab Republic: Mr. Adnan Nachabé, Legal Adviser to the Ministry of Foreign Affairs.

For the Arab Republic of Egypt: H.E. Mr. Ahmed Osman, Ambassador of Egypt to Austria.

In reply to a question by the President, Mr. Claude-Henri Vignes, Director of the Legal Division of the WHO, stated at the public sittings that the WHO did not intend to submit argument to the Court on the questions put in the request for Opinion, but that he would be prepared, on behalf of the Director-General, to answer any question that the Court might put to him. Questions were put by Members of the Court to the Government of Egypt and to the WHO; replies were given by the representative of Egypt and by the Director of the Legal Division of the WHO, and additional observations were made by the representatives of the United States of America and the United Arab Emirates.

9. At the close of the public sittings held on 23 October 1980, the President of the Court indicated that the Court remained ready to receive any further observations which the Director of the Legal Division of the WHO or the representatives of the States concerned might wish to submit in writing within a stated time-limit. In pursuance of this invitation, the Governments of the United States of America and Egypt transmitted certain written observations to the Court on 24 October and 29 October 1980 respectively; copies of these were supplied to the representatives of the other States which had taken part in the oral proceedings, as well as to the WHO. Certain further documents were also supplied to the Court by the WHO after the close of the oral proceedings, in response to a request made by a Member of the Court.

* * *

10. The first, and principal, question submitted to the Court in the request is formulated in hypothetical terms:

"1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?"

But a rule of international law, whether customary or conventional, does not operate in a vacuum; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part. Accordingly, if a question put in the hypothetical way in which it is posed in the request is to receive a pertinent and effectual reply, the Court must first ascertain the meaning and full implications of the question in the light of the actual framework of fact and law in which it falls for consideration. Otherwise its reply to the question may be incomplete and, in consequence, ineffectual and even misleading as to the pertinent legal rules actually governing the matter under consideration by the requesting Organization. The Court will therefore begin by setting out the pertinent elements of fact and of law which, in its view, constitute the context in which the meaning and implications of the first question posed in the request have to be ascertained.

* * *

11. The existence at the present day of a Regional Office of the World Health Organization located at Alexandria has its origin in two main circumstances. One is the policy adopted by the WHO in 1946, which is expressed in Chapter XI of the text of its Constitution, of establishing regional health organizations designed to be an integral part of the Organization. The other is the fact that at the end of the Second World War there existed at Alexandria a health Bureau which, pursuant to that policy
and by agreement between Egypt and the WHO, was subsequently incorporated in the Organization in the manner hereafter described.

12. Article 44 of the WHO Constitution empowers the World Health Assembly to define geographical areas in which it is desirable to establish a regional organization and, with the consent of a majority of the members of the Organization situated within the area, to establish the regional organization. It also provides that there is not to be more than one regional organization in each area. Articles 45 and 46 proceed to lay down that each such regional organization is to be an integral part of the Organization and to consist of a regional committee and a regional office. Articles 47-53 then set out rules to regulate the composition, functions, procedure and staff of regional committees. Finally, Article 54, which contains special provisions regarding the “integration” of pre-existing inter-governmental regional health organizations, reads as follows:

“The Pan American Sanitary Organization represented by the Pan American Sanitary Bureau and the Pan American Sanitary Conferences, and all other inter-governmental regional health organizations in existence prior to the date of signature of this Constitution, shall in due course be integrated with the Organization. This integration shall be effected as soon as practicable through common action based on mutual consent of the competent authorities expressed through the organizations concerned.”

The above-mentioned provisions of Chapter XI are thus the constitutional framework within which the WHO came to establish its regional office in Egypt.

13. The existence of a health bureau in Alexandria dates back to the creation of a general Board of Health in Egypt in 1831 for the purpose of preventing the spread of cholera and other diseases by and among pilgrims on the way to and from Mecca. This Board subsequently acquired a certain international character as a result of the association with its quarantine work of seven representatives of States having rights in Egypt under the capitulations régime; and in 1892 its character as an international health agency became more pronounced as a result of changes in the structure of its council effected by the International Sanitary Convention of Venice of that year. In this form the Conseil sanitaire maritime et quarantenaire d’Egypte operated successfully for over forty years, during which, by arrangement with the Office international d’hygiène publique and pursuant to the International Sanitary Convention of 1926, it also functioned as the Regional Bureau of Epidemiological Intelligence for the Near East. In 1938, at the request of the Egyptian Government, it was decided, at the International Sanitary Conference of that year that the Conseil sanitaire should be abolished and its functions assumed by the governments of Egypt and the other countries concerned, but this did not involve the suppression of the Regional Bureau of Epidemiological Intelligence. The new Bureau, although placed under the authority of the Egyptian Gov-

government, was to have the same international character as the former Bureau; the Egyptian Government was to set up a commission including technical representatives of the affiliated countries. From 1938 onwards the expenses of the Bureau were wholly borne by the Egyptian Government. The Second World War broke out before the projected commission had been constituted, and from December 1940 until the end of hostilities the work of the Alexandria Bureau was taken over by a special wartime service under the Quarantine Department of the Egyptian Ministry of Public Health. After the hostilities had ended, the Bureau resumed its operations.

14. It has not been made entirely clear to the Court what was the exact situation in regard to the Alexandria Sanitary Bureau as a result of the events just described. But it was operating under Egyptian Ministry of Public Health when in 1946, and before the WHO Constitution had been adopted, Egypt raised the question of the relation of the Bureau to the Organization. Even before that, the members of the newly created League of Arab States had taken a decision in favour of using the Alexandria Bureau as their regional sanitary bureau. Meanwhile, however, the Alexandria Bureau was continuing to operate under the Egyptian sanitary authorities rather than as an inter-governmental institution. On the other hand, the projected association of the Bureau with the League of Arab States, the international character of its functions and its previous status may have led to the Bureau being regarded as an inter-governmental institution. This no doubt explains why, as will now be seen, the Alexandria Sanitary Bureau, despite any question there may have been as to its inter-governmental character, was in fact dealt with by the Organization as a case of integration under Article 54 of the WHO Constitution.

15. On 6 March 1947, at the direction of the WHO Interim Commission, the Executive Secretary of the Commission sent a circular letter to member governments enquiring as to whether they might wish to have either the headquarters of the organization or the seat of a regional office located on their territory and as to the facilities they could offer. Soon afterwards he was also directed to get in touch with the authorities “of the Pan Arab Sanitary Organization”, and wrote on 2 May 1947 for information to the Egyptian Minister of Public Health. Replying on 26 July 1947, the Egyptian Minister supplied him with a memorandum giving an account of the history and activities of the “Pan Arab Regional Health Bureau” from 1926 onwards. When, on the basis of the memorandum, a recommendation was made by the Committee on Relations to the Interim Commission in September 1947 that negotiations should be started with the “Pan Arab Sanitary Organization”, objection was taken that the Pan Arab Sanitary Bureau did not really exist. Some delegates observed that the negotiations should rather be with the Egyptian Government and, ultimately, it was with the Egyptian Government that the negotiations concerning the Bureau took place. In fact, the next development was a reply from the Egyptian Government to the Executive Secretary’s circular
letter in which the Government stated that the competent authorities had declared that they were most anxious to see a regional bureau established at Alexandria, which could deal with all questions coming within the scope of the WHO for the entire Middle East.

16. Matters then began to move more quickly. It appears from a report submitted to the Interim Commission in May 1948, mentioned below, that early in January 1948 quarantine experts of the Arab countries met in Alexandria and passed a number of resolutions in favour of establishing a regional organization. This was to be composed of the member States of the League of Arab States and, it was contemplated, certain other States in the region; it was to have a regional committee similarly composed; and it was to use the Alexandria Bureau as its regional office. These resolutions were adopted in the light of the fact that the WHO was to take over the functions of pre-existing regional health organizations. The next step was an invitation from the Egyptian Ministry of Public Health to Dr. Stampar, Chairman of the Interim Commission, to visit Egypt and study the spot the conditions for setting up the proposed regional organization. In May 1948 a substantial report, referred to above, was duly submitted by the Chairman of the Interim Commission in which he gave a detailed account of the past history and current activities of the Alexandria Bureau and set out the arguments in favour of it as the regional health centre for the Near and Middle East. He ended the report with the conclusion:

"we are bound to admit that the conditions which predestinate Alexandria to be the centre of the future regional health organization for the Near and the Middle East are literally unique".

The Constitution of the WHO had now come into force and the question of the Alexandria Bureau was discussed in the Committee on Headquarters and Regional Organization at the first session of the new World Health Assembly. Mention was made of the facts that most of the member States of the Eastern Mediterranean area had agreed to the proposal for the establishment of a regional organization in that area, that the Alexandria Bureau was a pre-existing sanitary bureau, and that preliminary steps had already been taken for the final integration of this bureau with the WHO. Taking those facts into account the Committee recommended that the Executive Board should be instructed to integrate the Bureau with the WHO as soon as practicable, through common action, "in accordance with Article 54 of the WHO Constitution", and this recommendation was approved by the World Health Assembly on 10 July 1948 (resolution WHA1.72).

17. The Director-General of the WHO then proceeded to organize the setting up of a Regional Committee for the Eastern Mediterranean and an agenda was drawn up for its inaugural meeting due to take place on 7 February 1949. Earlier, the Executive Secretary of the Interim Commission had negotiated successfully with the Swiss Government the text of an agreement for the WHO's headquarters in Geneva which had been approved by the First World Health Assembly on 17 July 1948 and by Switzerland on 21 August 1948; and a model host agreement had been prepared in the WHO for use in negotiations concerning the seats of regional or local WHO offices. Accordingly, when the agenda was drawn up for the Regional Committee's inaugural meeting on 7 February 1949, included in it was the question of a "Draft Agreement with the Host Government of the Regional Office".

18. At the Regional Committee's meeting the Egyptian Delegation informed the Committee on 7 February 1949 that the Egyptian Council of Ministers had just

"agreed, subject to approval of the Parliament, to lease to the World Health Organization, for the use of the Regional Office for the Eastern Mediterranean area, the site of land and the building thereon which are at present occupied by the Quarantine Administration and the Alexandria Health Bureau, for a period of nine years at a nominal annual rent of P.T.10".

The Committee next took up the question of the location of the Regional Office for the Eastern Mediterranean area. A motion was introduced, which the Committee at once approved, "to recommend to the Director-General and the Executive Board, subject to consultation with the United Nations, the selection of Alexandria as the site of the Regional Office". The recitals in the formal resolution to that effect, adopted the following day referred, inter alia, to "the desirability of the excellent site and buildings under favourable conditions generously offered by the Government of Egypt".

19. The Regional Committee also addressed itself to the question of the integration of the Alexandria Sanitary Bureau with the WHO. After recalling that a Committee of the Arab States had previously voted in favour of the integration, the Egyptian delegate observed that, should this happen, "the WHO would have to take over expenses from the date of opening of the Regional Office". A few brief explanations having been given, the Committee adopted a resolution recommending the integration of the Bureau in the following terms:

"Resolves to recommend to the Executive Board that in establishing the Regional Organization and the Regional Office for the Eastern Mediterranean the functions of the Alexandria Sanitary Bureau be integrated within those of the Regional Organization of the World Health Organization."

The Egyptian delegate responded by presenting a written statement to the Committee to the effect that, taking into account the resolution just adopted, his Government was pleased to transfer to the World Health Organization the functions and all related files and records of the Alexandria Sanitary Bureau. The statement went on to say that this transfer
would be made on the date on which the Organization notified the Government of Egypt of the commencement of operations in the Regional Office for the Eastern Mediterranean Region. That statement having met with warm thanks from the Committee, the Egyptian delegate proposed that the work of the Regional Office should begin in July 1949 and this proposal was adopted.

20. The Director-General now raised the question of the “Draft Agreement with the Host Government” which he had included in the Agenda. He said he wished to inform the Committee that “such a draft agreement had been produced and handed to the Egyptian Government where it was under study in the legal department”. He also stated that the WHO, “though always considering necessary formalities, never allowed them to interfere with Health Work”, and the Egyptian delegate then added the comment that, should there be any difference of opinion between the WHO and the legal expert, this could be settled by negotiation.

21. The question passed to the Executive Board of the WHO which, in March 1949, adopted resolution EB3.30 “conditionally” approving selection of Alexandria as the site of the Regional Office, “subject to consultation with the United Nations”. That resolution went on to request the Director-General to thank Egypt for “its generous action” in placing the site and buildings at Alexandria at the disposal of the Organization for nine years at a nominal rent. Next, it formally approved the establishment of the Regional Office for the Eastern Mediterranean and the commencement of its operations on or about 1 July 1949. The resolution then endorsed the Regional Committee’s recommendation that the “functions” of the Alexandria Sanitary Bureau be “integrated” within those of the Regional Organization. It further authorized the Director-General to express appreciation to the Egyptian Government for the transfer of the “functions, files and records of the Alexandria Sanitary Bureau to the Organization upon commencement of operations in the Regional Office”.

The resolution did not deal with the projected host agreement still under negotiation with the Egyptian Government. Pursuant to the Agreement between the WHO and the United Nations which came into force on 10 July 1948 (Article XI), the consultation with the United Nations referred to in the resolution was effected in May 1949. This confirmed the selection of Alexandria as the site of the Regional Office.

22. However the draft host agreement, which necessarily had implications not only for the Ministry of Public Health but for other departments of the Egyptian administration, it would seem, had been undergoing close examination. As appears from a letter of 4 May 1949 from the Ministry of Foreign Affairs to Sir Ali Tewfik Shousha Pasha, the Under-Secretary of State for Public Health but already designated as the first WHO Regional Director for the Eastern Mediterranean, he had been discussing the draft agreement with the Foreign Ministry during April. In that letter the Foreign Ministry referred to the draft agreement as one

“which the World Health Organization intends to conclude with the Egyptian Government on the privileges and immunities to be enjoyed by its regional office which will be established in Alexandria as well as the staff of that office”.

It explained that it was enclosing a copy of the memorandum prepared by the Contentieux (legal department) of the Ministries of Foreign Affairs and Justice, setting out their comments on the draft agreement, together with a revised draft. The memorandum stated that, in studying the provisions of the draft, the Contentieux had also had regard to various other agreements concluded, or in course of conclusion, between individual States and specialized agencies on the occasion of the latter establishing headquarters or regional offices in their territories. In this connection, it made mention of the headquarters agreements already concluded by France with the United Nations Educational, Scientific and Cultural Organization, and by Switzerland with WHO itself, as well as draft agreements still under negotiation by France and Peru with the International Civil Aviation Organization regarding the seats of regional offices to be established in their territories. The memorandum went on to suggest numerous changes in the provisions of the agreement and gave detailed explanations of the amendments which the Contentieux wished to see in the draft. The memorandum and revised draft, it appears from a later note of Sir Ali Tewfik Shousha Pasha, were then transmitted to the Director-General of the WHO. It also appears from letters of 29 May and 4 June 1949 supplied to the Court by the WHO that some further exchanges took place between him and the Contentieux concerning the draft agreement at this time.

23. Meanwhile, however, the whole question of privileges and immunities for regional offices of international organizations had become at once more complicated and more pressing for the Egyptian administration. This was because by now Regional Bureaux for the Middle East had already been established in Cairo by the Food and Agriculture Organization of the United Nations, by ICAO and by Unesco, and because in any event it was becoming necessary to consider the question of Egypt’s adherence to the Convention on the Privileges and Immunities of the Specialized Agencies. The general situation was laid before Egypt’s Council of Ministers by the Foreign Minister in a Note of 25 May 1949. His Note ended with a proposal that, as a provisional measure the Council should grant to the staff of FAO, Unesco and WHO in their Regional Offices the same temporary exemption from customs duties on any articles and equipment imported from abroad and relating to their official work as was already enjoyed by ICAO. This proposal was endorsed by the Council of Ministers at a meeting four days later, and the Regional Director was so informed on 23 June. The operations of the Regional Office being due to commence on 1 July, the need to complete the negotiations for the host agreement had been under consideration by the World Health Assembly itself which passed a resolution on the subject on 25 June at its Second
Session. The Director-General was requested to continue the negotiations with the Government of Egypt in order to obtain an agreement extending privileges and immunities to the Regional Organization and to report to the next session. Pending the coming into force of that agreement, the Assembly invited the Government of Egypt to extend to the Organization the privileges and immunities set out in the Convention on the Privileges and Immunities of the Specialized Agencies. Egypt, however, had not yet adhered to that Convention, and it was only the Council of Ministers' decision authorizing, temporarily, exemption from customs dues that applied when the Regional Office commenced operations, as it did on the agreed date, 1 July 1949.

24. The Director-General continued the negotiations and on 26 July 1949 the WHO's comments on the Contentieux' memorandum were transmitted to the Egyptian Government, together with a revised draft of the host agreement and a draft lease of the site and buildings. On 9 November 1949, a host agreement on the same lines as the draft transmitted to Egypt was signed with the Government of India. In February 1950 the Executive Board noted the state of the negotiations; a letter of 23 March 1950 to the WHO Regional Director from the Contentieux of the Egyptian Government Ministries gave the impression that, subject to minor modifications, WHO's draft was acceptable to Egypt. In that belief the Third World Health Assembly passed a resolution in the following May affirming the Agreement in the form of the WHO's revised draft. Subsequently, however, the Regional Office reported that the Egyptian authorities were, in fact, asking for a number of fairly substantial alterations. As the Director-General considered the amendments requested to touch fundamental points of principle and therefore to be unacceptable, he went himself to Egypt and, in negotiations with the Egyptian authorities on 19 and 20 December 1950, persuaded them to drop the amendments which were the cause of the disagreement. The Egyptian authorities then expressed themselves as ready to accept the host agreement, subject to the approval of the Egyptian Parliament and to certain points being set out in an accompanying Exchange of Notes. Eventually, the Agreement was signed in Cairo on 25 March 1951 and was approved by the Fourth World Health Assembly in May, although one of the points in the Exchange of Notes had given rise to some discussion in the Legal Sub-Committee. The Egyptian Parliament gave its approval towards the end of June and the long-negotiated host agreement finally entered into force on 8 August 1951. As to the lease of the site and buildings of the former Sanitary Bureau to the WHO, which under an Egyptian law also required Parliamentary approval, its execution was not completed until 1955, the operation of the lease then being expressed to have begun several years earlier on 1 July 1949.

25. Mention has finally to be made of an Agreement for the provision of services by the WHO in Egypt, signed on 25 August 1950. At the same time the Court notes that, according to the Director of the Legal Division of the Organization, this Agreement does not have any particular connection with the setting up of the Regional Office in Egypt. The 1950 Agreement, he explained, is simply a standard form of agreement for the execution of technical co-operation projects, similar to Agreements concluded with other member States which have no WHO office situated on their territories.

26 The position appearing from the events which the Court has so far set out may be summarized as follows. During the early years of the WHO, Egypt raised the question of the relation to the new Organization of the existing long-established Alexandria Sanitary Bureau, and the Intern Commission of the WHO in turn approached Egypt regarding the integration of the existing Bureau with the Organization and the location of the WHO's Regional Office for the Eastern Mediterranean in Alexandria. Agreement was then reached between the WHO and Egypt early in 1949 that the operation of the Alexandria Bureau should be taken over by the WHO in July of that year. That agreement was arrived at on the basis of offers by the Egyptian Government to lease to the Organization for the use of the Regional Office for the Eastern Mediterranean the site and buildings of the existing Alexandria Bureau, and to transfer to the Organization the functions and all related files and records of the Bureau. Egypt's offers were accepted by the Organization which, on its part, undertook to assume financial responsibility for the Bureau on the date of the opening of the Regional Office; and it was then decided that the date should be 1 July 1949. These arrangements were approved by the Egyptian Government and were endorsed by the Organization specifically as an integration of a pre-existing institution under Article 54 of its Constitution. Temporary exemption from customs dues having been provided by Egypt's Council of Ministers, the WHO's Regional Office commenced operating at the seat of the former Sanitary Bureau on 1 July 1949.

27. Meanwhile, negotiations for the conclusion of a host agreement for the Regional Office, begun at least five months earlier, had been making slow progress and were not completed until nearly two years later. On 25 March 1951, however, the Agreement, Section 37 of which is the subject of the present request, was signed and ultimately entered into force on 8 August of that year. That agreement, in the words of its preamble, was concluded:

"for the purpose of determining the privileges, immunities and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials in particular with regard to its arrangements in the Eastern Mediterranean Region, and of regulating other related matters".

Its provisions followed closely those of the model host agreement prepared in the WHO, and are for the most part typical of those found in host agreements of headquarters or regional or local offices of international
organizations. These provisions are on the lines of the Convention of 21 November 1947 on the Privileges and Immunities of the Specialized Agencies, to which Egypt became a party on 28 September 1954. Under Section 39 of that Convention, however, the Agreement of 25 March 1951 continued to be the instrument defining the legal status of the Regional Office in Alexandria as between the WHO and Egypt.

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28. The Court must now turn to the circumstances which have led to the submission of the present request to the Court. Ever since beginning its activities in Egypt on 1 July 1949, the WHO's Regional Office has operated continuously at the site of the former Sanitary Bureau in Alexandria. In doing so, however, it has encountered certain difficulties stemming from the tense political situation in the Middle East. Those difficulties are reflected in the fact that in 1954 the World Health Assembly found it necessary to divide the Committee into two sub-committees: Sub-Committee A in which Israel was not, and Sub-Committee B in which it was, represented.

29. On 7 May 1979 the Regional Director received a letter from the governments of five member States of the Region requesting the convening of an extraordinary meeting of the Regional Committee to discuss transferring the Regional Office from Alexandria to one of the other Arab member States. A special session of Sub-Committee A was held on 12 May 1979, attended by representatives of 20 States, but not by Egypt which had asked for the session to be postponed. Sub-Committee A adopted a resolution expressing the wish of the majority of its members that the Regional Office should be transferred to another State in the Region and recommending its transfer. Meanwhile, the question had also been placed on the agenda for the thirty-second Session of the World Health Assembly and on 16 May 1979 the Egyptian delegation submitted a Memorandum alleging certain procedural irregularities and objecting that the request for transfer was "politically motivated". The question was referred to a Committee which expressed the view that the effects of the implementation of such a decision by the Assembly needed study and recommended that the study be undertaken by the Executive Board.

30. The World Health Assembly adopted the recommendation of the Committee and, on 28 May 1979, the Executive Board set up a Working Group to study all aspects of the matter and report back in January 1980. The Working Group's report, dated 16 January 1980 (which is in the dossier of documents supplied to the Court), included a section entitled "Question of denunciation of the existing Host Agreement", as to which it said:

"The Group considered that it was not in a position to decide whether or not Section 37 of the Agreement with Egypt is applicable. The final position of the Organization on the possible discrepancies of views will have to be decided upon by the Health Assembly . . . the International Court of Justice could also possibly be requested to provide an advisory opinion under Article 76 of the WHO Constitution."
draft resolution recommended by the Committee, the full text of which has been given in the opening paragraph of this Opinion. The resolution, the Court observes, in setting out the Assembly's decision to submit the present request to the Court, explained in recitals the reasons why the Assembly found it necessary to do so. In those recitals the Assembly took note of "the differing views" which had been expressed on the question of whether the Organization "may transfer the Regional Office without regard to the provisions of Section 37 of the Agreement between the World Health Organization and Egypt of 25 March 1951"; and it further noted that the Working Group of the Executive Board had been "unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement".

* * *

33. In the debates in the World Health Assembly just referred to, on the proposal to request the present opinion from the Court, opponents of the proposal insisted that it was nothing but a political manoeuvre designed to postpone any decision concerning removal of the Regional Office from Egypt, and the question therefore arises whether the Court ought to decline to reply to the present request by reason of its allegedly political character. In none of the written and oral statements submitted to the Court, on the other hand, has this contention been advanced and such a contention would in any case, have run counter to the settled jurisprudence of the Court. That jurisprudence establishes that if, as in the present case, a question submitted in a request is one that otherwise falls within the normal exercise of its judicial process, the Court has not to deal with the motives which may have inspired the request (Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, pp. 61-62; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, pp. 6-7; Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 155). Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution.

* * *

34. Having thus examined the factual and legal context in which the present request for an advisory opinion comes before it, the Court is now in a position to consider the full meaning and implications of the hypothetical questions on which it is asked to advise. Since those are formulated in the request by reference to the applicability of Section 37 of the Agreement of 25 March 1951 to a transfer of the Regional Office from Egypt, it is necessary at once to turn to the provisions of that Section. Included in the 1951 Agreement as one of its "Final Provisions", Section 37 reads:

"Section 37. The present Agreement may be revised at the request of either party. In this event the two parties shall consult each other concerning the modifications to be made in its provisions. If the negotiations do not result in an understanding within one year, the present Agreement may be denounced by either party giving two years' notice."

The "differing views" in the World Health Assembly as to the applicability of these provisions to a transfer of the Regional Office from Egypt, which were mentioned in the recitals to the resolution, concerned various points. One of these was whether a transfer of the seat of the Regional Office from Egypt is or is not covered by the provisions of the 1951 Agreement which to a large extent deal with privileges, immunities and facilities. Another was whether the provisions of Section 37 relate only to the case of a request by one or other party for revision of provisions of the Agreement relating to the question of privileges, immunities and facilities or are also apt to cover its total revision or outright denunciation. But the differences of view also involved further points, as appears from the debates and from the explanations given by the Director of the Legal Division of the WHO at the World Health Assembly's meeting of 20 May. Dealing with a question from the delegate of Jordan about the two years' notice provided for in Section 37, the Director of the Legal Division referred to the enlightenment to be obtained on the point by comparing the provisions in other host agreements. He also drew attention to the possibility of referring to the applicable general principles of international law, emphasizing the relevance in this connection of Article 56 of the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations.

35. Accordingly, it is apparent that, although the questions in the request are formulated in terms only of Section 37, the true legal question under consideration in the World Health Assembly is: What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected? This, in the Court's opinion, must also be considered to be the legal question submitted to it by the request. The Court points out, that, if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request (cf. Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, I.C.J. Reports 1956, p. 26, and see also p. 37; Certain Expenses of the United Nations (Article 17, paragraph 2, of the
Charter), Advisory Opinion, I.C.J. Reports 1962, pp. 156-158). It also points out in this connection that the Permanent Court of International Justice, in replying to requests for an advisory opinion, likewise found it necessary in some cases first to ascertain what were the legal questions really in issue in the questions posed in the request (cf. Jaworzina, Advisory Opinion, 1923, P.C.I.J., Series B, No. 8, p. 282; Interpretation of the Greco-Turkish Agreement of 1 December 1926, Advisory Opinion, 1928, P.C.I.J., Series B, No. 16, pp. 5-16). Furthermore, as the Court has stressed earlier in this Opinion, a reply to questions of the kind posed in the present request may, if incomplete, be not only ineffectual but actually misleading as to the legal rules applicable to the matter under consideration by the requesting Organization. For this reason, the Court could not adequately discharge the obligation incumbent upon it in the present case if, in replying to the request, it did not take into consideration all the pertinent legal issues involved in the matter to which the questions are addressed.

36. The Court will therefore now proceed to consider its replies to the questions formulated in the request on the basis that the true legal question submitted to the Court is: What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected?

* * *

37. The Court thinks it necessary to underline at the outset that the question before it is not whether, in general, an organization has the right to select the location of the seat of its headquarters or of a regional office. On that question there has been no difference of view in the present case, and there can be no doubt that an international organization does have such a right. The question before the Court is the different one of whether, in the present case, the Organization’s power to exercise that right is or is not regulated by reason of the existence of obligations vis-à-vis Egypt. The Court notes that in the World Health Assembly and in some of the written and oral statements before the Court there seems to have been a disposition to regard international organizations as possessing some form of absolute power to determine and, if need be, change the location of the sites of their headquarters and regional offices. But States for their part possess a sovereign power of decision with respect to their acceptance of the headquarters or a regional office of an organization within their territories; and an organization’s power of decision is no more absolute in this respect than is that of a State. As was pointed out by the Court in one of its early Advisory Opinions, there is nothing in the character of international organizations to justify their being considered as some form of “super-State” (Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 179). International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties. Accordingly, it provides no answer to the questions submitted to the Court simply to refer to the right of an international organization to determine the location of the seat of its regional offices.

38. The “differing views” expressed in the World Health Assembly regarding the relevance of the Agreement of 25 March 1951, and regarding the question whether the terms of Section 37 of the Agreement are applicable in the event of any transfer of the Regional Office from Egypt, were repeated and further developed in the written and oral statements submitted to the Court. As to the relevance of the 1951 Agreement in the present connection, the view advanced on one side has been that the establishment of the Regional Office in Alexandria took place on 1 July 1949, pursuant to an agreement resulting either from Egypt’s offer to transfer the operation of the Alexandria Bureau to the WHO and the latter’s acceptance of that offer, or from Egypt’s acceptance of a unilateral act of the competent organs of the WHO determining the site of the Regional Office. Proponents of this view maintain that the 1951 Agreement was a separate transaction concluded after the establishment of the Regional Office in Egypt had been completed and the terms of which only provide for the immunities, privileges and facilities of the Regional Office. They point to the fact that some other host agreements of a similar kind contain provisions expressly for the establishment of the seat of the Regional Office and stress the absence of such a provision in the 1951 Agreement. This Agreement, they argue, although it may contain references to the seat of the Regional Office in Alexandria, does not provide for its location there. On this basis, and on the basis of their understanding of the object of the 1951 Agreement deduced from its title, preamble, and text, they maintain that the Agreement has no bearing on the Organization’s right to remove the Regional Office from Egypt. They also contend that the 1951 Agreement was not limited to the privileges, immunities and facilities granted only to the Regional Office, but had a more general purpose, namely, to regulate the above-mentioned questions between Egypt and the WHO in general.

39. Proponents of the opposing view say that the establishment of the Regional Office and the integration of the Alexandria Bureau with the WHO were not completed in 1949; they were accomplished by a series of acts in a composite process, the final and definitive step in which was the conclusion of the 1951 host agreement. To holders of this view, the act of transforming the operation of the Alexandria Bureau to that of the WHO in 1949 and the host agreement of 1951 are closely related parts of a single transaction whereby it was agreed to establish the Regional Office at Alexandria. Stressing the several references in the 1951 Agreement to the location of the Office in Alexandria, they argue that the absence of a specific provision regarding its establishment there is due to the fact that this
Agreement was dealing with a pre-existing Sanitary Bureau already established in Alexandria. In general, they emphasize the significance of the character of the 1951 Agreement as a headquarters agreement, and of the constant references to it as such in the records of the WHO and in official acts of the Egyptian State.

40. The differences regarding the application of Section 37 of the Agreement to a transfer of the Regional Office from Egypt have turned on the meaning of the word "revise" in the first sentence and on the interpretation then to be given to the two following sentences of the Section. According to one view the word "revise" can cover only modifications of particular provisions of the Agreement and cannot cover a termination or denunciation of the Agreement, such as would be involved in the removal of the seat of the Office from Egypt; and this is the meaning given to the word "revise" in law dictionaries. On that assumption, and on the basis of what they consider to be the general character of the 1951 Agreement, they consider all the provisions of the Section, including the right of denunciation in the third sentence, to apply only in cases where a request has been made by one or other party for a partial modification of the terms of the Agreement. They conclude, in consequence, the 1951 Agreement contains no general right of denunciation and invoke the general rules expressed in the first paragraph of Article 56 of the Vienna Convention on the Law of Treaties and the corresponding provision of the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations. Under those articles 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, *inter alia*, such a right may be implied by the nature of the treaty. Referring to opinions expressed in the International Law Commission that headquarters agreements of international organizations are by nature agreements in which a right of denunciation may be implied under the articles in question, they then maintain that such a general right of denunciation is to be implied in the 1951 Agreement. The proponents of this view go on to argue that in any case the transfer of the Regional Office from Egypt is not a matter which can be said to fall within the provisions of Section 37, and that the removal of the seat of the Office from Egypt would not necessarily mean the denunciation of the 1951 Agreement.

41. Opponents of the view just described insist, however, that the word "revise" may also have the wider meaning of "review" and cover a general or total revision of an agreement, including its termination. According to them, the word has not infrequently been used with that meaning in treaties and was so used in the 1951 Agreement. They maintain that this is confirmed by the travaux préparatoires of Section 37, which are to be found in negotiations between representatives of the Swiss Government and the ILO concerning the latter's headquarters agreement with Switzerland. These negotiations, they consider, concern the specific question of the establishment of the ILO's seat in Geneva and, while Switzerland wished in this connection to include a provision for denunciation in the agreement, the ILO did not. The result, they say, was the compromise formula, subsequently introduced into WHO host agreements, which provides for the possibility of denunciation, but only after consultation and negotiation regarding the revision of the instrument. In their view, therefore, the travaux préparatoires confirm that the formula in Section 37 was designed to cover revision of the location of the Regional Office's seat at Alexandria, including the possibility of its transfer outside Egypt. They further argue that this interpretation is one required by the object and purpose of Section 37 which, they say, was clearly meant to preclude either of the parties to the Agreement from suddenly and precipitately terminating the legal régime it created. The proponents of this view of Section 37 also take the position that, even if it were to be rejected and the Agreement interpreted as also including a general right of denunciation, Egypt would still be entitled to notice under the general rules of international law. In this connection, they point to Article 56 of the Vienna Convention on the Law of Treaties and the corresponding article in the International Law Commission's draft articles on treaties concluded between States and international organizations or between international organizations. In both articles paragraph 2 specifically provides that in any case where a right of denunciation or withdrawal is implied in a treaty a party shall give not less than twelve months' notice of its intention to exercise the right.

42. The Court has described the differences of view regarding the application of Section 37 to a transfer of the Regional Office from Egypt only in a broad outline which does not reproduce all the refinements with which they have been expressed nor all considerations by which they have been supported. If it has done this, it is because it considers that the emphasis placed on Section 37 in the questions posed in the request distort in some measure the general legal framework in which the true legal issues before the Court have to be resolved. Whatever view may be held on the question whether the establishment and location of the Regional Office in Alexandria are embraced within the provisions of the 1951 Agreement, and whatever view may be held on the question whether the provisions of Section 37 are applicable to the case of a transfer of the Office from Egypt, the fact remains that certain legal principles and rules are applicable in the case of such a transfer. These legal principles and rules the Court must, therefore, now examine.

* * *

43. By the mutual understandings reached between Egypt and the Organization from 1949 to 1951 with respect to the Regional Office of the Organization in Egypt, whether they are regarded as distinct agreements or as separate parts of one transaction, a contractual legal régime was created
between Egypt and the Organization which remains the basis of their legal relations today. Moreover, Egypt was a member — a founder member — of the newly created World Health Organization when, in 1949, it transferred the operation of the Alexandria Sanitary Bureau to the Organization; and it has continued to be a member of the Organization ever since. The very fact of Egypt’s membership of the Organization entails certain mutual obligations of co-operation and good faith incumbent upon Egypt and upon the Organization. Egypt offered to become host to the Regional Office in Alexandria and the Organization accepted that offer: Egypt agreed to provide the privileges, immunities and facilities necessary for the independence and effectiveness of the Office. As a result the legal relationship between Egypt and the Organization became, and now is, that of a host State and an international organization, the very essence of which is a body of mutual obligations of co-operation and good faith. In the present instance Egypt became host to the Organization’s Regional Office, with its attendant advantages, and the Organization acquired a valuable seat for its office by the handing over to the Organization of an existing Egyptian Sanitary Bureau established in Alexandria, and the element of mutuality in the legal régime thus created between Egypt and the WHO is underlined by the fact that this was effected through common action based on mutual consent. This special legal régime of mutual rights and obligations has been in force between Egypt and WHO for over thirty years. The result is that there now exists in Alexandria a substantial WHO institution employing a large staff and discharging health functions important both to the Organization and to Egypt itself. In consequence, any transfer of the WHO Regional Office from the territory of Egypt necessarily raises practical problems of some importance. These problems are, of course, the concern of the Organization and of Egypt rather than of the Court. But they also concern the Court to the extent that they may have a bearing on the legal conditions under which a transfer of the Regional Office from Egypt may be effected.

44. The problems were studied by the Working Group set up by the Executive Board of WHO in 1979, and it is evident from the report of that Working Group that much care and co-operation between the Organization and Egypt is needed if the risk of serious disruption to the health work of the Regional Office is to be avoided. It is also apparent that a reasonable period of time would be required to effect an orderly transfer of the operation of the Office from Alexandria to the new site without disruption to the work. Precisely what period of time would be required is a matter which can only be finally determined by consultation and negotiation between WHO and Egypt. It is, moreover, evident that during this period the Organization itself would need to make full use of the privileges, immunities and facilities provided in the Agreement of 25 March 1951 in order to ensure a smooth and orderly transfer of the Office from Egypt to its new site. In short, the situation arising in the event of a transfer of the Regional Office from Egypt is one which, by its very nature, demands consultation, negotiation and co-operation between the Organization and Egypt.

45. The Court’s attention has been drawn to a considerable number of host agreements of different kinds, concluded by States with various international organizations and containing varying provisions regarding the revision, termination or denunciation of the agreements. These agreements fall into two main groups: (1) those providing the necessary régime for the seat of a headquarters or regional office of a more or less permanent character, and (2) those providing a régime for other offices set up ad hoc and not envisaged as of a permanent character. As to the first group, which includes agreements concluded by the ILO and the WHO, their provisions take different forms. The headquarters agreement of the United Nations itself, with the United States, which leaves to the former, the right to decide on its removal, provides for its termination if the seat is removed from the United States “except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein”. Other agreements similarly provide for cessation of the host agreement upon the removal of the seat, subject to arrangements for the orderly termination of the operations, while others, for example, provide for one year’s or six months’ notice of termination or denunciation, and there are other variants. The ad hoc type of agreement, on the other hand, commonly provides for termination on short periods of notice or by agreement or simply on cessation of the operations subject to orderly arrangements for bringing them to an end.

46. In considering these provisions, the Court feels bound to observe that in future closer attention might with advantage be given to their drafting. Nevertheless, despite their variety and imperfections, the provisions of host agreements regarding their revision, termination or denunciation are not without significance in the present connection. In the first place, they confirm the recognition by international organizations and host States of the existence of mutual obligations incumbent upon them to resolve the problems attendant upon a revision, termination or denunciation of a host agreement. But they do more, since they must be presumed to reflect the views of organizations and host States as to the implications of those obligations in the contexts in which the provisions are intended to apply. In the view of the Court, therefore, they provide certain general indications of what the mutual obligations of organizations and host States to co-operate in good faith may involve in situations such as the one with which the Court is here concerned.

47. A further general indication as to what those obligations may entail is to be found in the second paragraph of Article 56 of the Vienna Con-
wishes to effect the transfer to give a reasonable period of notice to the other party for the termination of the existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect an orderly and equitable transfer of the Office to its new site.

Those, in the view of the Court, are the implications of the general legal principles and rules applicable in the event of the transfer of the seat of a Regional Office from the territory of a host State. Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice of termination should be given, are matters which necessarily vary according to the requirements of the particular case. In principle, therefore, it is for the parties in each case to determine the length of those periods by consultation and negotiation in good faith. Some indications as to the possible periods involved, as the Court has said, can be seen in provisions of host agreements, including Section 37 of the Agreement of 25 March 1951, as well as in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission’s draft articles on treaties between States and international organizations or between international organizations. But what is reasonable and equitable in any given case must depend on its particular circumstances. Moreover, the paramount consideration both for the Organization and the host State in every case must be their clear obligation to co-operate in good faith to promote the objectives and purposes of the Organization as expressed in its Constitution; and this too means that they must in consultation determine a reasonable period of time to enable them to achieve an orderly transfer of the Office from the territory of the host State.

50. It follows that the Court’s reply to the second question is that the legal responsibilities of the Organization and Egypt during the transitional period between the notification of the proposed transfer of the Office and the accomplishment thereof would be to fulfill in good faith the mutual obligations which the Court has set out in answering the first question.

* * *

51. For these reasons,

THE COURT,

1. By twelve votes to one,

Decides to comply with the request for an advisory opinion; 

IN FAVOUR: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and Sette-Camara; 

AGAINST: Judge Morozov;
2. With regard to Question 1,
   By twelve votes to one,

*Is of the opinion* that in the event specified in the request, the legal
principles and rules, and the mutual obligations which they imply, regard-
ing consultation, negotiation and notice, applicable as between the World
Health Organization and Egypt are those which have been set out in
paragraph 49 of this Advisory Opinion and in particular that:

(a) their mutual obligations under those legal principles and rules place a
duty both upon the Organization and upon Egypt to consult together in
good faith as to the question under what conditions and in accordance
with what modalities a transfer of the Regional Office from Egypt may
be effected;

(b) in the event of its being finally decided that the Regional Office shall be
transferred from Egypt, their mutual obligations of co-operation place a
duty upon the Organization and Egypt to consult together and to
negotiate regarding the various arrangements needed to effect the
transfer from the existing to the new site in an orderly manner and with a
minimum of prejudice to the work of the Organization and the interests
of Egypt;

(c) their mutual obligations under those legal principles and rules place a
duty upon the party which wishes to effect the transfer to give a
reasonable period of notice to the other party for the termination of the
existing situation regarding the Regional Office at Alexandria, taking due account of all the practical arrangements needed to effect
an orderly and equitable transfer of the Office to its new site;

*IN FAVOUR:* President Sir Humphrey Waldock; Vice-President Elias; Judges
Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian
and Sette-Camara;

*AGAINST:* Judge Morozov;

3. With regard to Question 2.
   By eleven votes to two.

*Is of the opinion* that, in the event of a decision that the Regional Office
shall be transferred from Egypt, the legal responsibilities of the World
Health Organization and Egypt during the transitional period between
the notification of the proposed transfer of the Office and the accomplishment
thereof are to fulfil in good faith the mutual obligations which the Court has
set out in answering Question 1;

*IN FAVOUR:* President Sir Humphrey Waldock; Vice-President Elias; Judges
Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian and
Sette-Camara;

*AGAINST:* Judges Lachs and Morozov.

Done in English and in French, the English text being authoritative, at the
Peace Palace, The Hague, this twentieth day of December, one thousand
nine hundred and eighty, in three copies, of which one will be placed in the
archives of the Court, and the others transmitted to the Secretary-General
of the United Nations and to the Director-General of the World Health
Organization, respectively.

(Signed) Humphrey Waldock,
President.

(Signed) Santiago Torres Bernárdez,
Registrar.

Judges Gros, Lachs, Ruda, Mosler, Oda, Ago, El-Erian, and Sette-
Camara append separate opinions to the Opinion of the Court.

Judge Morozov appends a dissenting opinion to the Opinion of the Court.

(Initialled) H.W.
(Initialled) S.T.B.
in English and French was transmitted to the Court, by facsimile, by the United Nations Legal Counsel. By a letter dated 2 March 1988, addressed by the Secretary-General of the United Nations to the President of the Court (received by facsimile on 4 March 1988, and received by post and filed in the Registry on 7 March 1988) the Secretary-General formally communicated to the Court the decision of the General Assembly to submit to the Court for advisory opinion the question set out in that resolution. The resolution, certified true copies of the English and French texts of which were enclosed with the letter and included in the facsimile transmission, was in the following terms:

"The General Assembly,

Recalling its resolution 42/210 B of 17 December 1987 and bearing in mind its resolution 42/229 A above,

Having considered the reports of the Secretary-General of 10 and 25 February 1988 [A/42/915 and Add.1],

Affirming the position of the Secretary-General that a dispute exists between the United Nations and the host country concerning the interpretation or application of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, dated 26 June 1947 [see resolution 169 (II)], and noting his conclusions that attempts at amicable settlement were deadlocked and that he had invoked the arbitration procedure provided for in section 21 of the Agreement by nominating an arbitrator and requesting the host country to nominate its own arbitrator,

Bearing in mind the constraints of time that require the immediate implementation of the dispute settlement procedure in accordance with section 21 of the Agreement,

Noting from the report of the Secretary-General of 10 February 1988 [A/42/915] that the United States of America was not in a position and was not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement and that the United States was still evaluating the situation,

Taking into account the provisions of the Statute of the International Court of Justice, in particular Articles 41 and 68 thereof,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, in pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the following question, taking into account the time constraint:

"In the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [see resolution 169 (II)], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?"

A copy of resolution 42/229 A, referred to in the above resolution, was also enclosed with the Secretary-General’s letter.

1. The notice of the request for an advisory opinion prescribed by Article 66, paragraph 1, of the Statute of the Court, was given on 3 March 1988 by telegram from the Registrar to all States entitled to appear before the Court.
3. By an Order dated 9 March 1988 the Court found that an early answer to the request for advisory opinion would be desirable, as contemplated by Article 103 of the Rules of Court. By that Order the Court decided that the United Nations and the United States of America were considered likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute, and fixed 25 March 1988 as the time-limit within which the Court would be prepared to receive written statements from them on the question; and that any other State party to the Statute which desired to do so might submit to the Court a written statement on the question not later than 25 March 1988. Written statements were submitted, within the time-limit so fixed, by the Secretary-General of the United Nations, by the United States of America, and by the German Democratic Republic and by the Syrian Arab Republic.

4. By the same Order the Court decided further to hold hearings, opening on 11 April 1988, at which oral comments on written statements might be submitted to the Court by the United Nations, the United States and such other States as should have presented written statements.

5. The Secretary-General of the United Nations transmitted to the Court, pursuant to Article 65, paragraph 2, of the Statute, a dossier of documents likely to throw light upon the question; these documents were received in the Registry in installments between 11 and 29 March 1988.

6. At a public sitting held on 11 April 1988, an oral statement was made to the Court by Mr. Carl-August Fleischhauer, the United Nations Legal Counsel, on behalf of the Secretary-General. None of the States having presented written statements expressed a desire to be heard. Certain Members of the Court put questions to Mr. Fleischhauer, which were answered at a further public sitting held on 12 April 1988.

* * *

7. The question upon which the opinion of the Court has been requested is whether the United States of America (hereafter referred to as "the United States"), as a party to the United Nations Headquarters Agreement, is under an obligation to enter into arbitration. The Headquarters Agreement of 26 June 1947 came into force in accordance with its terms on 21 November 1947 by exchange of letters between the Secretary-General and the United States Permanent Representative. The Agreement was registered the same day with the United Nations Secretariat, in accordance with Article 102 of the Charter. In section 21, paragraph (a), it provides as follows:

"Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice."

There is no question but that the Headquarters Agreement is a treaty in force binding the parties thereto. What the Court has therefore to determine, in order to answer the question put to it, is whether there exists a dispute between the United Nations and the United States of the kind contemplated by section 21 of the Agreement. For this purpose the Court will first set out the sequence of events, preceding the adoption of resolutions 42/229 A and 42/229 B, which led first the Secretary-General and subsequently the General Assembly of the United Nations to conclude that such a dispute existed.

8. The events in question centred round the Permanent Observer Mission of the Palestine Liberation Organization (referred to hereafter as "the PLO") to the United Nations in New York. The PLO has enjoyed in relation to the United Nations the status of an observer since 1974; by General Assembly resolution 3237 (XXIX) of 22 November 1974, the Organization was invited to "participate in the sessions and the work of the General Assembly in the capacity of observer". Following this invitation, the PLO established an Observer Mission in 1974, and maintains an office, entitled office of the PLO Observer Mission, at 115 East 65th Street, in New York City, outside the United Nations Headquarters District. Recognized observers are listed as such in official United Nations publications: the PLO appears in such publications in a category of "organizations which have received a standing invitation from the General Assembly to participate in the sessions and the work of the General Assembly as observers".

9. In May 1987 a bill (S.1203) was introduced into the Senate of the United States, the purpose of which was stated in its title to be "to make unlawful the establishment or maintenance within the United States of an office of the Palestine Liberation Organization". Section 3 of the bill provided that

"It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this Act — 

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; 

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or 

(3) notwithstanding any provision of the law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States
entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in section 11.”

12. When the report of the Committee on Relations with the Host Country was placed before the Sixth Committee of the General Assembly on 25 November 1987, the representative of the United States noted:

“that the United States Secretary of State had stated that the closing of that mission would constitute a violation of United States obligation under the Headquarters Agreement, and that the United States Government was strongly opposed to it; moreover the United States representative to the United Nations had given the Secretary-General the same assurances” (A/C.6/42/SR.58).

When the draft resolution which subsequently became General Assembly resolution 42/210B was put to the vote in the Sixth Committee on 11 December 1987, the United States delegation did not participate in the voting because in its opinion: “it was unnecessary and inappropriate since it addressed a matter still under consideration within the United States Government”. The position taken by the United States Secretary of State, namely:

“that the United States was under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters” was cited by another delegate and confirmed by the representative of the United States, who referred to it as “well known” (A/C.6/42/SR.62).

13. The provisions of the amendment referred to above became incorporated into the United States “Foreign Relations Authorization Act, Fiscal Years 1988 and 1989” as Title X, the “Anti-Terrorism Act of 1987”. At the beginning of December 1987 the Act had not yet been adopted by the United States Congress. In anticipation of such adoption the Secretary-General addressed a letter, dated 7 December 1987, to the Permanent Representative of the United States, Ambassador Vernon Walters, in which he reiterated to the Permanent Representative the view previously expressed by the United Nations that the members of the PLO Observer Mission are, by virtue of General Assembly resolution 3237 (XXIX), invitees to the United Nations and that the United States is under an obligation to permit PLO personnel to enter and remain in the United States to carry out their official functions at the United Nations under the Headquarters Agreement. Consequently, it was said, the United States was under a legal obligation to maintain the current arrangements for the PLO Observer Mission, which had by then been in effect for some 13 years. The Secretary-General sought assurances that, in the event that the proposed
legislation became law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected.

14. In a subsequent letter, dated 21 December 1987, after the adoption on 15/16 December of the Act by the United States Congress, the Secretary-General informed the Permanent Representative of the adoption on 17 December 1987 of resolution 42/210 B by the General Assembly. By that resolution the Assembly

"Having been apprised of the action being considered in the host country, the United States of America, which might impede the maintenance of the facilities of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York, which enables it to discharge its official functions,

1. Reiterates that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and should be enabled to establish and maintain premises and adequate functional facilities, and that the personnel of the Mission should be enabled to enter and remain in the United States to carry out their official functions;

2. Requests the host country to abide by its treaty obligations under the Headquarters Agreement and in this connection to refrain from taking any action that would prevent the discharge of the official functions of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations;"

15. On 22 December 1987 the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, was signed into law by the President of the United States. Title X thereof, the Anti-Terrorism Act of 1987, was, according to its terms, to take effect 90 days after that date. On 5 January 1988 the Acting Permanent Representative of the United States to the United Nations, Ambassador Herbert Okun, in a reply to the Secretary-General's letters of 7 and 21 December 1987, informed the Secretary-General of this. The letter went on to say that

"Because the provisions concerning the PLO Observer Mission may infringe on the President's constitutional authority and, if implemented, would be contrary to our international legal obligations under the United Nations Headquarters Agreement, the Administration intends, during the ninety-day period before this provision is to take effect, to engage in consultations with the Congress in an effort to resolve this matter."

16. On 14 January 1988 the Secretary-General again wrote to Ambassador Walters. After welcoming the intention expressed in Ambassador Okun's letter to use the ninety-day period to engage in consultations with the Congress, the Secretary-General went on to say:

"As you will recall, I had, by my letter of 7 December, informed you that, in the view of the United Nations, the United States is under a legal obligation under the Headquarters Agreement of 1947 to maintain the current arrangements for the PLO Observer Mission, which have been in effect for the past 13 years. I had therefore asked you to confirm that if this legislative proposal became law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected, for without such assurance, a dispute between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement would exist."

Then, referring to the letter of 5 January 1988 from the Permanent Representative and to declarations by the Legal Adviser to the State Department, he observed that neither that letter nor those declarations

"constitute the assurance I had sought in my letter of 7 December 1987 nor do they ensure that full respect for the Headquarters Agreement can be assumed. Under these circumstances, a dispute exists between the Organization and the United States concerning the interpretation and application of the Headquarters Agreement and I hereby invoke the dispute settlement procedure set out in section 21 of the said Agreement.

According to section 21 (a), an attempt has to be made at first to solve the dispute through negotiations, and I would like to propose that the first round of the negotiating phase be convened on Wednesday, 20 January 1988 ..."

17. Beginning on 7 January 1988, a series of consultations were held; from the account of these consultations presented to the General Assembly by the Secretary-General in the report referred to in the request for advisory opinion, it appears that the positions of the parties thereto were as follows:

"the [United Nations] Legal Counsel was informed that the United States was not in a position and not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement; the United States was still evaluating the situation and had not yet concluded that a dispute existed between the United Nations and the United States at the present time because the legislation in question had not yet been implemented. The Executive Branch
was still examining the possibility of interpreting the law in conformity with the United States obligations under the Headquarters Agreement regarding the PLO Observer Mission, as reflected in the arrangements currently made for that Mission, or alternatively of providing assurances that would set aside the ninety-day period for the coming into force of the legislation.” (A/42/915, para. 6.)

18. The United Nations Legal Counsel stated that for the Organization the question was one of compliance with international law. The Headquarters Agreement was a binding international instrument the obligations of the United States under which were, in the view of the Secretary-General and the General Assembly, being violated by the legislation in question. Section 21 of the Agreement set out the procedure to be followed in the event of a dispute as to the interpretation or application of the Agreement and the United Nations had every intention of defending its rights under that Agreement. He insisted, therefore, that if the PLO Observer Mission was not to be exempted from the application of the law, the procedure provided for in section 21 be implemented and also that technical discussions regarding the establishment of an arbitral tribunal take place immediately. The United States agreed to such discussions but only on an informal basis. Technical discussions were commenced on 28 January 1988. Among the matters discussed were the costs of the arbitration, its location, its secretariat, languages, rules of procedure and the form of the compromis between the two sides (ibid., paras. 7-8).

19. On 2 February 1988 the Secretary-General once more wrote to Ambassador Walters. The Secretary-General took note that

“the United States side is still in the process of evaluating the situation which would arise out of the application of the legislation and pending the conclusion of such evaluation takes the position that it cannot enter into the dispute settlement procedure outlined in section 21 of the Headquarters Agreement”.

The Secretary-General then went on to say that

“The section 21 procedure is the only legal remedy available to the United Nations in this matter and since the United States so far has not been in a position to give appropriate assurances regarding the deferral of the application of the law to the PLO Observer Mission, the time is rapidly approaching when I will have no alternative but to proceed either together with the United States within the framework of section 21 of the Headquarters Agreement or by informing the General Assembly of the impasse that has been reached.”

20. On 11 February 1988 the United Nations Legal Counsel, referring to the formal invocation of the dispute settlement procedure on 14 January 1988 (paragraph 16 above), informed the Legal Adviser of the State Department of the United Nations' choice of its arbitrator, in the event of an arbitration under section 21 of the Headquarters Agreement. In view of the time constraints under which both parties found themselves, the Legal Counsel urged the Legal Adviser of the State Department to inform the United Nations as soon as possible of the choice made by the United States. No communication was received in this regard from the United States.

21. On 2 March 1988 the General Assembly, at its resumed forty-second session, adopted resolutions 42/229 A and 42/229 B. The first of these resolutions, adopted by 143 votes to 1, with no abstentions, contains (inter alia) the following operative provisions:

“...The General Assembly,

1. Supports the efforts of the Secretary-General and expresses its great appreciation for his reports;
2. Reaffirms that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (see resolution 169 (II)) and that it should be enabled to establish and maintain premises and adequate functional facilities and that the personnel of the Mission should be enabled to enter and remain in the United States of America to carry out their official functions;
3. Considers that the application of Title X of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, in a manner inconsistent with paragraph 2 above would be contrary to the international legal obligations of the host country under the Headquarters Agreement;
4. Considers that a dispute exists between the United Nations and the United States of America, the host country, concerning the interpretation or application of the Headquarters Agreement, and that the dispute settlement procedure set out in section 21 of the Agreement should be set in operation.”

The second resolution 42/229 B, adopted by 143 votes to none, with no abstentions, has already been set out in full in paragraph 1 above.

22. The United States did not participate in the vote on either resolution; after the vote, its representative made a statement, in which he said:

“The situation today remains almost identical to that prevailing when resolution 42/210 B was put to the vote in December 1987. The
United States has not yet taken action affecting the functioning of any Mission or invitee. As the Secretary-General relayed to the Assembly in the 25 February addendum to his report of 10 February, the United States Government has made no final decision concerning the application or enforcement of recently passed United States legislation, the Anti-Terrorism Act of 1987, with respect to the Permanent Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations in New York.

For these reasons, we can only view as unnecessary and premature the holding at this time of this resumed forty-second session of the General Assembly . . .

The United States Government will consider carefully the views expressed during this resumed session. It remains the intention of this Government to find an appropriate resolution of this problem in light of the Charter of the United Nations, the Headquarters Agreement, and the laws of the United States."

*

23. The question put to the Court is expressed, by resolution 42/229-B, to concern a possible obligation of the United States, "in the light of [the] facts reflected in the reports of the Secretary-General [A/42/915 and Add.1]," that is to say in the light of the facts which had been reported to the General Assembly at the time at which it took its decision to request an opinion. The Court does not however consider that the General Assembly, in employing this form of words, has requested it to reply to the question put on the basis solely of these facts, and to close its eyes to subsequent events of possible relevance to, or capable of throwing light on, that question. The Court will therefore set out here the developments in the affair subsequent to the adoption of resolution 42/229-B.

24. On 11 March 1988 the Acting Permanent Representative of the United States to the United Nations wrote to the Secretary-General, referring to General Assembly resolutions 42/229 A and 42/229 B and stating as follows:

"I wish to inform you that the Attorney General of the United States has determined that he is required by the Anti-Terrorism Act of 1987 to close the office of the Palestine Liberation Organization Observer Mission to the United Nations in New York, irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. If the PLO does not comply with the Act, the Attorney General will initiate legal action to close the PLO Observer Mission on or about March 21, 1988, the effective date of the Act. This course of action will allow the orderly enforcement of the Act. The United States will not take other actions to close the Observer Mission pending a decision in such litigation. Under the circumstances, the United States believes that submission of this matter to arbitration would not serve a useful purpose."

This letter was delivered by hand to the Secretary-General by the Acting Permanent Representative of the United States on 11 March 1988. On receiving the letter, the Secretary-General protested to the Acting Permanent Representative and stated that the decision taken by the United States Government as outlined in the letter was a clear violation of the Headquarters Agreement between the United Nations and the United States.

25. On the same day, the United States Attorney General wrote to the Permanent Observer of the PLO to the United Nations to the following effect:

"I am writing to notify you that on March 21, 1988, the provisions of the 'Anti-Terrorism Act of 1987' (Title X of the Foreign Relations Authorization Act of 1983-89; Pub. L. No. 100-204, enacted by the Congress of the United States and approved Dec. 22, 1987 (the 'Act')) will become effective. The Act prohibits, among other things, the Palestine Liberation Organization ('PLO') from establishing or maintaining an office within the jurisdiction of the United States. Accordingly, as of March 21, 1988, maintaining the PLO Observer Mission to the United Nations in the United States will be unlawful.

The legislation charges the Attorney General with the responsibility of enforcing the Act. To that end, please be advised that, should you fail to comply with the requirements of the Act, the Department of Justice will forthwith take action in United States federal court to ensure your compliance."

26. Finally, on the same day, in the course of a press briefing held by the United States Department of Justice, the Assistant Attorney General in charge of the Office of Legal Counsel said as follows, in reply to a question:

"We have determined that we would not participate in any forum, either the arbitral tribunal that might be constituted under Article XXI, as I understand it, of the UN Headquarters Agreement, or the International Court of Justice. As I said earlier, the statute [i.e., the Anti-Terrorism Act of 1987] has superseded the requirements of the UN Headquarters Agreement to the extent that those requirements are inconsistent with the statute, and therefore, participation in any of these tribunals that you cite would be to no useful end. The statute's mandate governs, and we have no choice but to enforce it."
27. On 14 March 1988 the Permanent Observer of the PLO replied to the Attorney General's letter drawing attention to the fact that the PLO Permanent Observer Mission had been maintained since 1974, and continuing:

"The PLO has maintained this arrangement in pursuance of the relevant resolutions of the General Assembly of the United Nations (3237 (XXIX), 42/210 and 42/229 ...). The PLO Observer Mission is in no sense accredited to the United States. The United States Government has made clear that PLO Observer Mission personnel are present in the United States solely in their capacity as 'inviteses' of the United Nations within the meaning of the Headquarters Agreement. The General Assembly was guided by the relevant principles of the United Nations Charter (Chapter XVI ...). I should like, at this point, to remind you that the Government of the United States has agreed to the Charter of the United Nations and to the establishment of an international organization to be known as the 'United Nations'."

He concluded that it was clear that "the US Government is obligated to respect the provisions of the Headquarters Agreement and the principles of the Charter". On 21 March 1988, the United States Attorney General replied to the PLO Permanent Observer as follows:

"I am aware of your position that requiring closure of the Palestine Liberation Organization ('PLO') Observer Mission may violate our obligations under the United Nations ('UN') Headquarters Agreement and, thus, international law. However, among a number of grounds in support of our action, the United States Supreme Court has held for more than a century that Congress has the authority to override treaties and, thus, international law for the purpose of domestic law. Here Congress has chosen, irrespective of international law, to ban the presence of all PLO offices in this country, including the presence of the PLO Observer Mission to the United Nations. In discharging my obligation to enforce the law, the only responsible course available to me is to respect and follow that decision.

Moreover, you should note that the Anti-Terrorism Act contains provisions in addition to the prohibition on the establishment or maintenance of an office by the PLO within the jurisdiction of the United States. In particular, I direct your attention to subsections 1003 (a) and (b), which prohibit anyone from receiving or expending any monies from the PLO or its agents to further the interests of the PLO or its agents. All provisions of the Act become applicable on 21 March 1988."

28. On 15 March 1988 the Secretary-General wrote to the Acting Permanent Representative of the United States in reply to his letter of 11 March 1988 (paragraph 24 above), and stated as follows:

"As I told you at our meeting on 11 March 1988 on receiving this letter, I did so under protest because in the view of the United Nations the decision taken by the United States Government as outlined in the letter is a clear violation of the Headquarters Agreement between the United Nations and the United States. In particular, I cannot accept the statement contained in the letter that the United States may act irrespective of its obligations under the Headquarters Agreement, and I would ask you to reconsider the serious implications of this statement given the responsibilities of the United States as the host country.

I must also take issue with the conclusion reached in your letter that the United States believes that submission of this matter to arbitration would not serve a useful purpose. The United Nations continues to believe that the machinery provided for in the Headquarters Agreement is the proper framework for the settlement of this dispute and I cannot agree that arbitration would serve no useful purpose. On the contrary, in the present case, it would serve the very purpose for which the provisions of section 21 were included in the Agreement, namely the settlement of a dispute arising from the interpretation or application of the Agreement."

29. According to the written statement of 25 March 1988 presented to the Court by the United States,

"The PLO Mission did not comply with the March 11 order. On March 22, the United States Department of Justice therefore filed a lawsuit in the United States District Court for the Southern District of New York to compel compliance. That litigation will afford an opportunity for the PLO and other interested parties to raise legal challenges to enforcement of the Act against the PLO Mission. The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely."

The Court has been supplied, as part of the dossier of documents furnished by the Secretary-General, with a copy of the summons addressed to the PLO, the PLO Observer Mission, its members and staff; it is dated 22 March 1988 and requires an answer within 20 days after service.

30. On 23 March 1988, the General Assembly, at its reconvened forty-second session, adopted resolution 42/230 by 148 votes to 2, by which it reaffirmed (inter alia) that
"a dispute exists between the United Nations and the United States of America, the host country, concerning the interpretation or application of the Headquarters Agreement, and that the dispute settlement procedure provided for under section 21 of the Agreement, which constitutes the only legal remedy to solve the dispute, should be set in operation" and requested "the host country to name its arbitrator to the arbitral tribunal".

31. The representative of the United States, who voted against the resolution, said (inter alia) the following in explanation of vote. Referring to the proceedings instituted in the United States courts, he said:

"The United States will take no further steps to close the PLO office until the Supreme Court has reached a decision on the Attorney General's position that the Act requires closure ... Until the United States courts have determined whether that law requires closure of the PLO Observer Mission the United States Government believes that it would be premature to consider the appropriateness of arbitration." (A/42/PV.109, pp. 13-15.)

He also urged:

"Let us not be diverted from the important and historic goal of peace in the Middle East by the current dispute over the status of the PLO Observer Mission." (Ibid., p. 16.)

32. At the hearing, the United Nations Legal Counsel, representing the Secretary-General, stated to the Court that he had informed the United States District Court Judge seised of the proceedings referred to in paragraph 29 above that it was the wish of the United Nations to submit an amicus curiae brief in those proceedings.

** The Court found that the opposing attitudes of the parties clearly established the existence of a dispute (ibid.; see also Northern Cameroons, I.C.J. Reports 1963, p. 27).

36. In the present case, the Secretary-General informed the Court that, in his opinion, a dispute within the meaning of Article 65, paragraph 1, of the Statute. There is in this case no reason why the Court should not answer that question.

34. In order to answer the question put to it, the Court has to determine whether there exists a dispute between the United Nations and the United States, and if so whether or not that dispute is one "concerning the interpretation or application of" the Headquarters Agreement within the meaning of section 21 thereof. If it finds that there is such a dispute it must also, pursuant to that section, satisfy itself that it is one "not settled by negotiation or other agreed mode of settlement".

35. As the Court observed in the case concerning Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, "whether there exists an international dispute is a matter for objective determination" (I.C.J. Reports 1950, p. 74). In this respect the Permanent Court of International Justice, in the case concerning Mavrommatis Palestine Concessions, had defined a dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (P.C.I.J., Series A, No. 2, p. 11). This definition has since been applied and clarified on a number of occasions. In the Advisory Opinion of 30 March 1950 the Court, after examining the diplomatic exchanges between the States concerned, noted that "the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations" and concluded that "international disputes have arisen" (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, I.C.J. Reports 1950, p. 74). Furthermore, in its Judgment of 21 December 1962 in the South West Africa cases, the Court made it clear that in order to prove the existence of a dispute

"it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other." (I.C.J. Reports 1962, p. 328.)
quarters Agreement existed between the United Nations and the United States from the moment the Anti-Terrorism Act was signed into law by the President of the United States and in the absence of adequate assurances to the Organization that the Act would not be applied to the PLO Observer Mission to the United Nations. By his letter of 14 January 1988 to the Permanent Representative of the United States, the Secretary-General formally contested the consistency of the Act with the Headquarters Agreement (paragraph 16 above). The Secretary-General confirmed and clarified that point of view in a letter of 15 March 1988 (paragraph 28 above) to the Acting Permanent Representative of the United States in which he told him that the determination made by the Attorney General of the United States on 11 March 1988 was a "clear violation of the Headquarters Agreement". In that same letter he once more asked that the matter be submitted to arbitration.

37. The United States has never expressly contradicted the view expounded by the Secretary-General and endorsed by the General Assembly regarding the sense of the Headquarters Agreement. Certain United States authorities have even expressed the same view, but the United States has nevertheless taken measures against the PLO Mission to the United Nations. It has indicated that those measures were being taken "irrespective of any obligations the United States may have under the [Headquarters] Agreement" (paragraph 24 above).

38. In the view of the Court, where one party to a treaty protests against the behaviour or a decision of another party, and claims that such behaviour or decision constitutes a breach of the treaty, the mere fact that the party accused does not advance any argument to justify its conduct under international law does not prevent the opposing attitudes of the parties from giving rise to a dispute concerning the interpretation or application of the treaty. In the case concerning United States Diplomatic and Consular Staff in Tehran, the jurisdiction of the Court was asserted principally on the basis of the Optional Protocols concerning the Compulsory Settlement of Disputes accompanying the Vienna Conventions of 1961 on Diplomatic Relations and of 1963 on Consular Relations, which defined the disputes to which they applied as "Disputes arising out of the interpretation or application of" the relevant Convention. Iran, which did not appear in the proceedings before the Court, had acted in such a way as, in the view of the United States, to commit breaches of the Conventions, but, so far as the Court was informed, Iran had at no time claimed to justify its actions by advancing an alternative interpretation of the Conventions, on the basis of which such actions would not constitute such a breach. The Court saw no need to enquire into the attitude of Iran in order to establish the existence of a "dispute"; in order to determine whether it had jurisdiction, it stated:

"The United States' claims here in question concern alleged violations by Iran of its obligations under several articles of the Vienna Conventions of 1961 and 1963 with respect to the privileges and immunities of the personnel, the inviolability of the premises and archives, and the provision of facilities for the performance of the functions of the United States Embassy and Consulates in Iran . . . By their very nature all these claims concern the interpretation or application of one or other of the two Vienna Conventions." (J.C.J. Reports 1980, pp. 24-25, para. 46.)

39. In the present case, the United States in its public statements has not referred to the matter as a "dispute" (save for a passing reference on 23 March 1988 to "the current dispute over the status of the PLO Observer Mission" (paragraph 31 above)), and it has expressed the view that arbitration would be "premature". According to the report of the Secretary-General to the General Assembly (A/42/915, para. 6), the position taken by the United States during the consultations in January 1988 was that it "had not yet concluded that a dispute existed between the United Nations and the United States" at that time "because the legislation in question had not yet been implemented". Finally, the Government of the United States, in its written statement of 25 March 1988, told the Court that:

"The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely."

40. The Court could not allow considerations as to what might be "appropriate" to prevail over the obligations which derive from section 21 of the Headquarters Agreement, as "the Court, being a Court of justice, cannot disregard rights recognized by it, and base its decision on considerations of pure expediency" (Free Zones of Upper Savoy and the District of Gex, Order of 6 December 1930, P.C.I.J., Series A, No. 24, p. 15).

41. The Court must further point out that the alleged dispute relates solely to what the United Nations considers to be its rights under the Headquarters Agreement. The purpose of the arbitration procedure envisaged by that Agreement is precisely the settlement of such disputes as may arise between the Organization and the host country without any prior recourse to municipal courts, and it would be against both the letter and the spirit of the Agreement for the implementation of that procedure to be subjected to such prior recourse. It is evident that a provision of the nature of section 21 of the Headquarters Agreement cannot require the exhaustion of local remedies as a condition of its implementation.

42. The United States in its written statement might be implying that neither the signing into law of the Anti-Terrorism Act, nor its entry into force, nor the Attorney General's decision to apply it, nor his resort to court proceedings to close the PLO Mission to the United Nations, would have been sufficient to bring about a dispute between the United Nations
and the United States, since the case was still pending before an American court and, until the decision of that court, the United States, according to the Acting Permanent Representative's letter of 11 March 1988, "will not take other actions to close" the Mission. The Court cannot accept such an argument. While the existence of a dispute does presuppose a claim arising out of the behaviour of or a decision by one of the parties, it in no way requires that any contested decision must already have been carried into effect. What is more, a dispute may arise even if the party in question gives an assurance that no measure of execution will be taken until ordered by decision of the domestic courts.

43. The Anti-Terrorism Act was signed into law on 22 December 1987. It was automatically to take effect 90 days later. Although the Act extends to every PLO office situated within the jurisdiction of the United States and contains no express reference to the office of the PLO Mission to the United Nations in New York, its chief, if not its sole, objective was the closure of that office. On 11 March 1988, the United States Attorney General considered that he was under an obligation to effect such a closure; he notified the Mission of this, and applied to the United States courts for an injunction prohibiting those concerned "from continuing violations of" the Act. As noted above, the Secretary-General, acting both on his own behalf and on instructions from the General Assembly, has consistently challenged the decisions contemplated and then taken by the United States Congress and the Administration. Under those circumstances, the Court is obliged to find that the opposing attitudes of the United Nations and the United States show the existence of a dispute between the two parties to the Headquarters Agreement.

44. For the purposes of the present advisory opinion there is no need to seek to determine the date at which the dispute came into existence, once the Court has reached the conclusion that there is such a dispute at the date on which its opinion is given.

* * *

45. The Court has next to consider whether the dispute is one which concerns the interpretation or application of the Headquarters Agreement. It is not however the task of the Court to say whether the enactment, or the enforcement, of the United States Anti-Terrorism Act would or would not constitute a breach of the provisions of the Headquarters Agreement; that question is reserved for the arbitral tribunal which the Secretary-General seeks to have established under section 21 of the Agreement.

46. In the present case, the Secretary-General and the General Assembly of the United Nations have constantly pointed out that the PLO was invited "to participate in the sessions and the work of the General Assembly ..." (resolution 3237 (XXIX)). In their view, therefore, the PLO Observer Mission to the United Nations was, as such, covered by the provisions of sections 11, 12 and 13 of the Headquarters Agreement; it should therefore "be enabled to establish and maintain premises and adequate functional facilities" (General Assembly resolution 42/229 A, para. 2). The Secretary-General and the General Assembly have accordingly concluded that the various measures envisaged and then taken by the United States Congress and Administration would be incompatible with the Agreement if they were to be applied to that Mission, and that the adoption of those measures gave rise to a dispute between the United Nations Organization and the United States with regard to the interpretation and application of the Headquarters Agreement.

47. As to the position of the United States, the Court notes that, as early as 29 January 1987, the United States Secretary of State wrote to Senator Dole that:

"The PLO Observer Mission in New York was established as a consequence of General Assembly resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly..."

He added that:

"... PLO Observer Mission personnel are present in the United States solely in their capacity as 'invitees' of the United Nations within the meaning of the Headquarters Agreement... we therefore are under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at UN headquarters..." (Congressional Record, Vol. 133, No. 78, p. S6449).

After the adoption of the Anti-Terrorism Act, the Acting Permanent Representative of the United States to the United Nations indicated to the Secretary-General that the provisions of that Act "concerning the PLO Observer Mission... if implemented, would be contrary to... the international legal obligations" of the host country under the Headquarters Agreement (paragraph 15 above). The United States then envisaged interpreting the Act in a manner compatible with its obligations (paragraph 17 above). Subsequently, however, the Acting Permanent Representative of the United States, in a letter dated 11 March 1988 (paragraph 24 above), informed the United Nations Secretary-General that the Attorney General of the United States had determined that the Anti-Terrorism Act required him to close the PLO Observer Mission, "irrespective of any obligations the United States may have under" the Headquarters Agreement. On the same day, an Assistant Attorney General declared that the Act had "superseded the requirements of the United Nations Headquarters Agreement to the extent that those requirements are inconsistent with the statute..." (paragraph 26 above). The Secretary-General, in his reply of
15 March 1988 to the letter from the United States Acting Permanent Representative, disputed the view there expressed, on the basis of the principle that international law prevails over domestic law.

48. Accordingly, in a first stage, the discussions related to the interpretation of the Headquarters Agreement and, in that context, the United States did not dispute that certain provisions of that Agreement applied to the PLO Mission to the United Nations in New York. However, in a second stage, it gave precedence to the Anti-Terrorism Act over the Headquarters Agreement, and this was challenged by the Secretary-General.

49. To conclude, the United States has taken a number of measures against the PLO Observer Mission to the United Nations in New York. The Secretary-General regarded these as contrary to the Headquarters Agreement. Without expressly disputing that point, the United States stated that the measures in question were taken “irrespective of any obligations the United States may have under the Agreement”. Such conduct cannot be reconciled with the position of the Secretary-General. There thus exists a dispute between the United Nations and the United States concerning the application of the Headquarters Agreement, falling within the terms of section 21 thereof.

50. The question might of course be raised whether in United States domestic law the decisions taken on 11 and 21 March 1988 by the Attorney General brought about the application of the Anti-Terrorism Act, or whether the Act can only be regarded as having received effective application when or if, on completion of the current judicial proceedings, the PLO Mission is in fact closed. This is however not decisive as regards section 21 of the Headquarters Agreement, which refers to any dispute “concerning the interpretation or application” of the Agreement, and not concerning the application of the measures taken in the municipal law of the United States. The Court therefore sees no reason not to find that a dispute exists between the United Nations and the United States concerning the “interpretation or application” of the Headquarters Agreement.

* * *

51. The Court now turns to the question of whether the dispute between the United Nations and the United States is one “not settled by negotiation or other agreed mode of settlement”, in the terms of section 21, paragraph (a), of the Headquarters Agreement.

52. In his written statement, the Secretary-General interprets this provision as requiring a two-stage process.

“In the first stage the parties attempt to settle their difference through negotiation or some other agreed mode of settlement . . . If they are unable to reach a settlement through these means, the second stage of the process, compulsory arbitration, becomes applicable.” (Para. 17.)

53. In his letter to the United States Permanent Representative dated 14 January 1988, the Secretary-General not only formally invoked the dispute settlement procedure set out in section 21 of the Headquarters Agreement, but also noted that “According to section 21 (a), an attempt has to be made at first to solve the dispute through negotiations” and proposed that the negotiations phase of the procedure commence on 20 January 1988. According to the Secretary-General’s report to the General Assembly, a series of consultations had already begun on 7 January 1988 (A/42/915, para. 6) and continued until 10 February 1988 (ibid., para. 10). Technical discussions, on an informal basis, on procedural matters relating to the arbitration contemplated by the Secretary-General, were held between 28 January 1988 and 2 February 1988 (ibid., paras. 8-9). On 2 March 1988, the Acting Permanent Representative of the United States stated in the General Assembly that

“we have been in regular and frequent contact with the United Nations Secretariat over the past several months concerning an appropriate resolution of this matter” (A/42/PV.104, p. 59).

54. The Secretary-General recognizes that “The United States did not consider these contacts and consultations to be formally within the framework of section 21 (a) of the Headquarters Agreement” (written statement, para. 44), and in a letter to the United States Permanent Representative dated 2 February 1988, the Secretary-General noted that the United States was taking the position that, pending its evaluation of the situation which would arise from application of the Anti-Terrorism Act, “it cannot enter into the dispute settlement procedure outlined in section 21 of the Headquarters Agreement”.

55. The Court considers that, taking into account the United States attitude, the Secretary-General has in the circumstances exhausted such possibilities of negotiation as were open to him. The Court would recall in this connection the dictum of the Permanent Court of International Justice in the Mavrommatis Palestine Concessions case that

“the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a deadlock is reached, or if finally a point is reached
at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that the dispute cannot be settled by diplomatic negotiation” (P.C.I.J., Series A. No. 2, p. 13).

When in the case concerning United States Diplomatic and Consular Staff in Tehran the attempts of the United States to negotiate with Iran “had reached a deadlock, owing to the refusal of the Iranian Government to enter into any discussion of the matter”, the Court concluded that “In consequence, there existed at that date not only a dispute but, beyond any doubt, a dispute . . . not satisfactorily adjusted by diplomacy” within the meaning of the relevant jurisdictional text (I.C.L.: Reports 1980, p. 27, para. 51). In the present case, the Court regards it as similarly beyond any doubt that the dispute between the United Nations and the United States is one “not settled by negotiation” within the meaning of section 21, paragraph (a), of the Headquarters Agreement.

56. Nor was any “other agreed mode of settlement” of their dispute contemplated by the United Nations and the United States. In this connection the Court should observe that current proceedings brought by the United States Attorney General before the United States courts cannot be an “agreed mode of settlement” within the meaning of section 21 of the Headquarters Agreement. The purpose of these proceedings is to enforce the Anti-Terrorism Act of 1987; it is not directed to settling the dispute, concerning the application of the Headquarters Agreement, which has come into existence between the United Nations and the United States. Furthermore, the United Nations has never agreed to settlement of the dispute in the American courts; it has taken care to make it clear that it wishes to be admitted only as amicus curiae before the District Court for the Southern District of New York.

* *

57. The Court must therefore conclude that the United States is bound to respect the obligation to have recourse to arbitration under section 21 of the Headquarters Agreement. The fact remains however that, as the Court has already observed, the United States has declared (letter from the Permanent Representative, 11 March 1988) that its measures against the PLO Observer Mission were taken “irrespective of any obligations the United States may have under the [Headquarters] Agreement”. If it were necessary to interpret that statement as intended to refer not only to the substantive obligations laid down in, for example, sections 11, 12 and 13, but also to the obligation to arbitrate provided for in section 21, this conclusion would remain intact. It would be sufficient to recall the fundamental principle of international law that international law prevails over domestic law. This principle was endorsed by judicial decision as long ago as the arbitral award of 14 September 1872 in the Alabama case between Great Britain and the United States, and has frequently been recalled since, for example in the case concerning the Greco-Bulgarian

“Communities” in which the Permanent Court of International Justice laid it down that

“it is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty” (P.C.I.J., Series B, No. 17, p. 32).

* * *

58. For these reasons,

THE COURT,

Unanimously,

Is of the opinion that the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947, is under an obligation, in accordance with section 21 of that Agreement, to enter into arbitration for the settlement of the dispute between itself and the United Nations.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-sixth day of April, one thousand nine hundred and eighty-eight, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) José Maria Ruda,
President.

(Signed) Eduardo Valencia-Ospina,
Registrar.

Judge Elias appends a declaration to the Advisory Opinion of the Court.

Judges ODA, SCHWEBEL and SHAHABUDEEN append separate opinions to the Advisory Opinion of the Court.

(Initialled) J.M.R.
(Initialled) E.V.O.
Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996
INTERNATIONAL COURT OF JUSTICE

YEAR 1996

8 July 1996

LEGALITY OF THE USE BY A STATE OF NUCLEAR WEAPONS IN ARMED CONFLICT

Jurisdiction of the Court to give the advisory opinion requested — Article 65, paragraph 1, of the Statute and Article 96, paragraph 2, of the Charter — "Legal question" — Political aspects of the question posed — Motives said to have inspired the request and political implications that the opinion might have — Question arising "within the scope of [the] activities" of the requesting Organization — Interpretation of the constitution of the Organization — Article 2 of the World Health Organization Constitution — Absence of sufficient connection between the functions vested in the Organization and the question posed — "Principle of speciality" — Relationship between the United Nations and the specialized agencies — Issue of World Health Organization practice in the field of nuclear weapons — Resolution duly adopted from a procedural point of view and question whether that resolution has been adopted intra vires — Resolution of the United Nations General Assembly "welcoming" the request for an opinion submitted by the World Health Organization — Conclusion.

ADVISORY OPINION

Present: President BEDJAOUI; Vice-President SCHWEBEI; Judges ODA, GUILLAUME, SHAHABUDDIN, WEERAMANTRY, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESICHETIN, FERRARI BRAVO, HIGGINS; Registrar VALENCIA-OSPINA.

1. By a letter dated 27 August 1993, filed in the Registry on 3 September 1993, the Director-General of the World Health Organization (hereinafter called "the WHO") officially communicated to the Registrar a decision taken by the World Health Assembly to submit a question to the Court for an advisory opinion. The question is set forth in resolution WHA46.40 adopted by the Assembly on 14 May 1993. That resolution, certified copies of the English and French texts of which were enclosed with the said letter, reads as follows:

"The Forty-sixth World Health Assembly,

Bearing in mind the principles laid down in the WHO Constitution;

Noting the report of the Director-General on health and environmental effects of nuclear weapons;

Recalling resolutions WHA34.38, WHA36.28 and WHA40.24 on the effects of nuclear war on health and health services;

Recognizing that it has been established that no health service in the world can alleviate in any significant way a situation resulting from the use of even one single nuclear weapon;

Recalling resolutions WHA42.26 on WHO's contribution to the international efforts towards sustainable development and WHA45.31 which draws attention to the effects on health of environmental degradation and recognizing the short- and long-term environmental consequences of the use of nuclear weapons that would affect human health for generations;

Recalling that primary prevention is the only appropriate means to deal with the health and environmental effects of the use of nuclear weapons; and

Noting the concern of the world health community about the continued threat to health and the environment from nuclear weapons;

Mindful of the role of WHO as defined in its Constitution to act as the directing and coordinating authority on international health work (Article 2 (a)); to propose conventions, agreements and regulations (Article 2 (k)); to report on administrative and social techniques affecting public health from preventive and curative points of view (Article 2 (p)); and to take all necessary action to attain the objectives of the Organization (Article 2 (s));

Realizing that primary prevention of the health hazards of nuclear weapons requires clarity about the status in international law of their use, and that over the last 48 years marked differences of opinion have been expressed by Member States about the lawfulness of the use of nuclear weapons;


request the International Court of Justice to give an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

2. Requests the Director-General to transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question, in accordance with Article 65 of the Statute of the Court."

2. Pursuant to Article 65, paragraph 2, of the Statute, the Director-General of the WHO communicated to the Court a dossier of documents likely to throw light upon the question; the dossier reached the Registry in several instalments.

3. By letters dated 14 and 20 September 1993, the Deputy-Registrar, pursuant to Article 66, paragraph 1, of the Statute of the Court, gave notice of the request for an advisory opinion to all States entitled to appear before the Court.

4. By an Order dated 13 September 1993 the Court decided that the WHO and the member States of that Organization entitled to appear before the Court were likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute; and, by the same Order, the Court fixed 10 June 1994 as the time-limit for the submission to it of written statements on the question. The special and direct communication provided for in Article 66, paragraph 2, of the Statute was included in the aforementioned letters of 14 and 20 September 1993 addressed to the States concerned. A similar communication was transmitted to the WHO by the Deputy-Registrar on 14 September 1993.

5. By an Order dated 20 June 1994, the President of the Court, upon the request of several States, extended to 20 September 1994 the time-limit for the submission of written statements. By the same Order, the President fixed 20 June 1995 as the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute.

6. Written statements were filed by the following States: Australia, Azerbaijan, Bahamas, Barbados, Belgium, Brazil, Canada, Costa Rica, Democratic People's Republic of Korea, Denmark, Egypt, Germany, Ireland, Italy, Japan, Jordan, Kazakhstan, Lithuania, Malaysia, Mexico, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Republic of Moldova, Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Sri Lanka, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and United States of America. In addition, written comments on those written statements were submitted by the following States: Costa Rica, France, India, Indonesia, Japan, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Republic of Moldova, Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Sri Lanka, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and United States of America. Upon receipt of those statements and comments, the Registrar communicated the text to all States having taken part in the written proceedings.

7. The Court decided to hold public sittings, opening on 30 October 1995, at which oral statements might be submitted to the Court by any State or organization which had been considered likely to be able to furnish information on the question before the Court. By letters dated 23 June 1995, the Registrar requested the WHO and its member States entitled to appear before the Court to inform him whether they intended to take part in the oral proceedings; it was indicated, in those letters, that the Court had decided to hear, during the same public sittings, oral statements relating to the request for an advisory opinion from the WHO as well as oral statements concerning the request for an advisory opinion meanwhile laid before the Court by the General Assembly of the United Nations on the question of the Legality of the Threat or Use of Nuclear Weapons, on the understanding that the WHO would be entitled to speak only in regard to the request it had itself submitted; and it was further specified therein that the participants in the oral proceedings which had not taken part in the written proceedings would receive the text of the statements and comments produced in the course of the latter.

8. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements and comments submitted to the Court accessible to the public, with effect from the opening of the oral proceedings.

9. In the course of public sittings held from 30 October 1995 to 15 November 1995, the Court heard oral statements in the following order by:

   for the WHO: Mr. Claude-Henri Vignes, Legal Counsel;

   for the Commonwealth of Australia: Mr. Gavan Griffith, Q.C., Solicitor-General of Australia, Counsel;

   for the Arab Republic of Egypt: The Honourable Gareth Evans, Q.C., Senator, Minister for Foreign Affairs, Counsel;

   for the French Republic: Mr. Georges Abi-Saab, Professor of International Law, Graduate Institute of International Studies, Geneva, Member of the Institute of International Law;

   for the French Republic: Mr. Marc Perrin de Brichambaut, Director of Legal Affairs, Ministry of Foreign Affairs;

   for the Federal Republic of Germany: Mr. Alain Pellet, Professor of International Law, University of Paris X and Institute of Political Studies, Paris;

   for Indonesia: H.E. Mr. Johannes Berchmans Soedarmano Kadarisman, Ambassador of Indonesia to the Netherlands;

   for Mexico: H.E. Mr. Sergio González Gálvez, Ambassador, Under-Secretary of Foreign Relations;

   for the Islamic Republic of Iran: H.E. Mr. Mohammad J. Zarif, Deputy Minister, Legal and International Affairs, Ministry of Foreign Affairs;

   for Italy: Mr. Umberto Leanza, Professor of International Law at the Faculty of Law at the University of Rome "Tor Vergata", Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs;
for Japan:  
H.E. Mr. Takekazu Kawanura, Ambassador,  
Director General for Arms Control and Scientific Affairs, Ministry of Foreign Affairs,
Mr. Takashi Hiraoka, Mayor of Hiroshima, 
Mr. Icho Itoh, Mayor of Nagasaki;

for Malaysia:  
H.E. Mr. T. A. R. Ismail, Ambassador, Permanent Representative of Malaysia to the United Nations, 
Dato' Mohtar Abdullah, Attorney-General;

for New Zealand:  
The Honourable Paul East, Q.C., Attorney-General of New Zealand, 
Mr. Allan Bracegirdle, Deputy Director of Legal Division of the New Zealand Ministry of Foreign Affairs and Trade;

for the Philippines:  
H.E. Mr. Rodolfo S. Sanchez, Ambassador of the Philippines to the Netherlands, 
Professor Merlin M. Magallona, Dean, College of Law, University of the Philippines;

for the Russian Federation:  
Mr. A. G. Khodakov, Director, Legal Department, Ministry of Foreign Affairs;

for Samoa:  
H.E. Mr. Neroni Slade, Ambassador and Permanent Representative of Samoa to the United Nations, 
Miss Laurence Boisson de Chazournes, Assistant Professor, Graduate Institute of International Studies, Geneva, 
Mr. Roger S. Clark, Distinguished Professor of Law, Rutgers University School of Law, Camden, New Jersey;

for the Marshall Islands:  
The Honourable Theodore G. Kronmiller, Legal Counsel, Embassy of the Marshall Islands to the United States of America, 
Mrs. Lijon Eknilang, Council Member, Rongelap Atoll Local Government;

for Solomon Islands:  
The Honourable Victor Ngele, Minister of Police and National Security, 
Mr. Jean Salmon, Professor of Law, Université libre de Bruxelles, 
Mr. Eric Davin, Professor of Law, Université libre de Bruxelles, 
Mr. Philippe Sands, Lecturer in Law, School of Oriental and African Studies, London University, and Legal Director, Foundation for International Environmental Law and Development,
Mr. James Crawford, Whewell Professor of International Law, University of Cambridge;

for Costa Rica:  
Mr. Carlos Vargas-Pizarro, Legal Counsel and Special Envoy of the Government of Costa Rica;

for the United Kingdom of Great Britain and Northern Ireland:  
The Rt. Honourable Sir Nicholas Lyell, Q.C., M.P., Her Majesty’s Attorney-General;

for the United States of America:  
Mr. Conrad K. Harper, Legal Adviser, United States Department of State, 
Mr. Michael J. Matheson, Principal Deputy Legal Adviser, United States Department of State, 
Mr. John H. McNeill, Senior Deputy General Counsel, United States Department of Defense;

for Zimbabwe:  
Mr. Jonathan Wutawunzhe, Chargé d’affaires a.i., Embassy of the Republic of Zimbabwe in the Netherlands.

Questions were put by Members of the Court to particular participants in the oral proceedings, which replied in writing, as requested, within the prescribed time-limits; the Court having decided that the other participants could also reply to those questions on the same terms, several of them did so. Other questions put by Members of the Court were addressed, more generally, to any participant in the oral proceedings; several of them replied in writing, as requested, within the prescribed time-limits.

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10. The Court has the authority to give advisory opinions by virtue of Article 65 of its Statute, paragraph 1 of which reads as follows:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

It is also stated, in Article 96, paragraph 2, of the Charter that the

“specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”.

Consequently, three conditions must be satisfied in order to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion must be duly authorized, under the Charter, to request opinions from the
Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency (cf. *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 333-334).

11. Where the WHO is concerned, the above-mentioned texts are reflected in two other provisions, to which World Health Assembly resolution WHA46.40 expressly refers in paragraph 1 of its operative part. These are, on the one hand, Article 76 of that Organization's Constitution, under which:

> "Upon authorization by the General Assembly of the United Nations, or upon authorization in accordance with any agreement between the Organization and the United Nations, the Organization may request the International Court of Justice for an advisory opinion on any legal question arising within the competence of the Organization."

And on the other hand, paragraph 2 of Article X of the Agreement of 10 July 1948 between the United Nations and the WHO, under which:

> "The General Assembly authorizes the World Health Organization to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its competence other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies."

This agreement was approved by the United Nations General Assembly on 15 November 1947 (resolution 124 (II)) and by the World Health Assembly on 10 July 1948 (resolution WHA1.102).

12. There is thus no doubt that the WHO has been duly authorized, in accordance with Article 96, paragraph 2, of the Charter, to request advisory opinions of the Court. The first condition which must be met in order to found the competence of the Court in this case is thus fulfilled. Moreover, this point has not been disputed; and the Court has in the past agreed to deal with a request for an advisory opinion submitted by the WHO (see *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, pp. 73 et seq.).

* * *

13. However, during both the written and oral proceedings, some States have disputed whether the other conditions necessary for the jurisdiction of the Court have been met in the present case. It has been contended that the question before the Court is an essentially political one, and also that it goes beyond the scope of the WHO's proper activities, which would *in limine* have deprived the Organization itself of any competence to seise the Court of it.

14. Further, various arguments have been put forward for the purpose of persuading the Court to use the discretionary power it possesses under Article 65, paragraph 1, of the Statute, to decline to give the opinion sought. The Court can however only exercise this discretionary power if it has first established that it has jurisdiction in the case in question; if the Court lacks jurisdiction, the question of exercising its discretionary power does not arise.

* * *

15. The Court must therefore first satisfy itself that the advisory opinion requested does indeed relate to a “legal question” within the meaning of its Statute and the United Nations Charter.

The Court has already had occasion to indicate that questions

> “framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law . . . [and] appear . . . to be questions of a legal character” (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15).

16. The question put to the Court by the World Health Assembly does in fact constitute a legal question, as the Court is requested to rule on whether,

> “in view of the health and environmental effects, . . . the use of nuclear weapons by a State in war or other armed conflict [would] be a breach of its obligations under international law including the WHO Constitution”.

To do this, the Court must identify the obligations of States under the rules of law invoked, and assess whether the behaviour in question conforms to those obligations, thus giving an answer to the question posed based on law.

The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a “legal question” and to “deprive the Court of a competence expressly conferred on it by its Statute” (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14). Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them.
has recognized that the Charter is a multilateral treaty, albeit a treaty having certain special characteristics.” (Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 157.)

But the constituent instruments of international organizations are also treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals. Such treaties can raise specific problems of interpretation owing, inter alia, to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties.

According to the customary rule of interpretation as expressed in Article 31 of the 1969 Vienna Convention on the Law of Treaties, the terms of a treaty must be interpreted “in their context and in the light of its object and purpose” and there shall be

“taken into account, together with the context:

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”.

The Court has had occasion to apply this rule of interpretation several times (see Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment, I.C.J. Reports 1991, pp. 69-70, para. 48; Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua interven- ing), Judgment, I.C.J. Reports 1992, pp. 582-583, para. 373, and p. 586, para. 380; Territorial Dispute (Libyan Arab Jamahiriya/ Chad), Judgment, I.C.J. Reports 1994, pp. 21-22, para. 41; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bah- rai n), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995, p. 18, para. 33); it will also apply it in this case for the purpose of determining whether, according to the WHO Constitution, the question to which it has been asked to reply arises “within the scope of [the] activities” of that Organization.

* *

20. The WHO Constitution was adopted and opened for signature on 22 July 1946; it entered into force on 7 April 1948 and was amended in 1960, 1975, 1977, 1984 and 1994.

The functions attributed to the Organization are listed in 22 subparagraphs (subparagraphs (a) to (v)) in Article 2 of its Constitution. None of these subparagraphs expressly refers to the legality of any activity
hazardous to health; and none of the functions of the WHO is dependent upon the legality of the situations upon which it must act. Moreover, it is stated in the introductory sentence of Article 2 that the Organization discharges its functions "in order to achieve its objective". The objective of the Organization is defined in Article 1 as being "the attainment by all peoples of the highest possible level of health". As for the Preamble to the Constitution, it sets out various principles which the States parties "declare, in conformity with the Charter of the United Nations, . . . to be basic to the happiness, harmonious relations and security of all peoples": hence, it is stated the eo, inter alia, that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being" and that "the health of all peoples is fundamental to the attainment of peace and security"; it is further indicated, at the end of the Preamble that,

"for the purpose of co-operation among themselves and with others to promote and protect the health of all peoples, the Contracting Parties . . . establish . . . the . . . Organization . . . as a specialized agency within the terms of Article 57 of the Charter of the United Nations".

21. Interpreted in accordance with their ordinary meaning, in their context and in the light of the object and purpose of the WHO Constitution, as well as of the practice followed by the Organization, the provisions of its Article 2 may be read as authorizing the Organization to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in.

The question put to the Court in the present case relates, however, not to the effects of the use of nuclear weapons on health, but to the legality of the use of such weapons in view of their health and environmental effects. Whatever those effects might be, the competence of the WHO to deal with them is not dependent on the legality of the acts that caused them. Accordingly, it does not seem to the Court that the provisions of Article 2 of the WHO Constitution, interpreted in accordance with the criteria referred to above, can be understood as conferring upon the Organization a competence to address the legality of the use of nuclear weapons, and thus in turn a competence to ask the Court about that.

22. World Health Assembly resolution WHA46.40, by which the Court has been seized of this request for an opinion, expressly refers, in its Preamble, to the functions indicated under subparagraphs (a), (k), (p) and (v) of Article 2 under consideration. These functions are defined as:

"(a) to act as the directing and co-ordinating authority on international health work;"
Realizing that primary prevention of the health hazards of nuclear weapons requires clarity about the status in international law of their use, and that over the last 48 years marked differences of opinion have been expressed by Member States about the lawfulness of the use of nuclear weapons;

The document entitled *Effects of Nuclear War on Health and Health Services*, to which the Preamble refers, is a report prepared in 1987 by the Management Group created by the Director-General of the WHO in pursuance of World Health Assembly resolution WHA36.28; this report updates another report on the same topic, which had been prepared in 1983 by an international committee of experts in medical sciences and public health, and whose conclusions had been approved by the Assembly in its above-mentioned resolution. As several States have observed during the present proceedings the Management Group does indeed emphasize in its 1987 report that “the only approach to the treatment of health effects of nuclear warfare is primary prevention, that is, the prevention of nuclear war” (Summary, p. 5, para. 7). However, the Group states that “it is not for [it] to outline the political steps by which this threat can be removed or the preventive measures to be implemented” (ibid., para. 8); and the Group concludes:

“However, WHO can make important contributions to this process by systematically distributing information on the health consequences of nuclear warfare and by expanding and intensifying international cooperation in the field of health.” (Ibid., para. 9.)

24. The WHO could only be competent to take those actions of “primary prevention” which fall within the functions of the Organization as defined in Article 2 of its Constitution. In consequence, the references to this type of prevention which are made in the Preamble to resolution WHA46.40 and the link there suggested with the question of the legality of the use of nuclear weapons do not affect the conclusions reached by the Court in paragraph 22 above.

25. The Court need hardly point out that international organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the “principle of speciality”, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them. The Permanent Court of International Justice referred to this basic principle in the following terms:

“As the European Commission is not a State, but an international institution with a special purpose, it only has the functions bestowed upon it by the Definitive Statute with a view to the fulfilment of that purpose, but it has power to exercise these functions to their full extent, in so far as the Statute does not impose restrictions upon it.” *(Jurisdiction of the European Community Commission of the Danube, Advisory Opinion, P.C.I.J., Series B, No. 14, p. 64.)*

The powers conferred on international organizations are normally the subject of an express statement in their constituent instruments. Nevertheless, the necessities of international life may point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organizations can exercise such powers, known as “implied” powers. As far as the United Nations is concerned, the Court has expressed itself in the following terms in this respect:

“Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. This principle of law was applied by the Permanent Court of International Justice to the International Labour Organization in its Advisory Opinion No. 13 of July 23rd, 1926 (Series B, No. 13, p. 18), and must be applied to the United Nations.” *(Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, pp. 182-183; cf. Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954, p. 57.)*

In the opinion of the Court, to ascribe to the WHO the competence to address the legality of the use of nuclear weapons — even in view of their health and environmental effects — would be tantamount to disregarding the principle of speciality; for such competence could not be deemed a necessary implication of the Constitution of the Organization in the light of the purposes assigned to it by its member States.

26. The World Health Organization is, moreover, an international organization of a particular kind. As indicated in the Preamble and confirmed by Article 69 of its Constitution, “the Organization shall be brought into relation with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations”. Article 57 of the Charter defines “specialized agencies” as follows:

“1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.”
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as ‘specialized agencies’.

Article 58 of the Charter reads:

“The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.”

Article 63 of the Charter then provides:

“1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.”

As these provisions demonstrate, the Charter of the United Nations laid the basis of a “system” designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The exercise of these powers by the organizations belonging to the “United Nations system” is co-ordinated, notably, by the relationship agreements concluded between the United Nations and each of the specialized agencies. In the case of the WHO, the agreement of 10 July 1948 between the United Nations and that Organization actually refers to the WHO Constitution in the following terms in Article I:

“The United Nations recognizes the World Health Organization as the specialized agency responsible for taking such action as may be appropriate under its Constitution for the accomplishment of the objectives set forth therein.”

It follows from the various instruments mentioned above that the WHO Constitution can only be interpreted, as far as the powers conferred upon that Organization are concerned, by taking due account not only of the general principle of speciality, but also of the logic of the overall system contemplated by the Charter. If, according to the rules on which that system is based, the WHO has, by virtue of Article 57 of the Charter, “wide international responsibilities”, those responsibilities are necessarily restricted to the sphere of public “health” and cannot encroach on the responsibilities of other parts of the United Nations system. And there is no doubt that questions concerning the use of force, the regulation of armaments and disarmament are within the competence of the United Nations and lie outside that of the specialized agencies. Besides, any other conclusion would render virtually meaningless the notion of a specialized agency; it is difficult to imagine what other meaning that notion could have if such an organization need only show that the use of certain weapons could affect its objectives in order to be empowered to concern itself with the legality of such use. It is therefore difficult to maintain that, by authorizing various specialized agencies to request opinions from the Court under Article 96, paragraph 2, of the Charter, the General Assembly intended to allow them to seize the Court of questions belonging within the competence of the United Nations.

For all these reasons, the Court considers that the question raised in the request for an advisory opinion submitted to it by the WHO does not arise “within the scope of [the] activities” of that Organization as defined by its Constitution.

27. A consideration of the practice of the WHO bears out these conclusions. None of the reports and resolutions referred to in the Preamble to World Health Assembly resolution WHA46.40 is in the nature of a practice of the WHO in regard to the legality of the threat or use of nuclear weapons. The Report of the Director-General (doc. A46/30), referred to in the third paragraph of the Preamble, the aforementioned resolutions WHA34.38 and WHA36.28, as well as resolution WHA40.24, all of which are referred to in the fourth paragraph, as well as the above-mentioned report of the Management Group of 1987 to which reference is made in the fifth and seventh paragraphs, deal exclusively, in the case of the first, with the health and environmental effects of nuclear weapons, and in the case of the remainder, with the effects of nuclear weapons on health and health services. As regards resolutions WHA42.26 and WHA45.31, referred to in the sixth paragraph of the Preamble to resolution WHA46.40, the first concerns the WHO’s contribution to international efforts towards sustainable development and the second deals with the effects on health of environmental degradation. None of these reports and resolutions deals with the legality of the use of nuclear weapons.

Resolution WHA46.40 itself, adopted, notwithstanding opposition, as soon as the question of the legality of the use of nuclear weapons was raised at the WHO, could not be taken to express or to amount on its own to a practice establishing an agreement between the members of the Organization to interpret its Constitution as empowering it to address the question of the legality of the use of nuclear weapons.

Nowhere else does the Court find any practice of this kind. In particular, such a practice cannot be inferred from isolated passages of certain resolutions of the World Health Assembly cited during the present proceedings, such as resolution WHA15.51 on the role of the physician in the preservation and development of peace, resolution WHA22.58 concerning co-operation between the WHO and the United Nations in regard to chemical and bacteriological weapons and the effects of their
possible use, and resolution WHA42.24 concerning the embargo placed on medical supplies for political reasons and restrictions on their movement. The Court has also noted that the WHO regularly takes account of various rules of international law in the exercise of its functions; that it participates in certain activities undertaken in the legal sphere at the international level—for example, for the purpose of drawing up an international code of practice on transboundary movements of radioactive waste; and that it participates in certain international conferences for the progressive development and codification of international law.

That the WHO, as a subject of international law, should be led to apply the rules of international law or concern itself with their development is in no way surprising; but it does not follow that it has received a mandate, beyond the terms of its Constitution, itself to address the legality or illegality of the use of weaponry in hostilities.


28. It remains to be considered whether the insertion of the words “including the WHO Constitution” in the question put to the Court (which essentially seeks an opinion on the legality of the use of nuclear weapons in general) could allow it to offer an opinion on the legality of the use of nuclear weapons by reference to the passage in the question concerning the WHO Constitution. The Court must answer in the negative. Indeed, the WHO is not empowered to seek an opinion on the interpretation of its Constitution in relation to matters outside the scope of its functions.

29. Other arguments have nevertheless been put forward in the proceedings to found the jurisdiction of the Court in the present case.

It has thus been argued that World Health Assembly resolution WHA46.40, having been adopted by the requisite majority, “must be presumed to have been validly adopted” (cf. 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. 22, para. 20). The Court would observe in this respect that the question whether a resolution has been duly adopted from a procedural point of view and the question whether that resolution has been adopted intra vires are two separate issues. The mere fact that a majority of States, in voting on a resolution, have complied with all the relevant rules of form cannot in itself suffice to remedy any fundamental defects, such as acting ultra vires, with which the resolution might be afflicted.

As the Court has stated, “each organ must, in the first place at least, determine its own jurisdiction” (Certain Expenses of the United Nations

(Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 168). It was therefore certainly a matter for the World Health Assembly to decide on its competence—and, thereby, that of the WHO—to submit a request to the Court for an advisory opinion on the question under consideration, having regard to the terms of the Constitution of the Organization and those of the Agreement of 10 July 1948 bringing it into relationship with the United Nations. But likewise it is incumbent on the Court to satisfy itself that the conditions governing its own competence to give the opinion requested are met; through the reference made, respectively, by Article 96, paragraph 2, of the Charter to the “scope of [the] activities” of the Organization and by Article X, paragraph 2, of the Agreement of 10 July 1948 to its “competence”, the Court also finds itself obliged, in the present case, to interpret the Constitution of the WHO.

The exercise of the functions entrusted to the Court under Article 65, paragraph 1, of its Statute requires it to furnish such an interpretation, independently of any operation of the specific recourse mechanism which Article 75 of the WHO Constitution reserves for cases in which a question or dispute arises between States concerning the interpretation or application of that instrument; and in doing so the Court arrives at different conclusions from those reached by the World Health Assembly when it adopted resolution WHA46.40.

30. Nor can the Court accept the argument that the General Assembly of the United Nations, as the source from which the WHO derives its power to request advisory opinions, has, in its resolution 49/75 K, confirmed the competence of that organization to request an opinion on the question submitted to the Court. In the last preambular paragraph of that resolution, the General Assembly

“[welcomed] resolution 46/40 of 14 May 1993 of the Assembly of the World Health Organization, in which the organization requested the International Court of Justice to give an advisory opinion on whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organization”.

In expressing this opinion, the General Assembly clearly reflected the wish of a majority of States that the Assembly should lend its political support to the action taken by the WHO, which it welcomed. However, the Court does not consider that, in doing so, the General Assembly meant to pass upon the competence of the WHO to request an opinion on the question raised. Moreover, the General Assembly could evidently
not have intended to disregard the limits within which Article 96, para-
graph 2, of the Charter allows it to authorize the specialized agencies to
request opinions from the Court — limits which were reaffirmed in
Article X of the relationship agreement of 10 July 1948.

* * *

31. Having arrived at the view that the request for an advisory opinion
submitted by the WHO does not relate to a question which arises “within
the scope of [the] activities” of that Organization in accordance with
Article 96, paragraph 2, of the Charter, the Court finds that an essential
condition of founding its jurisdiction in the present case is absent and
that it cannot, accordingly, give the opinion requested. Consequently, the
Court is not called upon to examine the arguments which were laid
before it with regard to the exercise of its discretionary power to give an
opinion.

* * *

32. For these reasons,

THE COURT,

By eleven votes to three,

finds that it is not able to give the advisory opinion which was
requested of it under World Health Assembly resolution WHA46.40
dated 14 May 1993.

in favour: President Bedjaoui; Vice-President Schwebel; Judges Oda,
Guillaume, Ranjeva, Herzegh, Shi, Fleischhauer, Vereshechin, Ferrari
Bravo, Higgins;

against: Judges Shahabuddeen, Weeramantry, Koroma.

Done in French and in English, the French text being authoritative, at
the Peace Palace, The Hague, this eighth day of July, one thousand nine
hundred and ninety-six, in three copies, one of which will be placed in the
archives of the Court and the others transmitted to the Secretary-General
of the United Nations and the Director-General of the World Health
Organization, respectively.

(Signed) Mohammed Bedjaoui,
President.

(Signed) Eduardo Valencia-Ospina,
Registrar.
DIFFERENCE RELATING TO IMMUNITY FROM LEGAL PROCESS OF A SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

Article 96, paragraph 2, of the Charter and Article 65, paragraph 1, of the Statute — Resolution 89 (1) of the General Assembly authorizing the Economic and Social Council to request advisory opinions — Article VIII, Section 30, of the Convention on the Privileges and Immunities of the United Nations — Existence of a "difference" between the United Nations and one of its Members — Opinion "accepted as decisive by the parties" — Advisory nature of the Court's function and particular treaty provisions — "Legal question" — Question arising "within the scope of [the] activity" of the body requesting it.

Jurisdiction and discretionary power of the Court to give an opinion — "Absence of compelling reasons" to decline to give such opinion.

Question on which the opinion is requested — Divergence of views — Formulation adopted by the Council as the requesting body.

Special Rapporteur of the Commission on Human Rights — "Expert on mission" — Applicability of Article VI, Section 22, of the General Convention — Specific circumstances of the case — Question whether words spoken by the Special Rapporteur during an interview were spoken "in the course of the performance of his mission" — Pivotal role of the Secretary-General in the process of determining whether, in the prevailing circumstances, an expert on mission is entitled to the immunity provided for in Section 22 (b) — Interview given by Special Rapporteur to International Commercial Litigation — Contacts with the media by Special Rapporteurs of the Commission on Human Rights — Reference to Special Rapporteur's capacity in the text of the interview — Position of the Commission itself.

Legal obligations of Malaysia in this case — Point in time from which the question must be answered — Authority and responsibility of the Secretary-General to inform the Government of a member State of his finding on the immunity of an agent — Finding creating a presumption which can only be set aside by national courts for the most compelling reasons — Obligation on the governmental authorities to convey that finding to the national courts concerned — Immunity from legal process "of every kind" within the meaning of Section 22 (b) of the Convention — Preliminary question which must be expeditiously decided in limine litis.

Holding the Special Rapporteur financially harmless.

Obligation of the Malaysian Government to communicate the advisory opinion to the national courts concerned.

Claims for any damages incurred as a result of acts of the Organization or its agents — Article VIII, Section 29, of the General Convention — Conduct expected of United Nations agents.

ADVISORY OPINION

Present: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjva, Herczegh, Sri, Fleischhauer, Koroma, Versichetchin, Higgins, Parra-Aranguren, Koizum, Rezek; Registrar Valencia-Ospina.

Concerning the difference relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights,

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The question on which the Court has been requested to give an advisory opinion is set forth in decision 1998/297 adopted by the United Nations Economic and Social Council (hereinafter called the "Council") on 5 August 1998. By a letter dated 7 August 1998, filed in the Registry on 10 August 1998, the Secretary-General of the United Nations officially communicated to the Registrar the Council's decision to submit the question to the Court for an advisory opinion. Decision 1998/297, certified copies of the English and French texts of which were enclosed with the letter, reads as follows:

"The Economic and Social Council,

Having considered the note by the Secretary-General on the privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

Considering that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of Section 30 of the Convention on the Privileges and Immunities of the United Nations, with respect to the immunity from legal process of Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

Recalling General Assembly resolution 89 (I) of 11 December 1946,

1. Requests on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly
resolution 89 (1), an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia in this case;

2. Calls upon the Government of Malaysia to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties.

1 E/1998/94.”

Also enclosed with the letter were certified copies of the English and French texts of the note by the Secretary-General dated 28 July 1998 and entitled “Privileges and Immunities of the Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers” and of the addendum to that note (E/1998/94/Add.1), dated 3 August 1998.

2. By letters dated 10 August 1998, the Registrar, pursuant to Article 66, paragraph 1, of the Statute of the Court, gave notice of the request for an advisory opinion to all States entitled to appear before the Court. A copy of the bilingual printed version of the request, prepared by the Registry, was subsequently sent to those States.

3. By an Order dated 10 August 1998, the senior judge, acting as President of the Court under Article 13, paragraph 3, of the Rules of Court, decided that the United Nations and the States which are parties to the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946 (hereinafter called the “General Convention”) were likely to be able to furnish information on the question in accordance with Article 66, paragraph 2, of the Statute. By the same Order, the senior judge, considering that, in fixing time-limits for the proceedings, it was “necessary to bear in mind that the request for an advisory opinion was expressly made ‘on a priority basis’”, fixed 7 October 1998 as the time-limit within which written statements on the question might be submitted to the Court, in accordance with Article 66, paragraph 2, of the Statute, and 6 November 1998 as the time-limit for written comments on written statements, in accordance with Article 66, paragraph 4, of the Statute.

On 10 August 1998, the Registrar sent to the United Nations and to the States parties to the General Convention the special and direct communication provided for in Article 66, paragraph 2, of the Statute.

4. By a letter dated 22 September 1998, the Legal Counsel of the United Nations communicated to the President of the Court a certified copy of the amended French version of the note by the Secretary-General which had been enclosed with the request. Consequently, a corrigendum to the printed French version of the request for an advisory opinion was communicated to all States entitled to appear before the Court.

5. The Secretary-General communicated to the Court, pursuant to

Article 65, paragraph 2, of the Statute, a dossier of documents likely to throw light upon the question; these documents were received in the Registry in instalments from 5 October 1998 onwards.

6. Within the time-limit fixed by the Order of 10 August 1998, written statements were filed by the Secretary-General of the United Nations and by Costa Rica, Germany, Italy, Malaysia, Sweden, the United Kingdom and the United States of America; the filing of a written statement by Greece on 12 October 1998 was authorized. A related letter was also received from Luxembourg on 29 October 1998. Written comments on the statements were submitted, within the prescribed time-limit, by the Secretary-General of the United Nations and by Costa Rica, Malaysia, and the United States of America. Upon receipt of those statements and comments, the Registrar communicated them to all States having taken part in the written proceedings.

The Registrar also communicated to those States the text of the introductory note to the dossier of documents submitted by the Secretary-General. In addition, the President of the Court granted Malaysia’s request for a copy of the whole dossier; on the instructions of the President, the Deputy-Registrar also communicated a copy of that dossier to the other States having taken part in the written proceedings, and the Secretary-General was so informed.

7. The Court decided to hold hearings, opening on 7 December 1998, at which oral statements might be submitted to the Court by the United Nations and the States parties to the General Convention.

8. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements and comments submitted to the Court accessible to the public, with effect from the opening of the oral proceedings.

9. In the course of public sittings held on 7 and 8 December 1998, the Court heard oral statements in the following order by:

for the United Nations: Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel,

Mr. Ralph Zucklin, Assistant Secretary-General for Legal Affairs;

for Costa Rica: H.E. Mr. José de J. Conejo, Ambassador of Costa Rica to the Netherlands,

Mr. Charles N. Brower, White & Case LLP;

for Italy: Mr. Umberto Leanza, Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs;

for Malaysia: Dato’ Helleniah bt Mohd Yusof, Solicitor General of Malaysia,

Sir Elihu Lauterpacht, C.B.E., Q.C., Honorary Professor of International Law, University of Cambridge.

The Court having decided to authorize a second round of oral statements, the United Nations, Costa Rica and Malaysia availed themselves of this option; at a public hearing held on 10 December 1998, Mr. Hans Corell, H.E. Mr. José de J. Conejo, Mr. Charles N. Brower, Dato’ Helleniah bt Mohd Yusof and Sir Elihu Lauterpacht were successively heard.
Members of the Court put questions to the Secretary-General’s representative, who replied both orally and in writing. Copies of the written replies were communicated to all the States having taken part in the oral proceedings; Malaysia submitted written comments on these replies.

* * *

10. In its decision 1998/297, the Council asked the Court to take into account, for purposes of the advisory opinion requested, the “circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General” (E/1998/94). Those paragraphs read as follows:

“1. In its resolution 22 A (1) of 13 February 1946, the General Assembly adopted, pursuant to Article 105 (3) of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations (the Convention). Since then, 137 Member States have become parties to the Convention, and its provisions have been incorporated by reference into many hundreds of agreements relating to the headquarters or seats of the United Nations and its organs, and to activities carried out by the Organization in nearly every country of the world.

2. That Convention is, inter alia, designed to protect various categories of persons, including ‘Experts on Mission for the United Nations’, from all types of interference by national authorities. In particular, Section 22 (b) of Article VI of the Convention provides:

'Section 22: Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations.’

3. In its Advisory Opinion of 14 December 1989, on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (the so-called ‘Mazithu case’), the International Court of Justice held that a Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights was an ‘expert on mission’ within the meaning of Article VI of the Convention.


5. In November 1995 the Special Rapporteur gave an interview to International Commercial Litigation, a magazine published in the United Kingdom of Great Britain and Northern Ireland but circulated also in Malaysia, in which he commented on certain litigations that had been carried out in Malaysian courts. As a result of an article published on the basis of that interview, two commercial companies in Malaysia asserted that the said article contained defamatory words that had ‘brought them into public scandal, odium and contempt’. Each company filed a suit against him for damages amounting to M$30 million (approximately US$12 million each), ‘including exemplary damages for slander’.

6. Acting on behalf of the Secretary-General, the Legal Counsel considered the circumstances of the interview and of the controverted passages of the article and determined that Dato’ Param Cumaraswamy was interviewed in his official capacity as Special Rapporteur on the Independence of Judges and Lawyers, that the article clearly referred to his United Nations capacity and to the Special Rapporteur’s United Nations global mandate to investigate allegations concerning the independence of the judiciary and that the quoted passages related to such allegations. On 15 January 1997, the Legal Counsel, in a note verbale addressed to the Permanent Representative of Malaysia to the United Nations, therefore ‘requested the competent Malaysian authorities to promptly advise the Malaysian courts of the Special Rapporteur’s immunity from legal process’ with respect to that particular complaint. On 20 January 1997, the Special Rapporteur filed an application in the High Court of Kuala Lumpur (the trial court in which the said suit had been filed) to set aside and/or strike out the plaintiffs’ writ, on the ground that the
words that were the subject of the suits had been spoken by him in the course of performing his mission for the United Nations as Special Rapporteur on the Independence of Judges and Lawyers. The Secretary-General issued a note on 7 March 1997 confirming that 'the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission' and that the Secretary-General 'therefore maintains that Dato' Param Cumaraswamy is immune from legal process with respect thereto'. The Special Rapporteur filed this note in support of his above-mentioned application.

7. After a draft of a certificate that the Minister for Foreign Affairs proposed to file with the trial court had been discussed with representatives of the Office of Legal Affairs, who had indicated that the draft set out the immunities of the Special Rapporteur incompletely and inadequately, the Minister nevertheless on 12 March 1997 filed the certificate in the form originally proposed: in particular the final sentence of that certificate in effect invited the trial court to determine at its own discretion whether the immunity applied, by stating that this was the case 'only in respect of words spoken or written and acts done by him in the course of the performance of his mission' (emphasis added). In spite of the representations that had been made by the Office of Legal Affairs, the certificate failed to refer in any way to the note that the Secretary-General had issued a few days earlier and that had in the meantime been filed with the court, nor did it indicate that in this respect, i.e. in deciding whether particular words or acts of an expert fell within the scope of his mission, the determination could exclusively be made by the Secretary-General, and that such determination had conclusive effect and therefore had to be accepted as such by the court. In spite of repeated requests by the Legal Counsel, the Minister for Foreign Affairs refused to amend his certificate or to supplement it in the manner urged by the United Nations.

8. On 28 June 1997, the competent judge of the Malaysian High Court for Kuala Lumpur concluded that she was 'unable to hold that the Defendant is absolutely protected by the immunity he claims', in part because she considered that the Secretary-General's note was merely 'an opinion' with scant probative value and no binding force upon the court and that the Minister for Foreign Affairs' certificate 'would appear to be no more than a bland statement as to a state of fact pertaining to the Defendant's status and mandate as a Special Rapporteur and appears to have room for interpretation'. The Court ordered that the Special Rapporteur's motion be dismissed with costs, that costs be taxed and paid forthwith by him and that he file and serve his defence within 14 days. On 8 July, the Court of Appeal dismissed Mr. Cumaraswamy's motion for a stay of execution.

9. On 30 June and 7 July 1997, the Legal Counsel thereupon sent notes verbales to the Permanent Representative of Malaysia, and also held meetings with him and his Deputy. In the latter note, the Legal Counsel, inter alia, called on the Malaysian Government to intervene in the current proceedings so that the burden of any further defence, including any expenses and taxed costs resulting therefrom, be assumed by the Government; to hold Mr. Cumaraswamy harmless in respect of the expenses he had already incurred or that were being taxed to him in respect of the proceedings so far; and, so as to prevent the accumulation of additional expenses and costs and the further need to submit a defence until the matter of his immunity was definitively resolved between the United Nations and the Government, to support a motion to have the High Court proceedings stayed until such resolution. The Legal Counsel referred to the provisions for the settlement of differences arising out of the interpretation and application of the 1946 Convention that might arise between the Organization and a Member State, which are set out in Section 30 of the Convention, and indicated that if the Government decided that it cannot or does not wish to protect and to hold harmless the Special Rapporteur in the indicated manner, a difference within the meaning of those provisions might be considered to have arisen between the Organization and the Government of Malaysia.

10. Section 30 of the Convention provides as follows:

'Section 30: All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.'

11. On 10 July yet another lawsuit was filed against the Special Rapporteur by one of the lawyers mentioned in the magazine article referred to in paragraph 5 above, based on precisely the same passages of the interview and claiming damages in an amount of M$60 million (US$24 million). On 11 July, the Secretary-General issued a note corresponding to the one of 7 March 1997 (see para. 6 above) and also communicated a note verbale with essentially the same text to the Permanent Representative of Malaysia with the request that it be presented formally to the competent Malaysian court by the Government.

12. On 23 October and 21 November 1997, new plaintiffs filed
a third and fourth lawsuit against the Special Rapporteur for M$100 million (US$40 million) and M$60 million (US$24 million) respectively. On 27 October and 22 November 1997, the Secretary-General issued identical certificates of the Special Rapporteur’s immunity.

13. On 7 November 1997, the Secretary-General advised the Prime Minister of Malaysia that a difference might have arisen between the United Nations and the Government of Malaysia and about the possibility of resorting to the International Court of Justice pursuant to Section 30 of the Convention. Nonetheless on 19 February 1998, the Federal Court of Malaysia denied Mr. Cumaraswamy’s application for leave to appeal stating that he is neither a sovereign nor a full-fledged diplomat but merely an unpaid, part-time provider of information. The Secretary-General then appointed a Special Envoy, Maitre Yves Fortier of Canada, who, on 26 and 27 February 1998, undertook an official visit to Kuala Lumpur to reach an agreement with the Government of Malaysia on a joint submission to the International Court of Justice. Following that visit, on 13 March 1998 the Minister for Foreign Affairs of Malaysia informed the Secretary-General’s Special Envoy of his Government’s desire to reach an out-of-court settlement. In an effort to reach such a settlement, the Office of Legal Affairs proposed the terms of such a settlement on 23 March 1998 and a draft settlement agreement on 26 May 1998. Although the Government of Malaysia succeeded in staying proceedings in the four lawsuits until September 1998, no final settlement agreement was concluded. During this period, the Government of Malaysia insisted that, in order to negotiate a settlement, Maitre Fortier must return to Kuala Lumpur. While Maitre Fortier preferred to undertake the trip only once a preliminary agreement between the parties had been reached, nonetheless, based on the Prime Minister of Malaysia’s request that Maitre Fortier return as soon as possible, the Secretary-General requested his Special Envoy to do so.

14. Maitre Fortier undertook a second official visit to Kuala Lumpur, from 25 to 28 July 1998, during which he concluded that the Government of Malaysia was not going to participate either in settling this matter or in preparing a joint submission to the current session of the Economic and Social Council. The Secretary-General’s Special Envoy therefore advised that the matter should be referred to the Council to request an advisory opinion from the International Court of Justice. The United Nations had exhausted all efforts to reach either a negotiated settlement or a joint submission through the Council to the International Court of Justice. In this connection, the Government of Malaysia has acknowledged the Organization’s right to refer the matter to the Council to request an advisory opinion in accordance with Section 30 of the Convention, advised the Secretary-General’s Special Envoy that the United Nations should proceed to do so, and indicated that, while it will make its own presentations to the International Court of Justice, it does not oppose the submission of the matter to that Court through the Council.”

11. The dossier of documents submitted to the Court by the Secretary-General (see paragraph 5 above) contains the following additional information that bears on an understanding of the request to the Court.

12. The article published in the November 1995 issue of International Commercial Litigation, which is referred to in paragraph 5 of the foregoing note by the Secretary-General, was written by David Samuels and entitled “Malaysian Justice on Trial”. The article gave a critical appraisal of the Malaysian judicial system in relation to a number of court decisions. Various Malaysian lawyers were interviewed; as quoted in the article, they expressed their concern that, as a result of these decisions, foreign investors and manufacturers might lose the confidence they had always had in the integrity of the Malaysian judicial system.

13. It was in this context that Mr. Cumaraswamy, who was referred to in the article more than once in his capacity as the United Nations Special Rapporteur on the Independence of Judges and Lawyers, was asked to give his comments. With regard to a specific case (the Ayer Molek case), he said that it looked like “a very obvious, perhaps even glaring example of judge-choosing”, although he stressed that he had not finished his investigation.

Mr. Cumaraswamy is also quoted as having said:

“Complaints are rife that certain highly placed personalities in the business and corporate sectors are able to manipulate the Malaysian system of justice.”

He added: “But I do not want any of the people involved to think I have made up my mind.” He also said:

“It would be unfair to name any names, but there is some concern about this among foreign businessmen based in Malaysia, particularly those who have litigation pending.”

14. On 18 December 1995, two commercial firms and their legal counsel addressed letters to Mr. Cumaraswamy in which they maintained that they were defamed by Mr. Cumaraswamy’s statements in the article, since it was clear, they claimed, that they were being accused of corruption in the Ayer Molek case. They informed Mr. Cumaraswamy that they had “no choice but to issue defamation proceedings against him” and added
“It is important that all steps are taken for the purpose of mitigating the continuing damage being done to our business and commercial reputations which is worldwide, as quickly and effectively as possible.”

15. On 28 December 1995, in view of the foregoing letters, the Secretariat of the United Nations issued a Note Verbale to the Permanent Mission of Malaysia in Geneva, requesting that the competent Malaysian authorities be advised, and that they in turn advise the Malaysian courts, of the Special Rapporteur’s immunity from legal process. This was the first in a series of similar communications, containing the same finding, sent by or on behalf of the Secretary-General — some of which were sent once court proceedings had been initiated (see paragraphs 6 et seq. of the note by the Secretary-General, reproduced in paragraph 10 above).

16. On 12 December 1996, the two commercial firms issued a writ of summons and statement of claim against Mr. Cumaraswamy in the High Court of Kuala Lumpur. They claimed damages, including exemplary damages, for slander and libel, and requested an injunction to restrain Mr. Cumaraswamy from further defaming the plaintiffs.

17. As stated in the note of the Secretary-General, quoted in paragraph 10 above, three further lawsuits flowing from Mr. Cumaraswamy’s statements to International Commercial Litigation were brought against him.

The Government of Malaysia did not transmit to its courts the texts containing the Secretary-General’s finding that Mr. Cumaraswamy was entitled to immunity from legal process.

The High Court of Kuala Lumpur did not pass upon Mr. Cumaraswamy’s immunity in limine litis, but held that it had jurisdiction to hear the case before it on the merits, including making a determination of whether Mr. Cumaraswamy was entitled to any immunity. This decision was upheld by both the Court of Appeal and the Federal Court of Malaysia.

18. As indicated in paragraph 4 of the above note by the Secretary-General, the Special Rapporteur made regular reports to the Commission on Human Rights (hereinafter called the “Commission”).

In his first report (E/CN.4/1995/39), dated 6 February 1995, Mr. Cumaraswamy did not refer to contacts with the media. In resolution 1995/36 of 3 March 1995, the Commission welcomed this report and took note of the methods of work described therein in paragraphs 63 to 93.

In his second report (E/CN.4/1996/37), dated 1 March 1996, the Special Rapporteur referred to the Ayer Molek case and to a critical press statement made by the Bar Council of Malaysia on 21 August 1995. The report also included the following quotation from a press statement issued by Mr. Cumaraswamy on 23 August 1995:

“Complaints are rife that certain highly placed personalities in Malaysia including those in business and corporate sectors are manipulating the Malaysian system of justice and thereby undermining the due administration of independent and impartial justice by the courts.

Under the mandate entrusted to me by the United Nations Commission on Human Rights, I am duty bound to investigate these complaints and report to the same Commission, if possible at its fifty-second session next year. To facilitate my inquiries I will seek the cooperation of all those involved in the administration of justice, including the Government which, under my mandate, is requested to extend its cooperation and assistance.”

In resolution 1996/34 of 19 April 1996, the Commission took note of this report and of the Special Rapporteur’s working methods.

In his third report (E/CN.4/1997/32), dated 18 February 1997, the Special Rapporteur informed the Commission of the article in International Commercial Litigation and the lawsuits that had been initiated against him, the author, the publisher, and others. He also referred to the notifications of the Legal Counsel of the United Nations to the Malaysian authorities. In resolution 1997/23 of 11 April 1997, the Commission took note of the report and the working methods of the Special Rapporteur, and extended his mandate for another three years.

In his fourth report (E/CN.4/1998/39), dated 12 February 1998, the Special Rapporteur reported on further developments with regard to the lawsuits initiated against him. In its resolution 1998/35 of 17 April 1998, the Commission similarly took note of this report and of the working methods reflected therein.

* * *

19. As indicated above (see paragraph 1), the note by the Secretary-General was accompanied by an addendum (E/1998/94/Add.1) which reads as follows:

“In paragraph 14 of the note by the Secretary-General on the privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers (E/1998/94), it is reported that the ‘Government of Malaysia succeeded in staying proceedings in the four lawsuits until September 1998’. In this connection, the Secretary-General has been informed that on 1 August 1998, Dato’ Param Cumaraswamy was served with a Notice of Taxation and Bill of Costs dated 28 July 1998 and signed by the Deputy Registrar of the Federal Court notifying him that the
bill of costs of the Federal Court application would be assessed on 18 September 1998. The amount claimed is M$310,000 (US$77,500). On the same day, Dato' Param Cumaraswamy was also served with a Notice dated 29 July 1998 and signed by the Registrar of the Court of Appeal notifying him that the Plaintiff's bill of costs would be assessed on 4 September 1998. The amount claimed in that bill is M$550,000 (US$137,500)."

20. The Council considered the note by the Secretary-General (E/1998/94) at the forty-seventh and forty-eighth meetings of its substantive session of 1998, held on 31 July 1998. At that time, the Observer for Malaysia disputed certain statements in paragraphs 7, 14 and 15 of the note. The note concluded with a paragraph 21 containing the Secretary-General's proposal for two questions to be submitted to the Court for an advisory opinion:

"21. . . .

'Considering the difference that has arisen between the United Nations and the Government of Malaysia with respect to the immunity from legal process of Mr. Dato' Param Cumaraswamy, the United Nations Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers, in respect of certain words spoken by him:

1. Subject only to Section 30 of the Convention on the Privileges and Immunities of the United Nations, does the Secretary-General of the United Nations have the exclusive authority to determine whether words were spoken in the course of the performance of a mission for the United Nations within the meaning of Section 22 (b) of the Convention?

2. In accordance with Section 34 of the Convention, once the Secretary-General has determined that such words were spoken in the course of the performance of a mission and has decided to maintain, or not to waive, the immunity from legal process, does the Government of a Member State party to the Convention have an obligation to give effect to that immunity in its national courts and, if failing to do so, to assume responsibility for, and any costs, expenses and damages arising from, any legal proceedings brought in respect of such words?"

On 5 August 1998, at its forty-ninth meeting, the Council considered and adopted without a vote a draft decision submitted by its Vice-President following informal consultations. After referring to Section 30 of the General Convention, the decision requested the Court to give an advisory opinion on the question formulated therein, and called upon the Government of Malaysia to ensure that

"all judgments and proceedings in this matter in the Malaysian courts are stayed pending receipt of the advisory opinion of the . . . Court . . ., which shall be accepted as decisive by the parties" (E/1998/L.49/Rev.1).

At that meeting, the Observer for Malaysia reiterated his previous criticism of paragraphs 7, 14 and 15 of the Secretary-General's note, but made no comment on the terms of the question to be put to the Court as now formulated by the Council. On being so adopted, the draft became decision 1998/297 (see paragraph 1 above).

21. As regards events subsequent to the submission of the request for an advisory opinion, and more precisely, the situation with regard to the proceedings pending before the Malaysian courts, Malaysia has provided the Court with the following information:

"the hearings on the question of stay in respect of three of the four cases have been deferred until 9 February 1999 when they are due again to be mentioned in court, and when the plaintiff will join in requesting further postponements until this Court's advisory opinion has been rendered, and sufficient time has been given to all concerned to consider its implications.

The position in the first of the four cases is the same, although it is fixed for mention on 16 December 1998. However, it will then be treated in the same way as the other cases. As to cost, the requirement for the payment of costs by the defendant has also been stayed, and that aspect of the case will be deferred and considered in the same way."

22. The Council has requested the present advisory opinion pursuant to Article 96, paragraph 2, of the Charter of the United Nations. This paragraph provides that organs of the United Nations, other than the General Assembly or the Security Council,

"which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".

Article 65, paragraph 1, of the Statute of the Court states that

"[t]he Court may give an advisory opinion on any legal question at
the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”.

23. In its decision 1998/297, the Council recalls that General Assembly resolution 89 (I) gave it authorization to request advisory opinions, and it expressly makes reference to the fact “that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of Section 30 of the Convention on the Privileges and Immunities of the United Nations, with respect to the immunity from legal process of Dato’ Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers”.

24. This is the first time that the Court has received a request for an advisory opinion that refers to Article VIII, Section 30, of the General Convention, which provides that “all differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.”

25. This section provides for the exercise of the Court’s advisory function in the event of a difference between the United Nations and one of its Members. In this case, such a difference exists, but that fact does not change the advisory nature of the Court’s function, which is governed by the terms of the Charter and of the Statute. As the Court stated in its Advisory Opinion of 12 July 1973, “the existence, in the background, of a dispute the parties to which may be affected as a consequence of the Court’s opinion, does not change the advisory nature of the Court’s task, which is to answer the questions put to it...” (Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973, p. 171, para. 14).

Paragraph 2 of the Council’s decision requesting the advisory opinion repeats expressis verbis the provision in Article VIII, Section 30, of the General Convention that the Court’s opinion “shall be accepted as decisive by the parties”. However, this equally cannot affect the nature of the function carried out by the Court when giving its advisory opinion. As the Court said in its Advisory Opinion of 23 October 1956, in a case involving similar language in Article XII of the Statute of the Adminis-

trative Tribunal of the International Labour Organisation, such “decisive” or “binding” effect “goes beyond the scope attributed by the Charter and by the Statute of the Court to an Advisory Opinion...” It in no wise affects the way in which the Court functions; that continues to be determined by its Statute and its Rules. Nor does it affect the reasoning by which the Court forms its Opinion or the content of the Opinion itself.” (Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956, p. 84.)

A distinction should thus be drawn between the advisory nature of the Court’s task and the particular effects that parties to an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which, “as such, ... has no binding force” (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71). These particular effects, extraneous to the Charter and the Statute which regulate the functioning of the Court, are derived from separate agreements; in the present case Article VIII, Section 30, of the General Convention provides that “[t]he opinion given by the Court shall be accepted as decisive by the parties”. That consequence has been expressly acknowledged by the United Nations and by Malaysia.

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26. The power of the Court to give an advisory opinion is derived from Article 96, paragraph 2, of the Charter and from Article 65 of the Statute (see paragraph 22 above). Both provisions require that the question forming the subject-matter of the request should be a “legal question”. This condition is satisfied in the present case, as all participants in the proceedings have acknowledged, because the advisory opinion requested relates to the interpretation of the General Convention, and to its application to the circumstances of the case of the Special Rapporteur, Dato’ Param Cumaraswamy. Thus the Court held in its Advisory Opinion of 28 May 1948 that “[t]he meaning of a treaty provision... is a problem of interpretation and consequently a legal question” (Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, p. 61).

27. Article 96, paragraph 2, of the Charter also requires that the legal questions forming the subject-matter of advisory opinions requested by authorized organs of the United Nations and specialized agencies shall arise “within the scope of their activities”. The fulfilment of this condition has not been questioned by any of the participants in the present proceedings. The Court finds that the legal questions submitted by the Council in its request concern the activities of the Commission, since they relate to the mandate of its Special Rapporteur appointed...
“to inquire into substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials”.

Mr. Cumaraswamy’s activities as Rapporteur and the legal questions arising therefrom are pertinent to the functioning of the Commission; accordingly they come within the scope of activities of the Council, since the Commission is one of its subsidiary organs. The same conclusion was reached by the Court in an analogous case, in its Advisory Opinion of 15 December 1989, also given at the request of the Council, regarding the 

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28. As the Court held in its Advisory Opinion of 30 March 1950, the permissive character of Article 65 of the Statute “gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request” (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 72). Such discretionary power does not exist when the Court is not competent to answer the question forming the subject-matter of the request, for example because it is not a “legal question”. In such a case, “the Court has no discretion in the matter; it must decline to give the opinion requested” (Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 155; cf. Legality of the Use by a State of Nuclear Weapons in Armed Conflict, I.C.J. Reports 1996 (I), p. 73, para. 14). However, the Court went on to state, in its Advisory Opinion of 20 July 1962, that “even if the question is a legal one, which the Court is undoubtedly competent to answer, it may nonetheless decline to do so” (I.C.J. Reports 1962, p. 155).

29. In its Advisory Opinion of 30 March 1950, the Court made it clear that, as an organ of the United Nations, its answer to a “request for an advisory opinion ‘represents its participation in the activities of the Organization, and, in principle, should not be refused’” (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71); moreover, in its Advisory Opinion of 20 July 1962, citing its Advisory Opinion of 23 October 1956, the Court stressed that “only ‘compelling reasons’ should lead it to refuse to give a requested advisory opinion” (Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 155). (See also, for example, Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989, pp. 190-

191, para. 37; and Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 235, para. 14.)

30. In the present case, the Court, having established its jurisdiction, finds no compelling reasons not to give the advisory opinion requested by the Council. Moreover, no participant in these proceedings questioned the need for the Court to exercise its advisory function in this case.

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31. Article 65, paragraph 2, of the Statute provides that

“[q]uestions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required”.

In compliance with this requirement, the Secretary-General transmitted to the Court the text of the Council’s decision, paragraph 1 of which reads as follows:

“1. Requests on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato’ Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General, and on the legal obligations of Malaysia in this case.”

32. Malaysia has asserted to the Court that it had “at no time approved the text of the question that appeared in E/1998/L.49 or as eventually adopted by ECOSOC and submitted to the Court” and that it “never did more than ‘take note’ of the question as originally formulated by the Secretary-General and submitted to the ECOSOC in document E/1998/94". It contends that the advisory opinion of the Court should be restricted to the existing difference between the United Nations and Malaysia. In Malaysia’s view, this difference relates to the question (as formulated by the Secretary-General himself (see paragraph 20 above)) of whether the latter has the exclusive authority to determine whether acts of an expert (including words spoken or written) were performed in the course of his or her mission. Thus, in the conclusion to the revised version of its written statement, Malaysia states, *inter alia*, that it

“considers that the Secretary-General of the United Nations has not been vested with the exclusive authority to determine whether words
were spoken in the course of the performance of a mission for the United Nations within the meaning of Section 22.(b) of the Convention”.

In its oral pleadings, Malaysia maintained that “in implementing Section 30, ECOSOC is merely a vehicle for placing a difference between the Secretary-General and Malaysia before the Court. ECOSOC does not have an independent position to assert as it might have had were it seeking an opinion on some legal question other than in the context of the operation of Section 30. ECOSOC . . . is no more than an instrument of reference, it cannot change the nature of the difference or alter the content of the question.”

33. In the written statement presented on behalf of the Secretary-General, the Legal Counsel of the United Nations requested the Court “to establish that, subject to Article VIII, Sections 29 and 30 of the Convention, the Secretary-General has exclusive authority to determine whether or not words or acts are spoken, written or done in the course of the performance of a mission for the United Nations and whether such words or acts fall within the scope of the mandate entrusted to a United Nations expert on mission.”

In this submission, it has also been argued “that such matters cannot be determined by, or adjudicated by, the national courts of the Member States parties to the Convention. The latter position is coupled with the Secretary-General’s right and duty, in accordance with the terms of Article VI, Section 23, of the Convention, to waive the immunity where, in his opinion, it would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.”

34. The other States participating in the present proceedings have expressed varying views on the foregoing issue of the exclusive authority of the Secretary-General.

35. As the Council indicated in the preamble to its decision 1998/297, that decision was adopted by the Council on the basis of the note submitted by the Secretary General on “Privileges and Immunities of the Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers” (see paragraph 1 above). Paragraph 1 of the operative part of the decision refers expressly to paragraphs 1 to 15 of that note but not to paragraph 21, containing the two questions that the Secretary-General proposed submitting to the Court (see paragraph 20 above). The Court would point out that the wording of the question submitted by the Council is quite different from that proposed by the Secretary-General.

36. Participants in these proceedings have advanced differing views as to what is the legal question to be answered by the Court. The Court observes that it is for the Council — and not for a member State nor for the Secretary-General — to formulate the terms of a question that the Council wishes to ask.

37. The Council adopted its decision 1998/297 without a vote. The Council did not pass upon any proposal that the question to be submitted to the Court should include, still less be confined to, the issue of the exclusive authority of the Secretary-General to determine whether or not acts (including words spoken or written) were performed in the course of a mission for the United Nations and whether such words or acts fall within the scope of the mandate entrusted to an expert on mission for the United Nations. Although the Summary Records of the Council do not expressly address the matter, it is clear that the Council, as the organ entitled to put the request to the Court, did not adopt the questions set forth at the conclusion of the note by the Secretary-General, but instead formulated its own question in terms which were not contested at that time (see paragraph 20 above). Accordingly, the Court will now answer the question as formulated by the Council.

* * *

38. The Court will initially examine the first part of the question laid before the Court by the Council, which is: “the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato’ Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General . . .”

39. From the deliberations which took place in the Council on the content of the request for an advisory opinion, it is clear that the reference in the request to the note of the Secretary-General was made in order to provide the Court with the basic facts to which to refer in making its decision. The request of the Council therefore does not only pertain to the threshold question whether Mr. Cumaraswamy was and is an expert on mission in the sense of Article VI, Section 22, of the General Convention but, in the event of an affirmative answer to this question, to the consequences of that finding in the circumstances of the case.

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40. Pursuant to Article 105 of the Charter of the United Nations:

"1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose."

Acting in accordance with Article 105 of the Charter, the General Assembly approved the General Convention on 13 February 1946 and proposed it for accession by each Member of the United Nations. Malaysia became a party to the General Convention, without reservation, on 28 October 1557.

41. The General Convention contains an Article VI entitled “Experts on Missions for the United Nations”. It is comprised of two Sections (22 and 23). Section 22 provides:

“Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:

\(\ldots\) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations.\(\ldots\)

42. In its Advisory Opinion of 14 December 1989 on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, the Court examined the applicability of Section 22 ratione personae, ratione temporis and ratione loci.

In this context the Court stated:

“The purpose of Section 22 is \(\ldots\) evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them ‘such privileges and immunities as are necessary for the independent exerci-

cise of their functions’. \(\ldots\) The essence of the matter lies not in their administrative position but in the nature of their mission.” (I.C.J. Reports 1989, p. 194, para. 47.)

In that same Advisory Opinion, the Court concluded that a Special Rapporteur is appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and is entrusted with a research mission must be regarded as an expert on mission within the meaning of Article VI, Section 22, of the General Convention (ibid., p. 197, para. 55).

43. The same conclusion must be drawn with regard to Special Rapporteurs appointed by the Human Rights Commission, of which the Sub-Commission is a subsidiary organ. It may be observed that Special Rapporteurs of the Commission usually are entrusted not only with a research mission but also with the task of monitoring human rights violations and reporting on them. But what is decisive is that they have been entrusted with a mission by the United Nations and are therefore entitled to the privileges and immunities provided for in Article VI, Section 22, that safeguard the independent exercise of their functions.

44. By a letter of 21 April 1994, the Chairman of the Commission informed the Assistant Secretary-General for Human Rights of Mr. Cumaranaswamy’s appointment as Special Rapporteur. The mandate of the Special Rapporteur is contained in resolution 1994/41 of the Commission entitled “Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers”. This resolution was endorsed by the Council in its decision 1994/251 of 22 July 1994. The Special Rapporteur’s mandate consists of the following tasks:

“(a) to inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) to identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations, including accommodations for the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) to study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers”.

45. The Commission extended by resolution 1997/23 of 11 April 1997 the Special Rapporteur’s mandate for a further period of three years.

In the light of these circumstances, the Court finds that Mr. Cumaranaswamy must be regarded as an expert on mission within the meaning of Article VI, Section 22, as from 21 April 1994, that by virtue of this capa-
city the provisions of this Section were applicable to him at the time of his statements at issue, and that they continue to be applicable.

46. The Court observes that Malaysia has acknowledged that Mr. Cumaraswamy, as Special Rapporteur of the Commission, is an expert on mission and that such experts enjoy the privileges and immunities provided for under the General Convention in their relations with States parties, including those of which they are nationals or on the territory of which they reside. Malaysia and the United Nations are in full agreement on these points, as are the other States participating in the proceedings.

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47. The Court will now consider whether the immunity provided for in Section 22 (b) applies to Mr. Cumaraswamy in the specific circumstances of the case; namely, whether the words used by him in the interview, as published in the article in International Commercial Litigation (November issue 1995), were spoken in the course of the performance of his mission, and whether he was therefore immune from legal process with respect to these words.

48. During the oral proceedings, the Solicitor General of Malaysia contended that the issue put by the Council before the Court does not include this question. She stated that the correct interpretation of the words used by the Council in its request

“does not extend to inviting the Court to decide whether, assuming the Secretary-General to have had the authority to determine the character of the Special Rapporteur’s action, he had properly exercised that authority”

and added:

“Malaysia observes that the word used was ‘applicability’ not ‘application’. ‘Applicability’ means ‘whether the provision is applicable to someone’ not ‘how it is to be applied’.”

49. The Court does not share this interpretation. It follows from the terms of the request that the Council wishes to be informed of the Court’s opinion as to whether Section 22 (b) is applicable to the Special Rapporteur, in the circumstances set out in paragraphs 1 to 15 of the note of the Secretary-General and whether, therefore, the Secretary-General’s finding that the Special Rapporteur acted in the course of the performance of his mission is correct.

50. In the process of determining whether a particular expert on mission is entitled, in the prevailing circumstances, to the immunity provided for in Section 22 (b), the Secretary-General of the United Nations has a pivotal role to play. The Secretary-General, as the chief administrative officer of the Organization, has the authority and the responsibility to exercise the necessary protection where required. This authority has been recognized by the Court when it stated:

“Upon examination of the character of the functions entrusted to the Organization and of the nature of the missions of its agents, it becomes clear that the capacity of the Organization to exercise a measure of functional protection of its agents arises by necessary intertment out of the Charter.” (Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 184.)

51. Article VI, Section 23, of the General Convention provides that “[p]rivileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves”. In exercising protection of United Nations experts, the Secretary-General is therefore protecting the mission with which the expert is entrusted. In that respect, the Secretary-General has the primary responsibility and authority to protect the interests of the Organization and its agents, including experts on mission. As the Court held:

“In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization . . .” (Ibid., p. 183.)

52. The determination whether an agent of the Organization has acted in the course of the performance of his mission depends upon the facts of a particular case. In the present case, the Secretary-General, or the Legal Counsel of the United Nations on his behalf, has on numerous occasions informed the Government of Malaysia of his finding that Mr. Cumaraswamy had spoken the words quoted in the article in International Commercial Litigation in his capacity as Special Rapporteur of the Commission and that he consequently was entitled to immunity from “every kind” of legal process.

53. As is clear from the written and oral pleadings of the United Nations, the Secretary-General was reinforced in this view by the fact that it has become standard practice of Special Rapporteurs of the Commission to have contact with the media. This practice was confirmed by the High Commissioner for Human Rights who, in a letter dated 2 October 1998, included in the dossier, wrote that: “it is more common than not for Special Rapporteurs to speak to the press about matters pertaining to their investigations, thereby keeping the general public informed of their work”.

54. As noted above (see paragraph 13), Mr. Cumaraswamy was explicitly referred to several times in the article “Malaysian Justice on Trial” in International Commercial Litigation in his capacity as United Nations Special Rapporteur on the Independence of Judges and Lawyers. In his reports to the Commission (see paragraph 18 above), Mr. Cumaraswamy
had set out his methods of work, expressed concern about the independence of the Malaysian judiciary, and referred to the civil lawsuits initiated against him. His third report noted that the Legal Counsel of the United Nations had informed the Government of Malaysia that he had spoken in the performance of his mission and was therefore entitled to immunity from legal process.

55. As noted in paragraph 18 above, in its various resolutions the Commission took note of the Special Rapporteur’s reports and of his methods of work. In 1997, it extended his mandate for another three years (see paragraphs 18 and 45 above). The Commission presumably would not have so acted if it had been of the opinion that Mr. Cumaraswamy had gone beyond his mandate and had given the interview to International Commercial Litigation outside the course of his functions. Thus the Secretary-General was able to find support for his findings in the Commission’s position.

56. The Court is not called upon in the present case to pass upon the aptness of the terms used by the Special Rapporteur or his assessment of the situation. In any event, in view of all the circumstances of this case, elements of which are set out in paragraphs 1 to 15 of the note by the Secretary-General, the Court is of the opinion that the Secretary-General correctly found that Mr. Cumaraswamy, in speaking the words quoted in the article in International Commercial Litigation, was acting in the course of the performance of his mission as Special Rapporteur of the Commission. Consequently, Article VI, Section 22 (b), of the General Convention is applicable to him in the present case and affords Mr. Cumaraswamy immunity from legal process of every kind.

* * *

57. The Court will now deal with the second part of the Council’s question, namely, “the legal obligations of Malaysia in this case”.

58. Malaysia maintains that it is premature to deal with the question of its obligations. It is of the view that the obligation to ensure that the requirements of Section 22 of the Convention are met is an obligation of result and not of means to be employed in achieving that result. It further states that Malaysia has complied with its obligation under Section 34 of the General Convention, which provides that a party to the Convention must be “in a position under its own law to give effect to its terms”, by enacting the necessary legislation; finally it contends that the Malaysian courts have not yet reached a final decision as to Mr. Cumaraswamy’s entitlement to immunity from legal process.

59. The Court wishes to point out that the request for an advisory opinion refers to “the legal obligations of Malaysia in this case”. The difference which has arisen between the United Nations and Malaysia originated in the Government of Malaysia not having informed the competent Malaysian judicial authorities of the Secretary-General’s finding that Mr. Cumaraswamy had spoken the words at issue in the course of the performance of his mission and was, therefore, entitled to immunity from legal process (see paragraph 17 above). It is as from the time of this omission that the question before the Court must be answered.

60. As the Court has observed, the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings.

61. When national courts are seized of a case in which the immunity of a United Nations agent is in issue, they should immediately be notified of any finding by the Secretary-General concerning that immunity. That finding, and its documentary expression, creates a presumption which can only be set aside for the most compelling reasons and is thus to be given the greatest weight by national courts.

The governmental authorities of a party to the General Convention are therefore under an obligation to convey such information to the national courts concerned, since a proper application of the Convention by them is dependent on such information.

Failure to comply with this obligation, among others, could give rise to the institution of proceedings under Article VIII, Section 30, of the General Convention.

62. The Court concludes that the Government of Malaysia had an obligation, under Article 105 of the Charter and under the General Convention, to inform its courts of the position taken by the Secretary-General. According to a well-established rule of international law, the conduct of any organ of a State must be regarded as an act of that State. This rule, which is of a customary character, is reflected in Article 6 of the Draft Articles on State Responsibility adopted provisionally by the International Law Commission on first reading, which provides:

“The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinated position in the organization of the State.” (Yearbook of the International Law Commission, 1973, Vol. II, p. 193.)
Because the Government did not transmit the Secretary-General's finding to the competent courts, and the Minister for Foreign Affairs did not refer to it in his own certificate, Malaysia did not comply with the above-mentioned obligation.

63. Section 22 (b) of the General Convention explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. By necessary implication, questions of immunity are therefore preliminary issues which must be expeditiously decided in limine litis. This is a generally recognized principle of procedural law, and Malaysia was under an obligation to respect it. The Malaysian courts did not rule in limine litis on the immunity of the Special Rapporteur (see paragraph 17 above), thereby nullifying the essence of the immunity rule contained in Section 22 (b). Moreover, costs were taxed to Mr. Cumaraswamy while the question of immunity was still unresolved. As indicated above, the conduct of an organ of a State — even an organ independent of the executive power — must be regarded as an act of that State. Consequently, Malaysia did not act in accordance with its obligations under international law.

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64. In addition, the immunity from legal process to which the Court finds Mr. Cumaraswamy entitled entails holding Mr. Cumaraswamy financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs.

* *

65. According to Article VIII, Section 30, of the General Convention, the opinion given by the Court shall be accepted as decisive by the parties to the dispute. Malaysia has acknowledged its obligations under Section 30.

Since the Court holds that Mr. Cumaraswamy is an expert on mission who under Section 22 (b) is entitled to immunity from legal process, the Government of Malaysia is obligated to communicate this advisory opinion to the competent Malaysian courts, in order that Malaysia's international obligations be given effect and Mr. Cumaraswamy's immunity be respected.

* *

66. Finally, the Court wishes to point out that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity.

The United Nations may be required to bear responsibility for the damage arising from such acts. However, as is clear from Article VIII, Section 29, of the General Convention, any such claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that "[i]nternational law" the United Nations shall make provisions for" pursuant to Section 29.

Furthermore, it need hardly be said that all agents of the United Nations, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.

* * *

67. For these reasons,

THE COURT

Is of the opinion:

(1) (a) By fourteen votes to one,

That Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers;

IN FAVOUR: President Schwobel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herzegh, Sji, Fleischhauer, Vereshchtein, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(b) By fourteen votes to one,

That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of International Commercial Litigation;

IN FAVOUR: President Schwobel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herzegh, Sji, Fleischhauer, Vereshchtein, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(2) (a) By thirteen votes to two,

That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-
General that Dato' Param Cumaraswamy was entitled to immunity from legal process;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetti, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma;

(b) By fourteen votes to one,

That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided in limine litis;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetti, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(3) Unanimously,

That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs;

(4) By thirteen votes to two,

That the Government of Malaysia has the obligation to communicate this Advisory Opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetti, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-ninth day of April, one thousand nine hundred and ninety-nine, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Stephen M. SCHWEBEL,
President.

(Signed) Eduardo VALENcia-OSPINA,
Registrar.
Behrami v. France and
Saramati v. France, Germany and Norway, ((dec.) [GC], nos. 71412/01 and 78166/01) ECHR, 2 May 2007
The European Court of Human Rights, sitting on 2 May 2007 as a Grand Chamber composed of:

Mr C.L. ROZAKIS, President,
Mr J.-P. COSTA,
Sir Nicolas BRATZA,
Mr B.M. ZUPANČIČ,
Mr P. LORENZEN,
Mr I. CABRAL BARRETO,
Mr M. PELLONPÄÄ,
Mr A.B. BAKA,
Mr K. TRAJA,
Mrs S. BOTOUCHAROVA,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Ms D. JOČIŠEVA,
Mr D. POPOVIĆ, judges,
and Mr M. O'BOYLE, Deputy Registrar,

Having regard to the above applications lodged on 28 September 2000 and 28 September 2001, respectively

THE FACTS

1. Mr Agim Behrami, was born in 1962 and his son, Mr Bekir Behrami, was born in 1990. Both are of Albanian origin. Mr Agim Behrami complained on his own behalf, and on behalf of his deceased son, Gadaf Behrami born in 1988. These applicants live in the municipality of Mitrovica in Kosovo, Republic of Serbia. They were represented by Mr Gazmend Nushi, a lawyer with the Council for the Defence of Human Rights and Freedoms, an organisation based in Pristina, Kosovo. Mr Saramati was born in 1950. He is also of Albanian origin living in Kosovo. He was represented by Mr Hazer Susuri of the Criminal Defence Resource Centre, Kosovo. At the oral hearing in the cases, the applicants were further represented by Mr Keir Starmer, QC and Mr Paul Troop as Counsel, assisted by Ms Nuala Mole, Mr David Norris and Mr Ahmet Hasolli, as Advisers.

The French Government were represented by their Agents, Mr R. Abraham, Mr J.-L. Florent and, subsequently, Ms Edwige Belliard, assisted

Having regard to the decision of 13 June 2006 by which the Chamber of the Second Section to which the cases had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72 of the Rules of Court),

Having regard to the agreement of the parties to the Saramati case to the appointment of a common interest judge (Judge Costa) pursuant to Rule 30 of the Rules of Court,

Having regard to the parties' written and oral submissions and noting the agreement of Germany not to make oral submissions following the applicant's request to withdraw his case against that State (paragraphs 64-65 of the decision below),

Having regard to the written submissions of the United Nations requested by the Court, the comments submitted by the Governments of the Denmark, Estonia, Greece, Poland, Portugal and of the United Kingdom as well as those of the German Government accepted as third party submissions, all under Rule 44(2) of the Rules of Court,

Having regard to the oral submissions in both applications at a hearing on 15 November 2006,

Having decided to join its examination of both applications pursuant to Rule 42 § 1 of the Rules of Court,

Having deliberated on 15 November 2006 and on 2 May 2007, decides as follows:
I. RELEVANT BACKGROUND TO THE CASES

2. The conflict between Serbian and Kosovar Albanian forces during 1998 and 1999 is well documented. On 30 January 1999, and following a decision of the North Atlantic Council ("NAC") of the North Atlantic Treaty Organisation ("NATO"), NATO announced air strikes on the territory of the Federal Republic of Yugoslavia ("FRY") not to comply with the demands of the international community. Negotiations took place between the parties to the conflict in February and March 1999. The resulting proposed peace plan was signed on 25 March 1999 and the beginning of air strikes against the FRY began on 24 March 1999. The FRY agreed to withdraw from Kosovo on 9 June 1999, and the FRY and Kosovar Albanian delegations signed a "Military Technical Agreement" ("MTA") by which they agreed on FRY withdrawal and the presence of an international security force following an appropriate UN Security Council Resolution ("UNSC Resolution").

3. UNSC Resolution 1244 of 10 June 1999 was the result of the decision of the North Atlantic Council of NATO announced air strikes on the territory of the Federal Republic of Yugoslavia ("FRY"). The FRY agreed to withdraw from Kosovo on 9 June 1999, and the FRY and Kosovar Albanian delegations signed a "Military Technical Agreement" ("MTA") by which they agreed on FRY withdrawal and the presence of an international security force following an appropriate UN Security Council Resolution ("UNSC Resolution").

II. THE CIRCUMSTANCES OF THE BEHRAMI CASE

5. On 11 March 2000, eight boys were playing in the hills in the municipality of Mitrovica. The group included two of Agim Behrami's sons, Gadaf and Bekim Behrami. At around midday, the group came upon a number of undetonated cluster bomb units ("CBUs") which had been dropped by NATO planes. The children played with the CBUs, and one of the boys, Bekim Behrami, was injured. He was then taken to hospital in Pristina, where he died on 14 March 2000. Further investigation reports dated 11, 12 and 13 March 2000 indicated that UNMIK police could not access the site without KFOR agreement. The UNMIK Police report of 18 March 2000 concluded that the incident amounted to "unintentional homicide committed by imprudence".

7. By letter dated 22 May 2000, the District Public Prosecutor wrote to Agim Behrami to the effect that the evidence was that the CBUs had been accidentally detonated, and that no criminal charges would not be pursued. The KCO forwarded the complaint to the French Troop Commander of KFOR, and the French Troop Commander of KFOR wrote to the French Troop Commander of KFOR, stating that the incident had been an accident and that the evidence was that the CBUs had been accidentally detonated.
III. THE CIRCUMSTANCES OF THE SARAMATI CASE

8. On 24 April 2001 Mr Saramati was arrested by UNMIK police and brought before an investigating judge on suspicion of attempted murder and illegal possession of a weapon. On 25 April 2001, the judge ordered his pre-trial detention and an investigation into the facts. On 29 May 2001, the District Court of Pristina ordered Mr Saramati's arrest for 30 days. On 2 June 2001, the judge ordered his detention to be extended. On 4 June 2001, the Supreme Court of Kosovo allowed Mr Saramati's appeal and he was released.

9. In early July 2001, UNMIK police informed him by telephone that he had to report to the police station to collect his money and belongings. The police station was in Pristina in the sector assigned to KFOR. On 9 July 2001, Mr Saramati was arrested by UNMIK police officers by order of the Commander of KFOR (COMKFOR), who was a Norwegian officer at the time.

10. On 14 July 2001, detention was extended for 30 days. On 26 July 2001, Mr Saramati's case was referred to the District Court for trial, the indictment retaining charges of, inter alia, attempted murder and the illegal possession of weapons and explosives. By letter dated 20 September 2001, the decision of COMKFOR to prolong his detention was communicated to his representatives.

11. During each trial hearing from 17 September 2001 to 23 January 2002, Mr Saramati's representatives requested his release and the trial court responded that, although the Supreme Court had so ruled in June 2001, his detention was entirely the responsibility of KFOR.

12. On 3 October 2002 Mr Saramati was convicted of attempted murder and illegal possession of a weapon. On 6 September 2002, the Supreme Court of Kosovo quashed Mr Saramati's conviction and the case was sent for re-trial. His release from detention was ordered. A re-trial has yet to be fixed.

IV. RELEVANT LAW AND PRACTICE

A. The prohibition on the unilateral use of force and its collective security counterpart

18. The prohibition on the unilateral use of force by States, together with its counterpart principle of collective security, mark the dividing line between the classic concept of international law, characterised by the right to war (ius ad bellum) as an indivisible part of State sovereignty, and modern international law which recognises the prohibition on the use of force as a fundamental legal norm (ius contra bellum). More particularly, the ius contra bellum era of public international law is accepted to have begun (at the latest, having regard, inter alia, to the Kellogg-Briand Pact signed in 1928) with the end of the First World War and the constitution of the League of Nations. The aim of this organisation was maintaining peace through an obligation not to resort to war (First recital and Article 11 of the Covenant) as well as through universal systems of peaceful settlement of disputes (Articles 12-15 of the Covenant). It is argued by commentators that, by that stage, customary international law prohibited unilateral recourse to force, for example, R. Kohn, "Le Droit international relatif au maintien de la paix", Helbing and Lichtenhahn, Bruylant, 2003, pp. 60-68.

20. The UN succeeded the League of Nations in 1946. The primary objective of the Covenant was to maintain international peace and security through the UN Charter and the maintenance of international peace and security (Chapter VII of the UN Charter). Pursuant to Article 39 of the UN Charter, the UN Security Council, established under Article 23, Chapter 2, 1952, unanimously adopted the UN Charter, which came into force on 21 June 1945. The UN Security Council has the authority to investigate any dispute or situation that may threaten international peace and security (Article 39 of the UN Charter). Pursuant to Article 41 of Chapter VII, the UN Security Council may take such action as it deems necessary to maintain international peace and security (Article 41 of Chapter VII).

13. On 11 August 2001, Mr Saramati's detention was again extended by the District Court of Kosovo to 30 days. On 6 September 2001, his case was transferred to the KFOR Legal Adviser advising that KFOR had the authority to detain under the UNSC Resolution 1244 as it was necessary "to maintain a safe and secure environment", and to protect KFOR troops. KFOR had information concerning Mr Saramati's alleged involvement with armed groups operating in the border region between Kosovo and Macedonia and the former Yugoslav Republic of Croatia. The arrest of Mr Saramati was intended to end the conflict in Kosovo and to prevent any further incidents. The arrest was communicated to Mr Saramati by the KFOR Legal Adviser.

14. During each trial hearing from 17 September 2001 to 23 January 2002, Mr Saramati's representatives requested his release and the trial court responded that, although the Supreme Court had so ruled in June 2001, his detention was entirely the responsibility of KFOR. By letter of 5 February 2003 that KFOR rejected the complaint stating, inter alia, that the UNSC Resolution 1244 had required KFOR to supervise mine clearing operations until UNMIK could take over and that such operations had been the responsibility of the UN since 5 July 1999.
The second type of action, “negative peace”, was founded on the Preamble, Article 2 § 4 and most of the Chapter VII measures and amounted to the prohibition of the unilateral use of force (Article 2 § 4) in favour of collective security implemented by a central UN organ (the UNSC) with the monopoly on the right to use force in conflicts identified as threatening peace. Two matters were essential to this peace and security mechanism: its “collective” nature (States had to act together against an aggressor identified by the UNSC) as well as its “universality” (competing alliances were considered to undermine the mechanism so that coercive action by regional organisations was subjected to the universal system by Article 53 of the Charter).

B. The Charter of the UN, 1945

21. The Preamble as well as Articles 1 and 2, in so far as relevant, provide as follows:

“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED
- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,
AND FOR THESE ENDS
- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,
HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, ..., have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations.

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

24. Chapter V deals with the UNSC and Article 24 outlines its “Functions and Powers” as follows:

“1. In order to ensure prompt and effective action by the [UN], its Members confer on the [UNSC] primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the [UNSC] acts on their behalf.

2. In discharging these duties the [UNSC] shall act in accordance with the Purposes and Principles of the [UN]. The specific powers granted to the [UNSC] for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII. ...”

Article 25 provides:

“The Members of the United Nations agree to accept and carry out the decisions of the [UNSC] in accordance with the present Charter.”

23. Chapter VII is entitled “Action with respect to threats to the peace, breaches of the peace and acts of aggression”. Article 39 provides:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

The notion of a “threat to the peace” within the meaning of Article 39 has evolved to include internal conflicts which threaten to “spill over” or
C. Article 103 of the Charter

26. This Article reads as follows:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

27. The ICJ considers Article 103 to mean that the Charter obligations of UN member states prevail over conflicting obligations from another international treaty, regardless of whether the latter treaty was concluded before or after the UN Charter or was only a regional arrangement (Nicaragua v. United States of America, ICJ Reports, 1984, p. 392, at § 107. See also Kadi v. Council and Commission, § 183, judgment of the Court of First Instance of the European Communities (“CFI”) of 21 September 2005 (under appeal) and two more recent judgments of the CFI in the same vein: Yusuf and Al Barakaat v. Council and Commission, 21 September 2005, §§ 231, 234, 242-243 and 254 as well as Ayadi v. Council, 12 July 2006, § 116). The ICJ has also found Article 25 to mean that UN member states’ obligations under a UNSC Resolution prevail over obligations arising under any other international agreement (Orders of 14 April 1992 (provisional measures), 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 and Libyan Arab Jamahiriya v United Kingdom), ICJ Reports, 1992, p. 16,§ 42 and p. 113, § 39, respectively).

D. The International Law Commission (“ILC”)

28. Article 13 of the UN Charter provided that the UN General Assembly should initiate studies and make recommendations for the purpose of, inter alia, encouraging the progressive development of international law and its codification. On 21 November 1947, the General Assembly adopted Resolution 174(II) establishing the ILC and approving its Statute.

1. Draft Articles on the Responsibility of International Organisations

29. Article 3 of these draft Articles adopted in 2003 during the 55th session of the ILC is entitled “General principles” and it reads as follows (see the Report of the ILC, General Assembly Official Records, 55th session, Supplement No. 10 A/58/10 (2003):

“1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.

2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
(a) Is attributable to the international organization under international law; and

(b) Constitutes a breach of an international obligation of that international organization.

30. Article 5 of the draft Articles adopted in 2004 during the 56th session of the ILC is entitled “Conduct of organs or agents placed at the disposal of an international organisation by a State or another international organisation” and reads as follows (see the Report of the ILC, General Assembly Official Records, 56th session, Supplement No. 10 A/59/10 (2004) and Report of the Special Rapporteur on the Responsibility of International Organisations, UN, Official Documents, A/CN.4/451/2, 2 April 2004):

“The conduct of an organ of a State or an organ or agent of an international organisation that is placed at the disposal of another international organisation shall be considered under international law an act of the latter organisation if the organisation exercises effective control over that conduct.”

31. The ILC Commentary on Article 5, in so far as relevant, provides:

“When an organ of a State is placed at the disposal of an international organisation, the organ may be fully seconded to that organisation. In this case the organ’s conduct would clearly be attributable only to the receiving organization. ... Article 5 deals with the different situation in which the lent organ or agent still acts to a certain extent as organ of the lending State or as organ or agent of the lending organization. This occurs for instance in the case of military contingents that a State placed at the disposal of the [UN] for a peacekeeping operation, since the State retains disciplinary powers and criminal jurisdiction over the members of the national contingent. In this situation the problem arises whether a specific conduct of the lent organ or agent has to be attributed to the receiving organization or to the lending State or organization. ...

Practice relating to peacekeeping forces is particularly significant in the present context because of the control that the contributing State retains over disciplinary matters and criminal affairs. This may have consequences with regard to attribution of conduct. ...

Attribution of conduct to the contributing State is clearly linked with the retention of some powers by that State over its national contingent and thus on the control that the State possesses in the relevant respect.

As has been held by several scholars, when an organ or agent is placed at the disposal of an international organization, the decisive question in relation to attribution of a given conduct appears to be who has effective control over the conduct in question.”

32. The report noted that it would be difficult to attribute to the UN action resulting from contingents operating under national rather than UN command and that in joint operations, international responsibility would be determined, absent an agreement, according to the degree of effective control exercised by either party in the conduct of the operation. It continued:

“What has been held with regard to joint operations ... should also apply to peacekeeping operations, insofar as it is possible to distinguish in their regard areas of effective control respectively pertaining to the [UN] and the [TCN]. While it is understandable that, for the sake of efficiency of military operations, the [UN] insists on claiming exclusive command and control over peacekeeping forces, attribution of conduct should also in this regard be based on a factual criterion.”

33. As regards UN peacekeeping forces (namely, those directly commanded by the UN and considered subsidiary organs of the UN), the Report quoted the UN’s legal counsel as stating that the acts of such subsidiary organs were in principle attributable to the organisation and, if committed in violation of an international obligation, entailed the international responsibility of the organisation and its liability in compensation. This, according to the Report, summed up the UN practice in respect of several UN peacekeeping missions referenced in the Report.

2. Draft Articles on State Responsibility

34. Article 6 if these draft Articles is entitled “Conduct of organs placed at the disposal of a State by another State” and it reads as follows (Report of the ILC, General Assembly Official Records, 56th session, Supplement No. 10 A/56/10):

“The conduct of an organ placed at the disposal of a State by another State shall be considered under international law an act of the latter State or as organ or agent of the lending organization. This occurs for instance in the case of military contingents that a State placed at the disposal of the [UN] for a peacekeeping operation, since the State retains disciplinary powers and criminal jurisdiction over the members of the national contingent. In this situation the problem arises whether a specific conduct of the lent organ or agent has to be attributed to the receiving organization or to the lending State or organization. ...

Article 6 addresses the situation in which an organ of a State is put at the disposal of another, so that the organ may act temporarily for the latter's benefit and under its authority. In such a case, the organ, originally that of one State, acts exclusively for the purposes of and on behalf of another State and its conduct is attributed to the latter State alone.

E. The Vienna Convention on the Law of Treaties

35. Article 30 is entitled “Application of successive treaties relating to the same subject matter” and its first paragraph reads as follows:

“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.”

F. The MTA of 9 June 1999

36. Following the agreement by the FRY that its troops would withdraw from Kosovo and the consequent suspension of air operations against the FRY, the MTA was signed between “KFOR” and the Governments of the FRY and the Republic of Serbia on 9 June 1999 which provided for the
phased withdrawal of FRY forces and the deployment of international presences. Article I (entitled “General Obligations”) noted that it was an agreement for the deployment in Kosovo:

“under United Nations auspices of effective international civil and security presences. The Parties note that the [UNSC] is prepared to adopt a resolution, which has been introduced, regarding these measures.”

37. Paragraph 2 of Article I provided for the cessation of hostilities and the withdrawal of FRY forces and, further, that:

“The State governmental authorities of the [FRY] and the Republic of Serbia understand and agree that the international security force (“KFOR”) will deploy following the adoption of the UNSC [Resolution] ... and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission. They further agree to comply with all of the obligations of this Agreement and to facilitate the deployment and operation of this force.”

38. Article V provided that COMKFOR would provide the authoritative interpretation of the MTA and the security aspects of the peace settlement it supported.

39. Appendix B set out in some detail the breadth and elements of the envisaged security role of KFOR in Kosovo. Paragraph 3 provided that neither the international security force nor its personnel would be “liable for any damages to public or private property that they may cause in the course of duties related to the implementation of this agreement”.

40. The letter of 10 June 1999 from NATO submitting the MTA to the SG of the UN and the latter's letter onwards to the UNSC, described the MTA as having been signed by the “NATO military authorities”.

G. The UNSC Resolution 1244 of 10 June 1999

41. The Resolution reads, in so far as relevant, as follows:

“Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its [previous relevant] resolutions ...,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo ... and to provide for the safe and free return of all refugees and displaced persons to their homes,

... Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the [FRY] of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the [FRY's] agreement to that paper,

... Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

... 5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the [FRY] to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

... 9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

... (e) Supervising de-mining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

... 10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the [FRY], and which will provide transitional administration while establishing and overseeing the development of provisional
democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include: 

   (b) Performing basic civilian administrative functions where and as long as required;

   (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

   (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peace-building activities;

   (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

   (j) Protecting and promoting human rights;

   (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.”

42. Annex 1 listed the general principles on a political solution to the Kosovo crisis adopted by the G-8 Foreign Ministers on 6 May 1999. Annex 2 comprised nine principles (guiding the resolution of the crisis presented in Belgrade on 2 June 1999 to which the FRY had agreed) including:

   “... 3. Deployment in Kosovo under [UN] auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.

4. The international security presence with substantial [NATO] participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence ..., to be decided by the Security Council of the [UN]. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.…”

43. While this Resolution used the term “authorise”, that term and the term “delegation” are used interchangeably. Use of the term “delegation” in the present decision refers to the empowering by the UNSC of another entity to exercise its function as opposed to “authorising” an entity to carry out functions which it could not itself perform.

H. Agreed Points on Russian Participation in KFOR (18 June 1999)

44. Following Russia’s involvement in Kosovo after the deployment of KFOR troops, an Agreement was concluded as to the basis on which Russian troops would participate in KFOR. Russian troops would operate in certain sectors according to a command and control model annexed to the agreement: all command arrangements would preserve the principle of unity of command and, while the Russian contingent was to be under the political and military control of the Russian Government, COMKFOR had authority to order NATO forces to execute missions refused by Russian forces.

45. Its command and control annex described the link between the UNSC and the NAC as one of “Consultation/Interaction” and between the NAC and COMKFOR as one of “operational control”.

I. Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo

46. This Regulation was adopted on 18 August 2000 by the SRSG to implement the Joint Declaration of 17 August 2000 on the status of KFOR and UNMIK and their personnel, and the privileges and immunities to which they are entitled. It was deemed to enter into force on 10 June 1999.

KFOR personnel were to be immune from jurisdiction before the courts in Kosovo in respect of any administrative, civil or criminal act committed by them in Kosovo and such personnel were to be “subject to the exclusive jurisdiction of their respective sending States” (section 2 of the Regulation). UNMIK personnel were also to be immune from legal process in respect of words spoken and all acts performed by them in their official capacity (section 3). The SG could waive the immunity of UNMIK personnel and requests to waive jurisdiction over KFOR personnel were to be referred to the relevant national commander (section 6).
J. NATO/KFOR (unclassified) HQ KFOR Main Standing Operating Procedures (“SOP”), March 2003

47. Referring to UNSC Resolution 1244 and UNMIK Regulation No. 2000/47, the SOP was intended as a guide. The KCO would adjudicate claims relating to the overall administration of military operations in Kosovo by KFOR in accordance with Annex A to the SOP. It would also determine whether the matter was against a TCN, in which case the claim would be forwarded to that TCN.

48. TCNs were responsible for adjudicating claims that arose from their own activities in accordance with their own rules and procedures. While there was at that time no approved policy for processing and paying claims that arose out of KFOR operations in Kosovo, TCNs were encouraged to process claims (through TCN Claims Offices – “TCNCOs”) in accordance with Annex B which provided guidelines on the claims procedure. While the adjudication of claims against a TCN was purely a “national matter for the TCN concerned”, the payment of claims in a fair manner was considered to further the rule of law, enhance the reputation of KFOR and to serve the interests of force protection for KFOR.

49. Annex C provided guidelines for the structure and procedures before the Kosovo Appeals Commission (from the KCO or from a TCNCO).


50. The relevant parts of paragraph 14 of the Opinion read:

“KFOR contingents are grouped into four multinational brigades. KFOR troops come from 35 NATO and non-NATO countries. Although brigades are responsible for a specific area of operations, they all fall “under the unified command and control” (UNSC Resolution 1244, Annex 2, para. 4) of [COMKFOR] from NATO. “Unified command and control” is a military term of art which only encompasses a limited form of transfer of power over troops. [TCNs] have therefore not transferred “full command” over their troops. When [TCNs] contribute troops to a NATO-led operation they usually transfer only the limited powers of “operational control” and/or “operational command”. These powers give the NATO commander the right to give orders of an operational nature to the commanders of the respective national units. The national commanders must implement such orders on the basis of their own national authority. NATO commanders may not give other kinds of orders (e.g. those affecting the personal status of a soldier, including taking disciplinary measures) and NATO commanders, in principle, do not have the right to give orders to individual soldiers … In addition, [TCNs] always retain the power to withdraw their soldiers at any moment. The underlying reason for such a rather complex arrangement is the desire of [TCNs] to preserve as much political responsibility and democratic control over their troops as is compatible with the requirements of military efficiency. This enables states to do the utmost for the safety of their soldiers, to preserve their discipline according to national custom and rules, to maintain constitutional accountability and, finally, to preserve the possibility to respond to demands from the national democratic process concerning the use of their soldiers.”

L. Detention and De-mining in Kosovo

1. Detention

51. A letter from COMKFOR to the OSCE of 6 September 2001 described how COMKFOR authorised detention: each case was reviewed by KFOR staff, the MNB commander and by a review panel at KFOR HQ, before being authorised by COMKFOR based on KFOR/OPS/FRAGO997 (superseded by COMKFOR Detention Directive 42 in October 2001).

2. De-mining

52. Landmines and unexploded ordinance (from the NATO bombardment of early 1999) posed a significant problem in post-conflict Kosovo, a problem exacerbated by the relative absence of local knowledge given the large scale displacement of the population during the conflict. The UN Mine Action Service (UNMAS) was the primary UN body charged with monitoring de-mining developments in general.

53. On 12 June 1999 the SG delivered his operational plan for the civil mission in Kosovo to the UNSC (Doc. No. S/1999/672). In outlining the structure of UNMIK, he noted that mine action was dealt with under humanitarian affairs (the former Pillar I of UNMIK) and that UNMIK had been tasked to establish, as soon as possible, a mine action centre. The UN Mine Action Coordination Centre (“UNMACC”: used interchangeably with “UNMIK MACC”) opened its office in Kosovo on 17 June 1999 and it was placed under the direction of the Deputy SRSG of Pillar I. Pending the transfer of responsibility for mine action to UNMACC, in accordance with the UNSC Resolution 1244, KFOR acted as the de facto coordination centre. The SG’s detailed report on UNMIK of 12 July 1999 (Doc No. S/1999/779) confirmed that UNMACC would plan mine action activities and act as the point of coordination between the mine action partners including KFOR, UN agencies, NGOs and commercial companies”.

54. On 24 August 1999 the Concept Plan for UNMIK Mine Action Programme (“MAP”) was published in a document entitled “UNMIK MACC, Office of the Deputy SRSG (Humanitarian Affairs)”. It confirmed that the UN, through UNMAS, the SRSG and the Deputy SRSG of Pillar I of UNMIK retained “overall responsibility” for the MAP in terms of providing policy guidance, identifying needs and priorities, coordinating with UN and non-UN partners as well as member states, and defining the overall operational plan and structure. The MAP was an “integral component of UNMIK”: As to the role of UNMIK MACC, it was
underlined that, since the UN did not intend to implement the mine action activities in Kosovo itself, it would rely on a variety of operators, including UN agencies, KFOR contingents, NGOs and commercial companies. These operators had to be accredited, supported and co-ordinated to ensure they worked in a coherent and integrated manner. Accordingly, the key element of all de-mining activities was the appropriate structural and coordination mechanism for all the activities in Kosovo. The Concept Plan laid the basis for this coordination mechanism.

55. Accordingly, on 24 August 1999, the Deputy SRSG of Pillar I to the SRSG, requesting that, since the Concept Plan had been approved, it should also be forwarded to the respondent States, together with an appropriate annotation that UNMIK had now assumed the responsibility for humanitarian mine action in Kosovo.

56. KFOR Directive on CBU Marking (KFOR/OPS/FRAGO 300) was adopted on 29 August 1999 and provided:

57. By letter dated 6 April 2000 to COMKFOR, the Deputy SRSG drew the latter's attention to recent CBU explosions involving deaths and asked for the latter's personal support to ensure KFOR continued to support the clearing project by marking CBU sites as a matter of urgency and providing any further information they had.


COMPLAINTS

61. Agim Behrami complained under Article 2, on his own behalf and on behalf of his son Gadaf Behrami, about the latter's death and Bekir Behrami complained about his serious injury. They alleged that KFOR troops had failed to mark and/or defuse the undetonated CBUs which those troops knew to be present on that site.

62. Mr Saramati complained under Article 13 of the Convention about his extra-judicial detention by KFOR between 13 July 2001, and 26 January 2002. He also complained under Article 6 of the Convention about KFOR's failure to search the place where he was held.

THE LAW

63. Messrs Behrami invoked Article 2 of the Convention as regards the impugned inaction of KFOR troops. Mr Saramati relied on Articles 5 and 13 as regards his detention by KFOR. The President of the Court agreed that the parties' submissions to the Grand Chamber could be limited to the admissibility of the cases.
I. WITHDRAWAL OF THE SARAMATI CASE AGAINST GERMANY

64. In arguing that he fell within the jurisdiction of, *inter alia*, Germany, Mr Saramati initially maintained that a German KFOR officer had been involved in his arrest in July 2001 and he also referred to the fact that Germany was the lead nation in MNB Southeast. In their written submissions to the Grand Chamber, the German Government indicated that, despite detailed investigations, they had not been able to establish any involvement of a German KFOR officer in Mr Saramati’s arrest.

Mr Saramati responded that, while German KFOR involvement was his recollection and while he had made that submission in good faith, he was unable to produce any objective evidence in support. He therefore accepted the contrary submission of Germany and, further, that German KFOR control of the relevant sector was of itself an insufficient factual nexus to bring him within the jurisdiction of Germany. By letter of 2 November 2006 he requested the Court to allow him to withdraw his case against Germany, which State did not therefore make oral submissions at the subsequent Grand Chamber hearing.

65. The Court considers reasonable the grounds for Mr Saramati’s request. There being two remaining respondent States in this case also disputing, *inter alia*, that Mr Saramati fell within their jurisdiction as well as the compatibility of his complaints, the Court does not find that respect for human rights requires a continued examination of Mr Saramati’s case against Germany (Article 37 § 1 *in fine* of the Convention) and it should therefore be struck out as against that State.

In such circumstances, the President of the Court has accepted the submissions of the German Government as third party observations under Rule 44 § 2 of the Rules of Court. References hereunder to the respondent States do not therefore include Germany and it is referred to below as a third party.

II. THE CASES AGAINST FRANCE AND NORWAY

A. The issue to be examined by the Court

66. The applicants maintained that there was a sufficient jurisdictional link, within the meaning of Article 1 of the Convention, between them and the respondent States and that their complaints were compatible *ratione loci, personae* and *materiae* with its provisions.

67. The respondent and third party States disagreed. The respondent Governments essentially contended that the applications were incompatible *ratione loci et personae* with the provisions of the Convention because the applicants did not fall within their jurisdiction within the meaning of Article 1 of the Convention. They further maintained that, in accordance with the ”Monetary Gold principle” (Monetary Gold Removed from Rome in 1943, ICJ Reports 1954), this Court could not decide the merits of the case as it would be determining the rights and obligations of non-Contracting Parties to the Convention.

The French Government also submitted that the cases were inadmissible under Article 35 § 1 mainly because the applicants had not exhausted remedies available to them, although they accepted that issues of jurisdiction and compatibility had to be first examined. While the Norwegian Government responded to questions during the oral hearing as to the remedies available to Mr Saramati, they did not argue that his case was inadmissible under Article 35 § 1 of the Convention.

The third party States submitted in essence that the respondent States had no jurisdiction *loci or personae*. The UN, intervening as a third party in the Behrami case at the request of the Court, submitted that, while de-mining fell within the mandate of UNMACC created by UNMIK, the absence of the necessary CBU location information from KFOR meant that the impugned inaction could not be attributed to UNMIK.

68. Accordingly, much of these submissions concerned the question of whether the applicants fell within the extra-territorial “jurisdiction” of the respondent States within the meaning of Article 1 of the Convention, the compatibility *ratione loci* of the complaints and, consequently, the decision in Banković and Others v. Belgium and 16 Other Contracting States ((dec.) [GC], no. 52207/99, ECHR 2001 XII) as well as related jurisprudence of this Court (Drozd and Janousek v. France and Spain, judgment of 26 June 1992, Series A no. 240; Loizidou v. Turkey, judgment of 18 December 1996, Reports 1996 VI, § 56; Cyprus v. Turkey [GC], no. 25781/94, ECHR 2001-IV; Issa and Others v. Turkey, no. 31821/96, 16 November 2004; Ilıcaş and Others v. Moldova and Russia [GC], no. 48787/99, ECHR 2004-VII; Öcalan v. Turkey [GC], no. 46221/99, ECHR 2005-IV; and No. 23276/04, Hussein v. Albania and Others, (dec.) 14 March 2006).

In this respect, it was significant for the applicants in the Behrami case that, *inter alia*, France was the lead nation in MNB Northeast and Mr Saramati underlined that French and Norwegian COMKFOR issued the relevant detention orders. The respondent (as well as third party) States disputed their jurisdiction *ratione loci* arguing, *inter alia*, that the applicants were not on their national territory, that it was the UN which had overall effective control of Kosovo, that KFOR controlled Mr Saramati and not the individual COMKFORs and that the applicants were not resident in the “legal space” of the Convention.

69. The Court recalls that Article 1 requires Contracting Parties to guarantee Convention rights to individuals falling with their “jurisdiction”. This jurisdictional competence is primarily territorial and, while the notion of compatibility *ratione personae* of complaints is distinct, the two concepts can be inter-dependent (Banković and Others, cited above, at § 75 and
The MTA and UNSC Resolution 1244 provided that KFOR, on which UNMIK relied to exist, controlled Kosovo in a manner equivalent to that of a State. In addition, KFOR was responsible for demining and administering Kosovo in a manner consistent with the MTA and UNSC Resolution 1244. In particular, the MTA and Resolution 1244 provided for the establishment of a United Nations mission in Kosovo (UNMIK) and a NATO-led force (KFOR). The Court considered that the FRY did not “control” Kosovo (within the meaning of the word in the above-cited jurisprudence of the Court concerning northern Cyprus) since prior to the relevant events, it had agreed in the MTA to withdraw its own forces in favor of the deployment of international civil (UNMIK) and security (KFOR) presences. The following day, 10 June 1999, UNSC Resolution 1244 was adopted. KFOR was mandated to exercise complete military control in Kosovo. UNMIK was to provide an interim international administration in Kosovo. The Court considered that the question raised by the present cases is, less whether the respondent States exercised extra-territorial jurisdiction in Kosovo, but rather whether, the relevant international presences which exercised the public powers normally exercised by the Government of the FRY were attributable to UNMIK and NATO or to KFOR. The Court therefore considered that the question raised by the present cases is whether the relevant international presences which exercised the public powers normally exercised by the Government of the FRY were attributable to UNMIK and NATO or to KFOR. KFOR had already been introduced under Chapter VII of the UN Charter (see the SG reports cited at paragraph 58 above) and in a report of the International Committee of the Red Cross ("Explosive Remnants of War, Cluster Bombs and Landmines in Kosovo") Geneva, August 2000, revised June 2001). KFOR had been aware of the unexploded ordinance and controlled the site. Moreover, NATO had submitted that it was critical that IFOR had responsibility for demining and that KFOR could not be held directly responsible for demining which was critical to the success of the demining operation. The KFOR documents referred to at paragraph 51 above).

74. The impugned acts involved the responsibility ratione personae of those States’ contribution to the civil and security presences which did exercise the relevant control of Kosovo.

75. In the first place, the Court had to examine the compatibility ratione personae of the applicants’ complaints with the provisions of the Convention. The Court has summarised and examined below the parties’ submissions relevant to this question. The applicants maintained that KFOR (as opposed to the UN or UNMIK) was the relevant responsible organisation in both cases.

76. Secondly, the Court considered that the question raised by the present cases is, less whether the respondent States exercised extra-territorial jurisdiction in Kosovo, but rather whether, the relevant international presences which exercised the public powers normally exercised by the Government of the FRY were attributable to UNMIK and NATO or to KFOR. The Court therefore considered that the question raised by the present cases is whether the relevant international presences which exercised the public powers normally exercised by the Government of the FRY were attributable to UNMIK and NATO or to KFOR. KFOR had already been introduced under Chapter VII of the UN Charter (see the SG reports cited at paragraph 58 above) and in a report of the International Committee of the Red Cross ("Explosive Remnants of War, Cluster Bombs and Landmines in Kosovo") Geneva, August 2000, revised June 2001). KFOR had been aware of the unexploded ordinance and controlled the site. Moreover, NATO had submitted that it was critical that IFOR had responsibility for demining and that KFOR could not be held directly responsible for demining which was critical to the success of the demining operation. The KFOR documents referred to at paragraph 51 above).

77. Finally, the Court considered that the question raised by the present cases is whether the relevant international presences which exercised the public powers normally exercised by the Government of the FRY were attributable to UNMIK and NATO or to KFOR.

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As to the link between KFOR and the UNSC, the applicants referred to the Attachment to the Agreement on Russian Participation (paragraph 45 above) which described that link as one of “consultation/interaction”.

As to the input of TCNs, the applicants noted that KFOR troops (including COMKFOR) were directly answerable to their national commanders and fell exclusively within the jurisdiction of their TCN: the rules of engagement were national; troops were disciplined by national command; deployment decisions were national; the troops were financed by the States; individual TCNCOs had been set up; TCNs retained disciplinary, civil and criminal jurisdiction over troops for their actions in Kosovo (UNMIK Regulation 2000/47 and HQ KFOR Main SOP, paragraphs 47-49 above) and, since a British court considered itself competent to examine a case about the actions of British KFOR in Kosovo, individual State accountability was feasible (Bici & Anor v Ministry of Defence [2004] EWHC 786); and it was national commanders who decided on the waiver of the immunity of KFOR troops whereas the SG so decided for UNMIK personnel. It was disingenuous to accept that KFOR troops were subject to the exclusive control of their TCN and yet deny that they fell within their jurisdiction. There was no TCN/UN agreement or a Status of Forces Agreement (“SOFA”) between the UN and the FRY.

78. Fourthly, as regards Mr Saramati’s case, final decisions on detention lay with COMKFOR who decided without reference to NATO high command or other TCN’s and he was not accountable to, nor reliant on, NATO for those decisions. Since the ordering of detention was a separate exercise of jurisdiction by each COMKFOR, this case was distinguishable from the case of Hess v. the United Kingdom (28 May 1975, Decisions and Reports no. 2, p. 72).

79. Fifthly, and alternatively, KFOR did not have a separate legal personality and could not be a subject of international law or bear international responsibility for the acts or omissions of its personnel.

80. Even if this Court were to consider that the relevant States were executing an international (UN/NATO) mandate, this would not absolve them from their Convention responsibility for two alternative reasons. In the first place, Article 103 of the UN Charter would have applied to relieve States of their Convention responsibilities only if UNSC Resolution 1244 required them to act in a manner which breached the Convention. Moreover, the only conflict between the demands of that Resolution and the Convention was the latter’s exclusive jurisdictional competence. The Convention permitted States to transfer sovereign power to an international organisation to pursue common goals if it was necessary to comply with international legal obligations and if the organisation imposing the obligation provided substantive and procedural protection “equivalent” to that of the Convention (Bosphorus, cited above, § 155): neither NATO nor KFOR provided such protection.

81. Finally, and as to the respondent States’ arguments, their submissions on the Monetary Gold principle were fundamentally misconceived. In addition, it would be inconsistent with the object and purpose of the Convention to accept that States should be deterred from participating in peacekeeping missions by the recognition of this Court’s jurisdiction in the present cases.

C. The submissions of the respondent States

1. The French Government

82. The Government argued that the term “jurisdiction” in Article 1 was closely linked to the notion of a State’s competence ratione personae. In addition, and according to the ILC, the criterion by which the responsibility of an international organisation was engaged in respect of acts of agents at its disposal was the overall effective, as opposed to exclusive, control of the agent by the organisation (paragraphs 30-33 above).

83. The French contingent was placed at the disposal of KFOR which, from a security point of view, exercised effective control in Kosovo. KFOR was an international force under unified command and control, and political control was exercised by the NAC of NATO. Decisions and acts were therefore taken in the name of KFOR and the French contingent acted at all times according to the OPLAN devised and controlled by NATO. KFOR was therefore an application of the peacekeeping operations authorised by the UNSC whose resolutions formed the legal basis for NATO to form and command KFOR. In such circumstances, the acts of the national contingents could not be imputed to a State but rather to the UN which exercised overall effective control of the territory.

84. The lack of jurisdiction ratione personae of France was confirmed by the following. In the first place, reference was made to the immunities of KFOR and UNMIK and to the special remedies put in place for obtaining damages which were adapted to the particular context of the international mission of KFOR (paragraphs 46-49 above). Secondly, if the Parliamentary Assembly of the Council of Europe (“PACE”) recommended (Resolution 1417 (2005) of 25 January 2005) the creation of a human rights’ court in Kosovo, it could not have considered that Convention Contracting Parties already exercised Article 1 jurisdiction there. Thirdly, the Committee for the
Prevention of Torture, Inhuman and Degrading Treatment ("the CPT")

concluded agreements with KFOR and UNMIK in May 2006 as it considered that Kosovo did not fall under the several international structures established under the authority of the French and Norwegian Control of Kosovo. These States' from their international mandates. KFOR was therefore a cohesive military force under the authority of the UNSC which monitored the discharge of its mandate through the SG reports. This constituted, with the civilian presence (UNMIK), a comprehensive UN administration of which national contributions were building blocks and not autonomous units.

89. The monitoring systems in place confirmed this; as noted above, the UNSC received feedback from the SG on KFOR and UNMIK, it was informed of the situation in Kosovo (Concluding Observations of the UN Human Rights Committee on the human rights situation in Kosovo (Concluding Observations), 2006). This was consistent with the findings of the CPT's report on Kosovo (Concluding Observations), 2006.

90. Finally, this Government underlined the serious repercussions of extending Article 1 to cover peacekeeping missions and, notably, the possibility of deterring States from participating in such missions and of making already complex peacekeeping missions unbearable due to overlapping and perhaps conflicting national or regional standards.

2. The Norwegian Government

85. The case was incompatible with the principle of non-territoriality, as Mr Saramati was not within the jurisdiction of the respondent States.

86. The legal framework for KFOR detention was the MINOSA Resolution 1244, OPLAN 10413, KFOR Rules of Engagement, FRAGO 997, and the KFOR Detention Directive 42.

87. The monitoring systems in place confirmed this; as noted above, the UNSC received feedback from the SG on KFOR and UNMIK, it was informed of the situation in Kosovo (Concluding Observations of the UN Human Rights Committee on the human rights situation in Kosovo (Concluding Observations), 2006). This was consistent with the findings of the CPT's report on Kosovo (Concluding Observations), 2006.

90. Finally, this Government underlined the serious repercussions of extending Article 1 to cover peacekeeping missions and, notably, the possibility of deterring States from participating in such missions and of making already complex peacekeeping missions unbearable due to overlapping and perhaps conflicting national or regional standards.
legal personality of international structures (such as NATO and the UN) and that of their member states. Even if KFOR did not have separate legal personality, it was under the control of the UN, which did. Neither the retention of disciplinary control by TCN's nor the Venice Commission Opinion relied upon by the applicants was inconsistent with the international operational control of such an operation by NATO through KFOR.

D. The submissions of the third parties

1. The Government of Denmark

96. The applicants did not fall within the jurisdiction of the respondent States and the applications were therefore inadmissible as incompatible 
ratione personae.

97. The cases raised fundamental issues as to the scope of the Convention as a regional instrument and its application to acts of the international peace-keeping forces authorised under Chapter VII of the UN Charter. 192 States had vested the UNSC (including all Convention Contracting States) with primary responsibility for the maintenance of international peace and security (Article 24 of the UN Charter) and, in fulfilling that function, it had the authority to make binding decisions (Article 25) which prevailed over other international obligations (Article 103). The UNSC could lay down the necessary framework for civil and military assistance and, in the case of Kosovo, this was UNSC Resolution 1244. The central question was, therefore, whether personnel contributed by TCNs were also exercising jurisdiction on behalf of the TCN.

98. In the first place, even if the most relevant recognised instance of extra-territorial jurisdiction was the notion (developed in the above-cited jurisprudence concerning Northern Cyprus and the subsequent Issa case) of "effective overall control", the TCNs could not have exercised such control since the relevant TCN personnel acted in fulfilment of UNMIK and KFOR functions. UNMIK exercised virtually all governmental powers in Kosovo and was answerable, via the SRSG and SG, to the UNSC. Its staff were employed by the UN. The "unified command and control" structure of KFOR, a coherent multinational force established under UNSC Resolution 1244 and falling under a single line of command under the authority of COMKFOR, rendered untenable the proposition of individual TCN liability for the acts or inaction of their troops carried out in the exercise of international authority.

99. Secondly, States put personnel at the disposal of the UN in Kosovo to pursue the purposes and principles of the UN Charter. A finding of "no jurisdiction" would not leave the applicants in a human rights' vacuum, as they suggested, given the steps being taken by those international presences to promote human rights' protection.

100. Thirdly, the Convention had to be interpreted and applied in the light of international law, in particular, on the responsibility of international organisations for organs placed at their disposal. Referring to the ongoing work of the ILC in this respect (paragraphs 30-33 above), they noted that that work so far had demonstrated no basis for holding a State responsible for peacekeeping forces placed at the disposal of the UNSC acting under Chapter VII, under unified command and control, within the mandate outlined and in execution of orders from that command structure.

101. Finally, if there were specific inadequacies in human rights' protection in Kosovo, these should be dealt with within the UN context. Seeking to address those deficiencies through this Court risked deterring States from participating in UN peacekeeping missions and undermining the coherence and effectiveness of such missions.

2. The Government of Estonia

102. The impugned action and inaction were regulated by UNSC Resolution 1244 adopted under Chapter VII of the UN Charter and the States were thereby fulfilling an obligation which fell within the scope of, and complied with, that Resolution in a manner which complied with international human rights standards as prescribed in the UN Charter. Even if there was a conflict between a State's UN and other treaty obligations, the former took precedent (Articles 25 and 103 of the UN Charter).

3. The German Government's written submissions

103. There was no jurisdictional link between Mr Saramati and the respondents because, inter alia, the agents of the respondents acted on behalf of UNMIK and KFOR.

104. Ultimate responsibility for Kosovo lay with the UN since effective control of Kosovo was exercised by UNMIK and KFOR pursuant to UNSC Resolution 1244. The UNSC retained overall responsibility and delegated the implementation of the Resolution's objectives to certain international actors all the while monitoring the discharge of mandates. KFOR retained, and operated under the principle of, "unified command and control": neither the national contingents nor COMKFOR had roles other than their international mandate under UNSC Resolution 1244 and none exercised sovereign powers, a fact not changed by the retention by TCNs of criminal and disciplinary competence over soldiers. The UNSC, via the SG and the SRSG, continued to be the guiding and legal authority for UNMIK. In short, both presences were international, coherent and comprehensive structures admitting of no national instruction.

105. These submissions as to the unity of the UN operation were confirmed by secondary legislation in Kosovo: if UNMIK took care to
ensure in its regulations human rights’ protection and monitoring, that implied that the Convention control mechanisms did not apply. In addition, the Human Rights Committee of the UN regarded the inhabitants of Kosovo as falling under the jurisdiction of UNMIK (see paragraph 89 above).

106. This Court could not review acts of the UN, not least since Article 103 of the UN Charter established the primacy of the UN legal order. The above-cited Bosphorus case could be distinguished since the impugned actions of the Irish authorities took place on Irish territory over which they were deemed to have had full and effective control (relying on the above-cited judgment of Ilașcu and Others, §§ 312-33 and Assanidze v. Georgia [GC], no. 71503/01, §§ 19-142, ECHR 2004-II) whereas none of the present respondent States enjoyed any sovereign rights or authority over the territory of Kosovo (the above cited Opinion of the Venice Commission and Resolution of PACE). Any determination by this Court of a complaint against UNMIK/KFOR would also breach the Monetary Gold principle (cited at paragraph 67 above).

107. Even if the respondent States were found to have “jurisdiction”, the impugned act could not be imputed to those States and, in this respect, the actual command structure was clearly determinative. Having regard to Article 6 of the ILC draft Articles on Responsibility of States for international wrongful acts, Article 5 of the ILC draft Articles on the Responsibility of International Organisations and the report of the Special Rapporteur to the ILC as regards the latter (see paragraphs 30-33 above), any damage caused by UN peacekeeping forces acting within their mandate would be attributable to the UN.

108. Finally, the difficulties to which post-conflict situations gave rise had to be recalled, notably the fact that full human rights’ protection was not possible in such a reconstructive context. If TCNs feared their several liability if standards fell below those of the Convention, they might restrain from participating in such missions which would run counter to the spirit of the Convention and its jurisprudence which supported international co-operation and the proper functioning of international organisations (the above-cited cases of Banković and Others, at § 62, Ilașcu and Others, at § 332 and Bosphorus, at § 150).

4. The Greek Government

109. The legal basis for the civil and military presence in Kosovo was UNSC Resolution 1244. KFOR formed part, and acted in Kosovo under the direction, of a multinational framework formed by the UN and NATO. Even assuming that KFOR (along with UNMIK) exercised effective control in Kosovo, that presence was under the control of the UN and/or NATO and once the TCNs stayed within the relevant mandate they did not exercise any individual control or jurisdiction in Kosovo. Referring to the Opinion of the Venice Commission (cited at paragraph 50 above), the Government concluded that any action/inaction of KFOR was attributable to the UN and/or NATO and not to the respondent States.

5. The Polish Government

110. A State could not be held responsible for the activities of KFOR or UNMIK, those entities acted under the authority of the UN pursuant to UNSC Resolution 1244 and the UN could not be held accountable under the Convention. In providing resources and personnel to the UN (with a legal personality distinct from its member states), TCNs were not exercising governmental authority in Kosovo. The complaints were therefore incompatible ratione personae.

111. A finding that States were severally liable for participating in peacekeeping and democracy-building missions would have a devastating effect on such missions notably as regards the States’ willingness to participate in such missions which result would run counter to the values of the UN Charter, the Statute of the Council of Europe and the Convention.

6. The Government of the United Kingdom

112. The applicants did not fall within the jurisdiction of the respondent States so the question of the attribution of actions to those States did not arise (Banković and Others decision, at § 75). 113. UNSC Resolution 1244 was adopted under Chapter VII of the UN Charter and, according to Article 103 of that Charter, the obligations of member states of the UN under that Resolution took priority over other international treaty obligations.

The administration of Kosovo was in the hands of the UN, via UNMIK and the SRSG, and that administration was not subject to the Convention. UNMIK was an international civil presence created by the UN in Kosovo answerable, via the SRSG, to the UNSC on its tasks set out in UNSC Resolution 1244. UNMIK was responsible for the civil administration of Kosovo and was therefore responsible for human rights matters. As to de-mining in particular, responsibility was that of UNMACC: regard was had to the terms of UNSC Resolution 1244, to the establishment of UNMACC and its taking de facto and then formal control of de-mining in August and October 1999, respectively. UNMACC being an agency of the UN, any allegation about de-mining could not engage the responsibility of France.

KFOR was a multinational and international security presence so that at no time did any respondent State exercise effective overall control over a part of Kosovo. The MNBs comprised contingents from many TCNs (including substantial contingents from States not parties to the Convention and from outside Europe) and were answerable to an overall commander ("unified command and control"). Even if a State was a "lead nation" of a MNB which controlled a particular sector, that gave that State no degree of control or authority over the inhabitants or territory of Kosovo. Neither
The UN outlined the respective mandates and responsibilities of UNMIK and KFOR as set out in UN Security Council Resolution 1244. The mandate as set out in UN Security Council Resolution 1244 was an expression of the will of the member states, adopted by the UN organ (Security Council) under Chapter VII, and as such, was an inherent part of the exercise of the powers of government in Kosovo through an international administration supported by an international security presence. The respondent States were therefore in a position to secure the rights and freedoms defined in Article 1 of the Convention to any of the inhabitants of Kosovo. None of the respondent States had the power or the responsibility to secure the rights and freedoms defined in Article 1 since that responsibility was specifically vested in UNMIK.

The application raised fundamental questions about the relationship between the Convention and the United Nations system. In particular, it raised the question whether the United Nations, through its mechanisms for the maintenance of international peace and security, had exclusive control of a place of detention or whether it was possible to bring those affected within the jurisdiction of the States or engage the Convention responsibility of those States.

The present case could be distinguished from the situation in R (Al-Skeini) v. Secretary of State for Defence ([2005] EWCA Civ 1609) where a contingent in an international operation had exclusive control of a place of detention. In addition, while the duty under Article 1 was indivisible (Banković and Others, at § 75), the respondent States had neither the power nor the responsibility to secure the rights and freedoms defined in Article 1 since they were not exercising sovereign jurisdiction over any part of Kosovo and KFOR did not exercise control over any part of Kosovo.

The UN mission in Kosovo (UNMIK) and the NATO-led KFOR were established as an equal presence but with separate mandates and control structures. UNMIK was a subsidiary organ of the UN with all-inclusive legislative, executive, administrative and security powers and responsibilities. KFOR was a NATO-led operation authorised by the UN Security Council under unified command and control. However, both were required to co-ordinate and operate in a mutually supportive manner in the same operations.

As to de-mining in particular, paragraph 9(e) of UN Security Council Resolution 1244 transferred responsibility for de-mining to KFOR but expressly left determination of the tasks to be undertaken to the two presences. Responsibility for de-mining was de facto assumed by UNMACC in August 1999 although it was not until October 1999 that UNMIK officially informed KFOR (letter from the Deputy SRSG at paragraph 57 above). However, this did not affect KFOR’s continuing responsibilities for de-mining activities as set out in the Concept Plan and, more particularly, the NATO OPN 10413 (paragraph 3 above). One of KFOR’s most important tasks was information sharing and marking of sites. Indeed, according to KFOR’s most important tasks, KFOR decided to increase its commitment to

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In addition, while the duty under Article 1 was indivisible (Banković and Others, at § 75), the respondent States had neither the power nor the responsibility to secure the rights and freedoms defined in Article 1 since they were not exercising sovereign jurisdiction over any part of Kosovo and KFOR did not exercise control over any part of Kosovo.

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CBU site marking. Accordingly, UNMIK’s responsibility for de-mining was dependant on accurate information being available on locations and, since UNMACC was unaware of the location of the unmarked CBUs relevant to the present case, it took no action to de-mine.

120. In sum, while the de-mining operation would have fallen within UNMACC’s mandate, in the absence of the necessary location information from KFOR, the impugned action could not be attributed to UNMIK.

E. The Court’s assessment

121. The Court has adopted the following structure in its decision set out below. It has, in the first instance, established which entity, KFOR or UNMIK, had the mandate to detain (the Saramati case) and to de-mining (the Behrami case) since both detained and de-mined CBUs were international structures established and answerable to the UNSC. The applicants maintained that KFOR had the mandate to both detain and de-mining was sufficiently different to UNMIK as to engage the respondent States individually.

122. The Court’s role is not to define authoritatively the meaning of provisions of the UN Charter and other international instruments, but to examine whether there was a plausible basis in such instruments for the impugned action or omission found to be attributable to the UN. This is consistent with the principles underlying the Convention, and is interpreted and applied in a vacuum. It must also take into account relevant rules of international law when examining questions concerning its jurisdiction and consistency. Furthermore, the Court has ruled that the Convention cannot be interpreted as having been set up jointly by the applicant states unless its principles and provisions are interpreted so that they are consistent with the Convention’s general principles of international law.

1. The entity with the mandate to detain in the Behrami case and to de-mining was KFOR.

123. The respondent States argued that, as KFOR was established under the UN Charter, it was entitled to take action in the Saramati case. The applicants argued that KFOR was a service provider and that UNMIK had the mandate to both detain and de-mining. The Court has interpreted the meaning of the Convention in light of the principles underlying it, and in a manner consistent with international law.

1. The entity with the mandate to detain in the Behrami case and to de-mining was KFOR.
Accordingly, the Court considers that issuing detention orders fell within the security mandate of KFOR and that the supervision of de-mining fell within UNMIK’s mandate.

2. Can the impugned action and inaction be attributed to the UN?

(a) The Chapter VII foundation for KFOR and UNMIK

128. As the first step in the application of Chapter VII, the UNSC Resolution 1244 referred expressly to Chapter VII and made the necessary identification of a “threat to international peace and security” within the meaning of Article 39 of the Charter (paragraph 23 above). The UNSC Resolution 1244, inter alia, recalled the UNSC’s “primary responsibility for the maintenance of international peace and security”. Being "determined to resolve the grave humanitarian situation ... was acting under Chapter VII, it went on to set out the solutions found to the identified threat to peace and security.

129. The solution adopted by UNSC Resolution 1244 to this identified threat was, as noted above, the deployment of an international security force (KFOR) and the establishment of a civil administration (UNMIK). In particular, that Resolution authorised “Member States and relevant international organisations” to establish the international security presence in Kosovo as set out in point 4 of Annex 2 to the Resolution (Article 9, Point 4 of Annex 2, added by the SG’s report of 24 October 2000). The SG was thereby authorising international forces to be deployed under UN command, for the purpose of establishing and maintaining international security in Kosovo.

(b) Can the impugned action be attributed to KFOR?

132. While Chapter VII constituted the foundation for the described delegation of UN security powers, that delegation must be sufficiently limited so as to remain compatible with the UN’s primary responsibility for the maintenance of international peace and security. Being "determined to resolve the grave humanitarian situation ... was acting under Chapter VII, it went on to set out the solutions found to the identified threat to peace and security.

133. Whether or not the FRY was a UN member state at the relevant time, the FRY had agreed in the MTA to the deployment of international forces just before the adoption of the Resolution. Following the dissolution of the former Socialist Federal Republic of Yugoslavia, the FRY had already been introduced before the MTA, and international forces were deployed until the Resolution was adopted.

134. While the Resolution referred to Chapter VII of the Charter, it did not identify the precise Articles of that Chapter under which the UNSC was acting and the Court notes that there are a number of possible bases in Chapter VII for the UNSC’s action.

135. Accordingly, the Court considers that issuing detention orders fell within the security mandate of KFOR and that the supervision of de-mining fell within UNMIK’s mandate.
Those limits strike a balance between the central security role of the UNSC and two realities of its implementation. In the first place, the absence of Article 43 agreements means that the UNSC relies on States (notably its permanent members) and groups of States to provide the necessary military and complex nature of such collective security missions renders necessary some delegation of command.

133. The Court considers that the key question is whether the UNSC retained ultimate authority and control so that operational command only was delegated. This delegation model is now an established substitute for the Article 43 agreements never concluded.

134. That the UNSC retained such ultimate authority and control, in delegating its security powers by UNSC Resolution 1244, is borne out by the following factors. In the first place, and as noted above, Chapter VII allows the UNSC to delegate to “Member States and relevant international organisations”. Secondly, the relevant power was a delegable power. ... exercise its overall authority and control (consistently, the UNSC was to remain actively seized of the matter, Article 21 of the Resolution). The requirement that the SG present the KFOR report to the UNSC was an added safeguard since the SG is considered to represent the general interests of the UN.

While the text of Article 19 of UNSC Resolution 1244 meant that a veto by one permanent member of the UNSC could prevent termination of the relevant delegation, the Court does not consider this factor alone sufficient to conclude that the UNSC did not retain ultimate authority and control.

135. Accordingly, UNSC Resolution 1244 gave rise to the following chain of command to represent the general interests of the UN by NATO’s command of operational matters. The Court does not see how the failure to conclude a SOFA would undermine the effectiveness or unity of NATO’s operational command in operational matters. The Court is not persuaded that TCN involvement, either actual or structural, was incompatible with the effectiveness (including the unity of NATO’s operational command). The Court does not find any suggestion that the TCN structural involvement, highlighted by the applicants, led to any actual or potential deployment of specific TCNs in the KFOR. While individual TCNs might potentially be treated differently depending on whether the operation was under the direct operational authority of the UN or the NATO, theCourt does not find any suggestion that the TCN structural involvement, highlighted by the applicants, led to any actual or potential deployment of specific TCNs in the KFOR.
between the UN and the host FRY could affect, as the applicants suggested, NATO's operational command. That COMKFOR was charged (the applicants at paragraph 78 above) exclusively with issuing military orders regardless of whether they were a consequence of the necessity to comply with international legal obligations (Article 1 (1) of the Convention), and that no part of its operational control was excluded from the jurisdiction under Article 1 (1) of the Convention; that the applicants at paragraph 78 above were not in any way disputing the legality of the operations conducted under Article 1 (1) of the Convention; and that the applicants only contended that the protected international obligations (in a manner which could be considered as an international legal obligation that would derogate from the requirements of Article 1 (1) of the Convention) were not taken into account in the making of such orders. The question is whether COMKFOR was exercising lawfully delegated Chapter VII powers of the UNSC so that the impugned action was, in principle, "attributable" to the UN within the meaning of the word outlined at paragraphs 29 and 121 above.

140. Accordingly, even if the UN itself would accept that there is room for progress in co-operation and command structures between the UNSC, TCNs and contributing international organisations (see, for example, the Brahami report, cited above; UNSC Resolutions 1327 (2000) and 1353 (2001); and Reports of the SG of 1 June and 21 December 2001 on the Implementation of the Recommendations of the Special Committee on Peacekeeping Operations and the Panel on Peacekeeping Operations (A/55/77, A/56/735/2001)), the Court finds that the UNSC retained ultimate authority and control over the relevant operations, or that effective command of the relevant operations was retained by NATO.

141. In such circumstances, the Court observes that KFOR was exercising lawfully delegated Chapter VII powers of the UNSC so that the impugned action was, in principle, "attributable" to the UN within the meaning of the word outlined at paragraphs 29 and 121 above.

3. Is the Court competent ratione personae?

142. In contrast to KFOR, UNMIK was a subsidiary organ of the UN. While the delegation of power by the UNSC to the SG or UNMIK also placed the organ under the effective command of the SG (Article 20 of UNSC Resolution 1244), the Court notes that the UNSC retained ultimate authority and control over the relevant operations, or that effective command of the relevant operations was retained by the SG.

143. Accordingly, the Court notes that UNMIK was a subsidiary organ of the UN in the same sense. Whether it was a subsidiary organ of the SG or of the UNSC, KFOR was not. The Court therefore has competence ratione personae to review the acts of the respondent States carried out on behalf of the UN and, more generally, as to the relationship between the Convention and the UN acting under Chapter VII of its Charter.

144. It is therefore the case that the impugned action and inaction are, in principle, attributable to the UN. It is, moreover, clear that the UN has a legal personality separate from that of its member states (The Reparations case, ICJ Reports 1949) and that that organisation is not a Contracting Party to the Convention. The Court therefore has competence ratione personae to review the acts of the respondent States carried out on behalf of the UN and, more generally, as to the relationship between the Convention and the UN acting under Chapter VII of its Charter.
represents an important contribution to achieving international peace (see the Preamble to the Convention), the fact remains that the UNSC has primary responsibility, as well as extensive means of realizing this objective, notably, through the adoption of Chapter VII measures. The Court, in its decision in the Bosphorus case, acknowledged this responsibility by the UNSC in this respect, which is unique and has evolved as a consequence of the prohibition on the use of force (see paragraphs 18-20 above).

The present case, however, involves a different situation, as the UN has not adopted Chapter VII measures in reaction to an identified conflict considered to threaten peace, namely UNMIK and KFOR. Since operations established by the UN under Chapter VII of the UN Charter are fundamental to the mission of the UN to secure international peace and security and since they rely on the UN’s authority to determine what is required for the efficient fulfilment by the UNSC of its Chapter VII mandate and, consequently, by the UN of its imperative peace and security aim.

The applicants argued that the substantive and procedural protection of fundamental rights provided by the Court was in no way less than that provided by the UN. The Court, however, does not consider that any question arises as to the Court’s competence, notably, ratione personae. In the present cases, the impugned acts and omissions of KFOR and UNMIK cannot be attributed to the respondent States and, moreover, did not take place on the territory of those States.

In the present cases, the Court concludes that the applicants’ complaints must be declared incompatible with the provisions of the Convention.
APPENDIX
List of Abbreviations

- CBU: Cluster Bomb Unit
- CFI: Court of First Instance of the European Communities
- CIC SOUTH: Commander in Chief of Allied Forces Southern Europe
- COMKFOR: Commander of KFOR
- CPT: Committee for the Prevention of Torture and Inhuman and Degrading Treatment, Council of Europe
- DSRSG – Deputy Special Representative to the Secretary General, UN
- EU: European Union
- FRAGO: Fragmentary Order
- FRY: Federal Republic of Yugoslavia
- ICJ: International Court of Justice
- ICTY: International Criminal Tribunal for the former Yugoslavia
- ILC: International Law Commission
- KCO: Kosovo Claims Office
- KFOR: Kosovo Force
- MAP: Mine Action Programme
- MNB: Multinational Brigade
- MTA: Military Technical Agreement
- NAC: North Atlantic Council, NATO
- NATO: North Atlantic Treaty Organisation
- OPLAN: Operational Plan
- OSCE: Organisation for Security and Co-operation in Europe
- PACE: Parliamentary Assembly, Council of Europe
- SACEUR: Supreme Allied Commander Europe, NATO
- SG: Secretary General, UN
- SHAPE – Supreme Headquarters Allied Powers Europe, NATO
- SOFA: Status of Forces Agreement
- SOP: Standing Operating Procedures
- SRSG: Special Representative to the Secretary General, UN
- TCN: Troop Contributing Nation
- TCNCO: Troop Contributing Nation Claims' Office
- UN: United Nations
- UNHCR: United Nations High Commissioner for Refugees
- UNMACC: United Nations Mine Action Co-ordination Centre
- UNMAS: United Nations Mine Action Service
- UNMIK: United Nations Interim Administration Mission in Kosovo
- UNICEF: United Nations Children's Fund
- UNPROFOR: United Nations Protection Force
- UNTAC: United Nations Transitional Administration for Cambodia
- UNTAES: United Nations Transitional Administration for Eastern Slavonia
- UNTAET: United Nations Transitional Administration for East Timor
- Venice Commission – European Commission for Democracy through Law, Council of Europe
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Joined Cases C-402/05 P and C-415/05 P

Yassin Abdullah Kadi and Al Barakaat International Foundation

v

Council of the European Union

and

Commission of the European Communities


Summary of the Judgment

1. Acts of the institutions – Choice of legal basis – Regulation imposing restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban

(Art 57(2) EC, 60 EC, 133 EC and 301 EC; Council Regulation No 881/2002)

2. Acts of the institutions – Choice of legal basis – Community measures concerning objectives under the EU Treaty in the sphere of external relations – Article 308 EC – Not permissible

(Art 60 EC, 301 EC and 308 EC; Art. 3 EU)

3. Acts of the institutions – Choice of legal basis – Regulation imposing restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban

(Art 60 EC, 301 EC and 308 EC; Council Regulation No 881/2002)


(Art 220 EC; Council Regulation No 881/2002)


(Art 200 EC, 307 EC; Art. 6(1) EU)
far as it prohibits the transfer of economic resources to individuals in third countries. With regard, first of all, to Article 57(2) EC, the restrictive measures at issue do not fall within one of the categories of measures listed in that provision. Next, so far as Article 60(1) EC is concerned, that provision cannot furnish the basis for the regulation in question either, for its ambit is determined by that of Article 301 EC. As regards, finally, Article 60(2) EC, this provision does not include any Community competence to that end, given that it does no more than enable the Member States to take, on certain exceptional grounds, unilateral measures against a third country with regard to capital movements and payments, subject to the power of the Council to require a Member State to amend or abolish such measures. (see paras 168, 176-178, 183, 185, 187-191, 193)

2. The view that Article 308 EC allows, in the special context of Articles 60 EC and 301 EC, the adoption of Community measures concerning not one of the objectives of the Community but one of the objectives under the EU Treaty in the sphere of external relations, including the common foreign and security policy (the CFSP), runs counter to the very wording of Article 308 EC.

While it is correct to consider that a bridge has been constructed between the actions of the Community involving economic measures under Articles 60 EC and 301 EC and the objectives of the EU Treaty in the sphere of external relations, including the CFSP, neither the wording of the provisions of the EC Treaty nor the structure of the latter provides any foundation for the view that that bridge extends to other provisions of the EC Treaty, in particular to Article 308 EC.

Recourse to Article 308 EC demands that the action envisaged should, on the one hand, relate to the ‘operation of the common market’ and, on the other, be intended to attain ‘one of the objectives of the Community’. That latter concept, having regard to its clear and precise wording, cannot on any view be regarded as including the objectives of the CFSP.

The coexistence of the Union and the Community as integrated but separate legal orders, and the constitutional architecture of the pillars, as intended by the framers of the Treaties now in force, constitute considerations of an institutional kind militating against any extension of that bridge to articles of the EC Treaty other than those with which it explicitly creates a link.

In addition, Article 308 EC, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the EC Treaty as a whole and, in particular, by those defining the tasks and the activities of the Community.

Likewise, Article 3 EU, in particular its second paragraph, cannot supply a base for any widening of Community powers beyond the objects of the Community. (see paras 197-204)

3. Article 308 EC is designed to fill the gap where no specific provisions of the Treaty confer on the Community institutions express or implied powers to act, if such powers appear none the less to be necessary to enable the Community to carry out its functions with a view to attaining one of the objectives laid down by the Treaty.

Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, inasmuch as it imposes restrictive measures of an economic and financial nature, plainly falls within the ambit ratione materiae of Articles 60 EC and 301 EC. Since those articles do not, however, provide for any express or implied powers of action to impose such measures on addressees in no way linked to the governing regime of a third country such as those to whom that regulation applies, that lack of power, attributable to the limited ambit ratione personae of those provisions, may be made good by having recourse to Article 308 EC as a legal basis for that regulation in addition to the first two provisions providing a foundation for that measure from the point of view of its material scope, provided, however, that the other conditions to which the applicability of Article 308 EC is subject have been satisfied.

The objective pursued by the contested regulation being to prevent persons associated with Usama bin Laden, the Al-Qaeda network or the Taliban from having at their disposal any financial or economic resources, in order to impede the financing of terrorist activities, it may be made to refer to one of the objectives of the Community for the purpose of Article 308 EC. Inasmuch as they provide for Community powers to impose restrictive measures of an economic nature in order to implement actions decided on under the common foreign and security policy, Articles 60 EC and 301 EC are the expression of an implicit underlying objective, namely, that of making it possible to adopt such measures through the efficient use of a Community instrument. That objective may be regarded as constituting one of the objectives of the Community for the purpose of Article 308 EC.

Implementing such measures through the use of a Community instrument does not go beyond the general framework created by the provisions of the EC Treaty as a whole, because by their very nature they offer a link to the operation of the common market, that link constituting another condition for the application of Article 308 EC. If economic and financial measures such as those imposed by the regulation were imposed unilaterally by every Member State, the multiplication of those national measures might well affect the operation of the common market. (see paras 211, 213, 216, 222, 225-227, 229-230)

4. The Community is based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid review of the conformity of their acts with the basic constitutional charter, the Treaty, which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions. An international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the Community legal system, observance of which is ensured by the Court by virtue of the exclusive jurisdiction conferred on it by Article 220 EC, jurisdiction that forms part of the very foundations of the Community.

With regard to a Community act which, like Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, is intended to give effect to a resolution adopted by an international body, even if that review were to be limited to examination of the compatibility of that resolution with jus cogens, but rather to review the lawfulness of the implementing Community measure.

Any judgment given by the Community judicature deciding that a Community measure intended to give effect to such a resolution is contrary to a higher rule of law in the Community legal order would not entail any challenge to the primacy of that resolution in international law. (see paras 281-282, 286-288)

5. Fundamental rights form an integral part of the general principles of law whose observance...
the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms has special significance. Respect for human rights is therefore a condition of the lawfulness of Community acts, and measures incompatible with respect for human rights are not acceptable in the Community.

The obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established by the Treaty.

It is not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of the Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban in the light of fundamental freedoms is excluded by virtue of the fact that that measure is intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations. Such immunity from jurisdiction for a Community measure, as a corollary of the principle of the primacy at the level of international law of obligations under the Charter of the United Nations, especially those relating to the implementation of resolutions of the Security Council adopted under Chapter VII of that Charter, cannot find a basis in the EC Treaty. Article 307 EC may in no circumstances permit any challenge to the principles that form part of the very foundations of the Community legal order, which include the principles of democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as a foundation of the Union. If Article 300(7) EC, providing that agreements concluded under the conditions set out therein are to be binding on the institutions of the Community and on Member States, were applicable to the Charter of the United Nations, it would confer on the latter primacy over acts of secondary Community law. That primacy at the level of Community law would not, however, extend to primary law, in particular to the general principles of which fundamental rights form part.

The Community judicature must, therefore, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the regulation at issue, are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations.

(see paras 283-285, 299, 303-304, 306-308, 326)

6. The Community must respect international law in the exercise of its powers and a measure adopted by virtue of those powers must be interpreted, and its scope limited, in the light of the relevant rules of international law.

In the exercise of its power to adopt Community measures taken on the basis of Articles 60 EC and 301 EC, in order to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations, the Community must attach special importance to the fact that, in accordance with Article 24 of the Charter of the United Nations, the adoption by the Security Council of resolutions under Chapter VII of the Charter constitutes the exercise of the primary responsibility with which that international body is invested for the maintenance of peace and security at the global level, a responsibility which, under Chapter VII, includes the power to determine what and who poses a threat to international peace and security and to take the measures necessary to maintain or restore them.

The Charter of the United Nations does not, however, impose the choice of a predetermined model for the implementation of resolutions adopted by the Security Council under Chapter VII, since they are to be given effect in accordance with the procedure applicable in that respect in the domestic legal order of each Member of the United Nations. The Charter of the United Nations leaves the Members of the United Nations a free choice among the various possible models for transposition of those resolutions into their domestic legal order.

(see paras 281, 293-294, 298)

7. So far as concerns the rights of the defence, in particular the right to be heard, with regard to restrictive measures such as those imposed by Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, the Community authorities cannot be required to communicate, before the name of a person or entity is included for the first time in the list of persons or entities concerned by those measures, the grounds on which that inclusion is based. Such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by that regulation. Nor, for reasons also connected to the objective pursued by that regulation and to the effectiveness of the measures provided by the latter, were the Community authorities bound to hear the appellants before their names were included for the first time in the list set out in Annex I to that regulation. In addition, with regard to a Community measure intended to give effect to a resolution adopted by the Security Council in connection with the fight against terrorism, overriding considerations to do with safety or the conduct of the international relations of the Community and of its Member States may militate against the communication of certain matters to the persons concerned and, therefore, against their being heard on those matters.

Nevertheless, the rights of the defence, in particular the right to be heard, were patently not respected, for neither the regulation at issue nor Common Position 2002/402 concerning restrictive measures against Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, to which that regulation refers, provides for a procedure for communicating the evidence justifying the inclusion of the names of the persons concerned in Annex I to that regulation and for hearing those persons, either at the same time as that inclusion or later and, furthermore, the Council neither communicated to the appellants the evidence used against them to justify the restrictive measures imposed on them nor afforded them the right to be informed of that evidence within a reasonable period after those measures were enacted.

(see paras 334, 338-339, 341-342, 345, 348)

8. The principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention on Human Rights, this principle having furthermore been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union.

Observance of the obligation to communicate the grounds on which the name of a person or entity is included in the list forming Annex I to Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Community judicature and also to put the latter fully in a
position in which it may carry out the review of the lawfulness of the Community measure in question which is its duty under the EC Treaty.

Given that those persons or entities were not informed of the evidence adduced against them and having regard to the relationship between the rights of the defence and the right to an effective legal remedy, they have also been unable to defend their rights with regard to that evidence in satisfactory conditions before the Community judicature and the latter is not able to undertake the review of the lawfulness of that regulation in so far as it concerns those persons or entities, with the result that it must be held that their right to an effective legal remedy has also been infringed.

(see paras 335-337, 349, 351)

9. The importance of the aims pursued by a Community act is such as to justify negative consequences, even of a substantial nature, for some operators, including those who are in no way responsible for the situation which led to the adoption of the measures in question, but who find themselves affected, particularly as regards their property rights.

With reference to an objective of public interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified by the Security Council or the Sanctions Committee as being associated with Usama bin Laden, members of the Al-Qaeda organisation and the Taliban cannot be regarded as inappropriate or disproportionate. In this respect, the restrictive measures imposed by Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban constitute restrictions of the right to property which may, in principle, be justified.

The applicable procedures must, however, afford the person or entity concerned a reasonable opportunity of putting his or its case to the competent authorities, as required by Article 1 of Protocol No 1 to the European Convention on Human Rights.

Thus, the imposition of the restrictive measures laid down by that regulation in respect of a person or entity, by including him or it in the list contained in its Annex I, constitutes an unjustified restriction of the right to property, for that regulation was adopted without furnishing any guarantee enabling that person or entity to put his or its case to the competent authorities, in a situation in which the restriction of property rights must be regarded as significant, having regard to the general application and actual continuation of the restrictive measures affecting him or it.

(see paras 361, 363, 368, 365-370)

10. In so far as a regulation such as Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban must be annulled so far as concerns the appellants, by reason of breach of principles applicable in the procedure followed when the restrictive measures introduced by that regulation were adopted, it cannot be excluded that, on the merits of the case, the imposition of those measures on the appellants may for all that prove to be justified.

Annulment of that regulation with immediate effect would thus be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures imposed by the regulation and which the Community is required to implement, because in the interval preceding its replacement by a new regulation the appellants might take steps seeking to prevent measures freezing funds from being applied to them again. In those circumstances, Article 231 EC will be correctly applied in maintaining the effects of the contested regulation, so far as concerns the appellants, for a period that may not exceed three months running from the date of delivery of this judgment.

(see paras 373-374, 376)

JUDGMENT OF THE COURT (Grand Chamber) 3 September 2008 (*)

(see paras 335-337, 349, 351)

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(see paras 373-374, 376)
Kingdom of the Netherlands, represented by H.G. Sevenster and M. de Mol, acting as Agents,
interveners on appeal,

Commission of the European Communities, represented by C. Brown, J. Enegren and P.J.
Kuijper, acting as Agents, with an address for service in Luxembourg,
supported by:

French Republic, represented by G. de Bergues, E. Belliard and S. Gasri, acting as Agents,
intervener on appeal,

United Kingdom of Great Britain and Northern Ireland, represented by R. Caudwell, E.
Jenkinson and S. Behzadi-Spencer, acting as Agents, assisted by C. Greenwood QC and A.
Dashwood, Barrister, with an address for service in Luxembourg,

THE COURT (Grand Chamber),

composed of: V. Skouris, President, C.W.A. Timmermans (Rapporteur), A. Rosas and K. Lenzaerts,
Presidents of Chambers, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann,
J. Makarczyk, P. Küris, P. Lindh, J.-C. Bionchot, T. von Danwitz and A. Arabadjiev, Judges,
Advocate General: M. Poiares Maduro,
Registrar: J. Swedenborg, Administrator,
having regard to the written procedure and further to the hearing on 2 October 2007,
after hearing the Opinion of the Advocate General at the sitting on 16 January 2008 (C-402/05 P)
and 23 January 2008 (C-415/05 P),
gives the following

Judgment

1 By their appeals, Mr Kadi (C-402/05 P) and Al Barakaat International Foundation (‘Al Barakaat’)
(C-415/05 P) seek to have set aside the judgments of the Court of First Instance of the European
Communities of 21 September 2005 in Case T-315/01 Kadi v Council and Commission [2005]
ECR II-3649 (‘Kadi’) and Case T-306/01 Yusuf and Al Barakaat International Foundation v
under appeal’).

2 By those judgments the Court of First Instance rejected the actions brought by Mr Kadi and Al
restrictive measures directed against certain persons and entities associated with Usama bin
Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No
467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the
flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of
Afghanistan (OJ 2002 L 139, p. 9, ‘the contested regulation’), in so far as that act relates to them.

Legal context

3 Under Article 1(1) and (3) of the Charter of the United Nations, signed at San Francisco (United
States of America) on 26 June 1945, the purposes of the United Nations are inter alia ‘[t]o maintain
international peace and security’ and ‘[t]o achieve international cooperation in solving international
problems of an economic, social, cultural, or humanitarian character, and in promoting and
encouraging respect for human rights and for fundamental freedoms for all without distinction as to
race, sex, language, or religion’.

4 Under Article 24(1) and (2) of the Charter of the United Nations:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on
the Security Council primary responsibility for the maintenance of international peace and security,
and agree that in carrying out its duties under this responsibility the Security Council acts on their
behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes
and Principles of the United Nations. The specific powers granted to the Security Council for the
discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

5 Article 25 of the Charter of the United Nations provides that ‘[t]he Members of the United Nations
agree to accept and carry out the decisions of the Security Council in accordance with the present
Charter’.

6 Articles 39, 41 and 48 of the Charter of the United Nations form part of Chapter VII thereof,
headed ‘Action with respect to threats to the peace, breaches of the peace, and acts of
aggression’.

7 In accordance with Article 39 of the Charter of the United Nations:

The Security Council shall determine the existence of any threat to the peace, breach of
the peace, or act of aggression and shall make recommendations, or decide what measures shall be
taken in accordance with Articles 41 and 42, to maintain or restore international peace and
security.

8 Article 41 of the Charter of the United Nations is worded as follows:

‘The Security Council may decide what measures not involving the use of armed force are to be
employed to give effect to its decisions, and it may call upon the Members of the United Nations to
apply such measures. These may include complete or partial interruption of economic relations
and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the
severance of diplomatic relations.’

9 By virtue of Article 48(2) of the Charter of the United Nations, the decisions of the Security Council
for the maintenance of international peace and security ‘shall be carried out by the Members of the
United Nations directly and through their action in the appropriate international agencies of which
they are members’.

10 Article 103 of the Charter of the United Nations states that ‘[i]n the event of a conflict between
the obligations of the Members of the United Nations under the present Charter and their obligations
under any other international agreement, their obligations under the present Charter shall prevail’. 
Background to the disputes

The background to the disputes has been set out in paragraphs 10 to 36 of Kadi and in paragraphs 10 to 41 of Yusuf and Al Barakaat.

For the purposes of this judgment it may be summarised as follows.

On 15 October 1999 the Security Council adopted Resolution 1267 (1999), in which it, inter alia, condemned the fact that Afghan territory continued to be used for the sheltering and training of terrorists and planning of terrorist acts, reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security and deplored the fact that the Taliban continued to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from territory held by the Taliban and to use Afghanistan as a base from which to sponsor international terrorist operations.

In the second paragraph of the resolution the Security Council demanded that the Taliban should without further delay turn Usama bin Laden over to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be arrested and effectively brought to justice. In order to ensure compliance with that demand, paragraph 4(b) of Resolution 1267 (1999) provides that all the States must, in particular, “freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorised by the Committee on a case-by-case basis on the grounds of humanitarian need”.

In paragraph 6 of Resolution 1267 (1999), the Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a committee of the Security Council composed of all its members (the Sanctions Committee), responsible in particular for ensuring that the States implement the measures imposed by paragraph 4, designating the funds or other financial resources referred to in paragraph 4 and considering requests for exemptions from the measures imposed by paragraph 4.

Taking the view that action by the Community was necessary in order to implement Resolution 1267 (1999), on 15 November 1999 the Council adopted Common Position 1999/727/CFSP concerning restrictive measures against the Taliban (OJ 1999 L 294, p. 1).

Article 2 of that Common Position prescribes the freezing of funds and other financial resources held abroad by the Taliban under the conditions set out in Security Council Resolution 1267 (1999).

On 14 February 2000, on the basis of Articles 60 EC and 301 EC, the Council adopted Regulation (EC) No 467/2001 concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2000 L 43, p. 1).

On 19 December 2000 the Security Council adopted Resolution 1333 (2000), demanding, inter alia, that the Taliban should comply with Resolution 1267 (1999), and, in particular, that they should cease to provide sanctuary and training for international terrorists and their organisations and turn Usama bin Laden over to appropriate authorities to be brought to justice. The Security Council decided, in particular, to strengthen the flight ban and freezing of funds imposed under Resolution 1267 (1999).

Accordingly, paragraph 8(c) of Resolution 1333 (2000) provides that the States are, inter alia, “to freeze without delay funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the [Sanctions Committee], including those in the Al-Qaeda organisation, and including funds derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him, and to ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden and individuals and entities associated with him including the Al-Qaeda organisation”.

In the same provision, the Security Council instructed the Sanctions Committee to maintain an updated list, based on information provided by the States and regional organisations, of the individuals and entities designated as associated with Usama bin Laden, including those in the Al-Qaeda organisation.

In paragraph 23 of Resolution 1333 (2000), the Security Council decided that the measures imposed, inter alia, by paragraph 8 were to be established for 12 months and that, at the end of that period, it would decide whether to extend them for a further period on the same conditions.

Taking the view that action by the European Community was necessary in order to implement that resolution, on 26 February 2001 the Council adopted Common Position 2001/154/CFSP concerning additional restrictive measures against the Taliban and amending Common Position 96/746/CFSP (OJ 2001 L 57, p. 1).

Article 4 of that common position provides:

‘Funds and other financial assets of Usama bin Laden and individuals and entities associated with him, as designated by the Sanctions Committee, will be frozen, and funds or other financial resources not will be made available to Usama bin Laden and individuals or entities associated with him as designated by the Sanctions Committee, under the conditions set out in [Resolution 1333 (2000)].’

On 6 March 2001, on the basis of Articles 60 EC and 301 EC, the Council adopted Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation No 337/2000 (OJ 2001 L 67, p. 1).

The third recital in the preamble to that regulation states that the measures provided for by Resolution 1333 (2000) fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned.

Article 1 of Regulation No 467/2001 defines what is meant by ‘funds’ and ‘freezing of funds’.

Under Article 2 of Regulation No 467/2001:

1. All funds and other financial resources belonging to any natural or legal person, entity or body designated by the ... Sanctions Committee and listed in Annex I shall be frozen.

2. No funds or other financial resources shall be made available, directly or indirectly, to or for the benefit of, persons, entities or bodies designated by the Taliban Sanctions Committee and...
3. Paragraphs 1 and 2 shall not apply to funds and financial resources for which the Taliban Sanctions Committee has granted an exemption. Such exemptions shall be obtained through the competent authorities of the Member States listed in Annex I.

29 Annex I to Regulation No 467/2001 contains the list of persons, entities and bodies affected by the freezing of funds imposed by Article 2. Under Article 10(1) of Regulation No 467/2001, the Commission was empowered to amend or supplement Annex I on the basis of determinations made by either the Security Council or the Sanctions Committee.

30 On 8 March 2001 the Sanctions Committee published a first consolidated list of the entities which and the persons who must be subjected to the freezing of funds pursuant to Security Council Resolutions 1267 (1999) and 1333 (2000) (see the Committee’s press release AFG/131 SC/7028 of 8 March 2001). That list has since been amended and supplemented several times. The Commission has in consequence adopted various regulations pursuant to Article 10 of Regulation No 467/2001, in which it has amended or supplemented Annex I to that regulation.

31 On 17 October and 9 November 2001 the Sanctions Committee published two new additions to its summary list, including in particular the names of the following entity and person:

- ‘Al-Qadi, Yasin (A.K.A. Kadi, Shaykh Yassin Abdullah; A.K.A. Kahdi, Yasin), Jeddah, Saudi Arabia’, and

- ‘Barakaat International Foundation, Box 4036, Spånga, Stockholm, Sweden; Rinkebytorget 1, 04, Spånga, Sweden’.

32 By Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Regulation No 467/2001 (OJ 2001 L 277, p. 25), Mr Kadi’s name was added, with others, to Annex I.

33 By Commission Regulation (EC) No 2199/2001 of 12 November 2001 amending, for the fourth time, Regulation No 467/2001 (OJ 2001 L 295, p. 16), the name Al Barakaat was added, with others, to Annex I.

34 On 16 January 2002 the Security Council adopted Resolution 1390 (2002), which lays down the measures to be directed against Usama bin Laden, members of the Al-Qaeda network and the Taliban and other associated individuals, groups, undertakings and entities. Paragraphs 1 and 2 of that resolution provide, in essence, for the continuance of the measures freezing funds imposed by paragraphs 4(b) of Resolution 1267 (1999) and 8(c) of Resolution 1333 (2000). In accordance with paragraph 3 of Resolution 1390 (2002), those measures were to be reviewed by the Security Council 12 months after their adoption, at the end of which period the Council would either allow those measures to continue or decide to improve them.

35 Taking the view that action by the Community was necessary in order to implement that resolution, on 27 May 2002 the Council adopted Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746, 1999/727, 2001/154 and 2001/771/CSP (OJ 2002 L 139, p. 4). Article 3 of that Common Position prescribes, inter alia, the continuation of the freezing of the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list drawn up by the Sanctions Committee in accordance with Security Council Resolutions 1267 (1999) and 1333 (2000).

36 On 27 May 2002 the Council adopted the contested regulation on the basis of Articles 60 EC, 301 EC and 308 EC.

37 According to the fourth recital in the preamble to that regulation, the measures laid down by, inter alia, Resolution 1390 (2002) fall within the scope of the Treaty and, 'therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned'.

38 Article 1 of Regulation No 881/2002 defines 'funds' and 'freezing of funds' in terms which are essentially identical to those used in Article 1 of Regulation No 467/2001.

39 Under Article 2 of Regulation No 881/2002:

1. All funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I shall be frozen.

2. No funds shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I.

3. No economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I, so as to enable that person, group or entity to obtain funds, goods or services.'

40 Annex I to the contested regulation contains the list of persons, groups and entities affected by the freezing of funds imposed by Article 2 of that regulation. That list includes, inter alia, the names of the following entity and persons:

- ‘Al Barakaat International Foundation; Box 4036, Spånga, Stockholm, Sweden; Rinkebytorget 1, 04, Spånga, Sweden’, and

- ‘Al-Qadi, Yasin (alias KADI, Shaykh Yassin Abdullah; alias KAHDI, Yasin), Jeddah, Saudi Arabia’.

41 On 20 December 2002 the Security Council adopted Resolution 1452 (2002), intended to facilitate the implementation of counter-terrorism obligations. Paragraph 1 of that resolution provides for a number of derogations from and exceptions to the freezing of funds and economic resources imposed by Resolutions 1267 (1999) and 1390 (2002) which may be granted by the Member States on humanitarian grounds, on condition that the Sanctions Committee gives its consent.

42 On 17 January 2003 the Security Council adopted Resolution 1455 (2003), intended to improve the implementation of the measures imposed in paragraphs 4(b) of Resolution 1267 (1999), 8(c) of Resolution 1333 (2000) and 1 and 2 of Resolution 1390 (2002). In accordance with paragraph 2 of Resolution 1455 (2003), those measures are again to be improved after 12 months or earlier if necessary.

43 Taking the view that action by the Community was necessary in order to implement Resolution 1452 (2002), on 27 February 2003 the Council adopted Common Position 2003/40/CFSP concerning exceptions to the restrictive measures imposed by Common Position 2002/402 (OJ 2003 L 53, p. 62). Article 1 of Common Position 2003/140 provides that, when implementing the measures set out in Article 3 of Common Position 2002/402, the Community is to provide for the exceptions permitted by that resolution (2002).

44 On 27 March 2003 the Council adopted Regulation (EC) No 561/2003 amending, as regards...
exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002 (OJ 2003 L 82, p. 1). In the fourth recital in the preamble to that regulation, the Council states that it is necessary, in view of Resolution 1452 (2002), to adjust the measures imposed by the Community.

In accordance with Article 1 of Regulation No 561/2003, the following article is to be inserted in the contested regulation:

‘Article 2a

1. Article 2 shall not apply to funds or economic resources where:

(a) any of the competent authorities of the Member States, as listed in Annex II, has determined, upon a request made by an interested natural or legal person, that these funds or economic resources are:

(i) necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(iii) intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or frozen economic resources; or

(iv) necessary for extraordinary expenses; and

(b) such determination has been notified to the Sanctions Committee; and

(c) (i) in the case of a determination under point (a)(i), (ii) or (iii), the Sanctions Committee has not objected to the determination within 48 hours of notification; or

(ii) in the case of a determination under point (a)(iv), the Sanctions Committee has approved the determination.

2. Any person wishing to benefit from the provisions referred to in paragraph 1 shall address its request to the relevant competent authority of the Member State as listed in Annex II.

The competent authority listed in Annex II shall promptly notify both the person that made the request, and any other person, body or entity known to be directly concerned, in writing, whether the request has been granted.

The competent authority shall also inform other Member States whether the request for such an exception has been granted.

3. Funds released and transferred within the Community in order to meet expenses or recognised by virtue of this Article shall not be subject to further restrictive measures pursuant to Article 2.

...’

The actions before the Court of First Instance and the judgments under appeal

By applications lodged at the Registry of the Court of First Instance, Mr Kadi and Al Barakaat both brought actions seeking annulment of Regulation No 467/2001, the former seeking annulment also of Regulation No 2062/2001 and the latter annulment also of Regulation No 2199/2001, in so far as those measures concern them. During the proceedings before the Court of First Instance, the appellants amended their claims and pleas in law, so as to refer thenceforth to the contested regulation, in so far as that measure concerns them.

By orders of the President of the First Chamber of the Court of First Instance, the United Kingdom of Great Britain and Northern Ireland was given leave to intervene in support of the forms of order sought by the defendants at first instance.

In the judgments under appeal, the Court of First Instance decided as a preliminary point that each action must be regarded as being directed thenceforth against the Council alone, supported by the Commission and the United Kingdom, and the sole object of each must be considered to be a claim for annulment of the contested regulation, in so far as it concerned the respective applicants (Kadi, paragraph 58, and Yusuf and Al Barakaat, paragraph 77).

In support of his claims, Mr Kadi put forward in his application before the Court of First Instance three grounds of annulment alleging, in essence, breaches of his fundamental rights. The first alleges breach of the right to be heard, the second, breach of the right to respect for property and of the principle of proportionality, and the third, breach of the right to effective judicial review.

For its part, Al Barakaat based its claims on three grounds of annulment: the first alleges that the Council was incompetent to adopt the contested regulation, the second alleges infringement of Article 249 EC and the third alleges breach of its fundamental rights.

As regards the Council’s competence concerning the adoption of the contested regulation

In the contested judgments, the Court of First Instance first of all considered whether the Council was competent to adopt the contested regulation on the legal basis of Articles 60 EC, 301 EC and 308 EC, taking the view, in paragraph 61 of Kadi, that that was a matter of public policy which could therefore be raised by the Community judicature of its own motion.

In Yusuf and Al Barakaat, the Court of First Instance at the outset dismissed the applicants’ claim alleging that there was no legal basis for Regulation No 467/2001.

In paragraph 107 of that judgment, the Court of First Instance found it appropriate to take such a step, even though the ground of challenge had become devoid of purpose because of the repeal of that regulation by the contested regulation, for it considered that the grounds on which it dismissed that claim formed part of the premises of its reasoning concerning the legal basis of the latter regulation, thenceforth the sole subject of the action for annulment.

In this connection, it first rejected, in Yusuf and Al Barakaat, paragraphs 112 to 116, the argument that the acts in question affected individuals, who were moreover nationals of a Member State, whereas Articles 60 EC and 301 EC authorised the Council to take measures against third countries only.

In paragraph 115 of that judgment, the Court of First Instance held that, just as economic or financial sanctions may legitimately be directed specifically at the rulers of a third country, rather than at the country as such, they may be directed at the persons or entities associated with those rulers or directly or indirectly controlled by them, wherever they may be.

According to paragraph 116, that interpretation, which is not contrary to the letter of Article 60 EC or Article 301 EC, is justified both by considerations of effectiveness and by humanitarian concerns.
Next, in Yusuf and Al Barakaat, paragraphs 117 to 121, the Court of First Instance rejected the argument that the measures at issue in that case were not intended to interrupt or reduce economic relations with a third country but to combat international terrorism and, more particularly, Usama bin Laden. According to the Court of First Instance, in the light of the wording of Articles 60 EC and 301 EC, it is not possible to have recourse to those articles to impose that result, be understood to be a regulation, but rather a bundle of individual decisions.

61 According to the Court of First Instance, under the terms of Articles 60 EC and 301 EC, EC actions imposing economic sanctions under Articles 60 EC and 301 EC are wholly special provisions objects which Articles 2 EC and 3 EC expressly entrust to the Community (Kadi, paragraph 116).

62 The Court of First Instance held, secondly, that the Council had wrongly considered that Article 308 EC, which authorises the Council to adopt the contested regulation, explicitly established at the time of the revision caused by the Maastricht Treaty, between the Community and a third country, is not applicable in the case of a delegation to the Community of powers conferred by a provision of the Treaty creating the EC (paragraph 134 to 157).

63 In this regard, it held that, in order to interpret provisions of the EC Treaty, in that case they appear to be directly and individually concerned by it, within the meaning of the fourth paragraph of Article 230 EC, the exercise by the Community and its Member States of their powers is bound by resolutions of the Security Council adopted under Chapter VII of the United Nations Charter. The Court of First Instance would thus need to rule on those alleged breaches (paragraphs 179 to 220).
considered, however, that the question arising in the cases before it was whether there exist any structural limits, imposed by general international law or by the EC Treaty itself, on that judicial review.

In that situation, the Community act, according to the Court of First Instance, either directly or indirectly, as an administrator of international law or as a party to the various proceedings in which it is involved, so falling within the provisions of the EC Treaty and Article 220 EC, in which respect Articles 226, 239 and 240 of the EC Treaty, as applied in European Union law, and Articles 36 and 37 of the EC Treaty, as applied in European Union law, are intended to ensure that that principle is observed (Kadi, paragraphs 218 and 219).

According to the Court of First Instance, any limitation of the Community’s jurisdiction should be necessary as a corollary to the principles identified above, in the Court’s examination of the relationship between the international legal order under the United Nations and the Community legal order.

In that regard, the Court of First Instance, referring, by analogy, to Joined Cases 21/72 to 24/72 [1972] ECR 1219, paragraph 12, in particular held that, in order to determine what constitutes a threat to international peace and security and the measures required to maintain or re-establish them, it is necessary to establish whether the Community measures at issue were appropriate and proportionate in relation to the resolutions of the Security Council which they put into effect.

Nevertheless, however, according to the Court of First Instance, the Community’s jurisdiction to determine the scope of the review of legality, direct or indirect, of the lawfulness of the resolutions put into effect by that regulation in the light of fundamental rights as protected by the Community legal order (Kadi, paragraphs 217 to 222, Yusuf and Al Barakaat, paragraphs 268 to 276, Al Barakaat, paragraphs 277 to 281).

The Court of First Instance inferred therefrom that the applicants’ challenging of the internal lawfulness of the contested regulation implied that the Court of First Instance should undertake a review, direct or indirect, of the lawfulness of the resolutions put into effect by that regulation in the light of fundamental rights as protected by the Community legal order (Yusuf and Al Barakaat, paragraphs 266 and 267).

In that connection the Court of First Instance recalled, in Kadi, paragraph 213, and Yusuf and Al Barakaat, paragraph 243, that the contested regulation, adopted in the light of Common Position 2001/412, 2001/420, constitutes the implementation at Community level of the obligations placed on the Member States of the Community with respect to the sanctions against the Taliban and other associated individual, groups, undertakings and entities, which have been decided and later strengthened by several resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations.

According to the Court of First Instance, the Community, through the 2001/412 Regulation, has limited its circumscribed powers leaving it no autonomous discretion in their exercise, so that it could, in particular, neither directly nor indirectly, alter the content of the resolutions in issue nor set up any mechanism capable of giving rise to such alteration (Kadi, paragraphs 214 and 215, Yusuf and Al Barakaat, paragraphs 264 and 265).

The Court of First Instance inferred therefore that the applicants’ challenging of the internal lawfulness of the contested regulation implied that the Court of First Instance should undertake a review, direct or indirect, of the lawfulness of the resolutions put into effect by that regulation in the light of fundamental rights as protected by the Community legal order (Kadi, paragraphs 215 and 216, Yusuf and Al Barakaat, paragraphs 264 and 265).

In paragraphs 217 to 222 of Kadi, drawn up in terms identical to those of paragraphs 268 to 276 of Yusuf and Al Barakaat, the Court of First Instance held that, under its jurisdiction, it is necessary to determine whether the Community measures at issue were appropriate and proportionate in relation to the resolutions of the Security Council which they put into effect.

As has already been explained, the Community Council at issue was required, as a matter of principle, to decline jurisdiction to undertake such indirect review of the lawfulness of those resolutions which, as rules of international law binding on the Member States of the Community, are mandatory for the Court as they are for all the Community institutions. Those parties are of the view, however, that the Community Council cannot avoid review of the question whether their acts are in conformity with the basic constitutional charter, the EC Treaty, which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions.

Furthermore, however, according to the Court of First Instance, the Community’s jurisdiction to determine the scope of the review of legality, direct or indirect, of the lawfulness of the resolutions put into effect by that regulation in the light of fundamental rights as protected by the Community legal order (Kadi, paragraphs 217 to 222, Yusuf and Al Barakaat, paragraphs 268 to 276, Al Barakaat, paragraphs 277 to 281).

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221 In light of the considerations set out in paragraphs 193 to 204 above, the claim that the Court of First Instance has jurisdiction to review indirectly the lawfulness of such a decision according to the standard of protection of fundamental rights as recognised by the Community legal order, cannot be justified either on the basis of international law or on the basis of Community law.

222 First, such jurisdiction would be incompatible with the undertakings of the Member States under the Charter of the United Nations, especially Articles 25, 48 and 103 thereof, and also with Article 27 of the Vienna Convention on the Law of Treaties [concluded in Vienna on 25 May 1969].

223 Second, such jurisdiction would be contrary to provisions both of the EC Treaty, especially Articles 5 EC, 10 EC, 297 EC and the first paragraph of Article 307 EC, and of the Treaty on European Union, in particular Article 5 EU, in accordance with which the Community judicature is to exercise its powers on the conditions and for the purposes provided for by the provisions of the EC Treaty and the Treaty on European Union. It would, what is more, be incompatible with the principle that the Community’s powers and, therefore, those of the Court of First Instance, must be exercised in compliance with international law (Case C-286/90 Poulsen and Diva Navigation [1992] ECR I–6019, paragraph 9, and Case C-162/96 Racke [1998] ECR I–3655, paragraph 45).

224 It has to be added that, with particular regard to Article 307 EC and to Article 103 of the Charter of the United Nations, reference to infringements either of fundamental rights as protected by the Community legal order or of the principles of that legal order cannot affect the validity of a Security Council measure or its effect in the territory of the Community (see, by analogy, Case 11/70 Internationale Handelsgesellschaft [1970] ECR 1125, paragraph 3; Case 234/85 Keller [1986] ECR 2897, paragraph 7, and Joined Cases 97/87 to 99/87 Dow Chemical Iberica and Others v Commission [1989] ECR 3165, paragraph 38).

225 It must therefore be considered that the resolutions of the Security Council at issue fall, in principle, outside the ambit of the Court’s judicial review and that the Court has no authority to call in question, even indirectly, their lawfulness in the light of Community law. On the contrary, the Court is bound, so far as possible, to interpret and apply that law in a manner compatible with the obligations of the Member States under the Charter of the United Nations.

87 In Kadi, paragraph 226, and Yusuf and Al Barakaat, paragraph 277, the Court of First Instance found that it was, none the less, empowered to check, indirectly, the lawfulness of the resolutions of the Security Council in question with regard to jus cogens, understood as a body of higher rules of public international law binding on all subjects of international law, including the bodies of the United Nations, and from which no derogation is possible.

88 In paragraphs 227 to 231 of Kadi, drawn up in terms identical to those of paragraphs 278 to 282 of Yusuf and Al Barakaat, the Court of First Instance held as follows:

"227 In this connection, it must be noted that the Vienna Convention on the Law of Treaties, which consolidates the customary international law and Article 5 of which provides that it is to apply "to any treaty which is the constituent instrument of an international organisation and to any treaty adopted within an international organisation", provides in Article 53 for a treaty to be void if it conflicts with a peremptory norm of general international law (jus cogens), defined as "a norm accepted and recognised 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". Similarly, Article 64 of the Vienna Convention provides that: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates".

228 Furthermore, the Charter of the United Nations itself presupposes the existence of mandatory principles of international law, in particular, the protection of the fundamental rights of the human person. In the preamble to the Charter, the peoples of the United Nations declared themselves determined to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person". In addition, it is apparent from Chapter I of the Charter, headed "Purposes and Principles", that one of the purposes of the United Nations is to encourage respect for human rights and for fundamental freedoms.

229 Those principles are binding on the Members of the United Nations as well as on its bodies. Thus, under Article 24(2) of the Charter of the United Nations, the Security Council, in discharging its duties under its primary responsibility for the maintenance of international peace and security, is to act in accordance with the Purposes and Principles of the United Nations. The Security Council’s powers of sanction in the exercise of that responsibility must therefore be wielded in compliance with international law, particularly with the purposes and principles of the United Nations.

230 International law thus permits the inference that there exists one limit to the principle that resolutions of the Security Council have binding effect: namely, that they must observe the fundamental peremptory provisions of jus cogens. If they fail to do so, however improbable that may be, they would bind neither the Member States of the United Nations nor, in consequence, the Community.

231 The indirect judicial review carried out by the Court in connection with an action for annulment of a Community act adopted, where no discretion whatsoever may be exercised, with a view to putting into effect a resolution of the Security Council may therefore, highly exceptionally, extend to determining whether the superior rules of international law falling within the ambit of jus cogens have been observed, in particular, the mandatory provisions concerning the universal protection of human rights, from which neither the Member States nor the bodies of the United Nations may derogate because they constitute "intratreaty exceptions of international customary law" (Advisory Opinion of the International Court of Justice of 8 July 1996, The Legality of the Threat or Use of Nuclear Weapons, Reports 1996, p. 226, paragraph 79; see also, to that effect, Advocate General Jacobs’s Opinion in Case C–84/95 Bosporus [1996] ECR I–3953, paragraph 65)."

89 Firstly, with particular regard to the alleged breach of the fundamental right to respect for property, the Court of First Instance considered, in Kadi, paragraph 237, and Yusuf and Al Barakaat, paragraph 288, that it fell to be assessed whether the freezing of funds provided for by the contested regulation, as amended by Regulation No 561/2003, itself putting into effect Resolution 1452 (2002), show that it is neither the purpose nor the effect of that measure to submit the persons entered in the summary list to inhuman or degrading treatment.

90 In Kadi, paragraph 238, and Yusuf and Al Barakaat, paragraph 289, the Court of First Instance decided that such was not the case, measured by the standard of universal protection of the fundamental rights of the human person covered by jus cogens.

91 In Kadi, paragraphs 239 and 240, and Yusuf and Al Barakaat, paragraphs 290 and 291, the Court of First Instance held that the exemptions to and derogations from the obligation to freeze funds provided for in the contested regulation as a result of its amendment by Regulation No 561/2003, itself putting into effect Resolution 1452 (2002), show that it is neither the purpose nor the effect of that measure to submit the persons entered in the summary list to inhuman or degrading treatment.

92 In Kadi, paragraphs 243 to 251, and Yusuf and Al Barakaat, paragraphs 294 to 302, the Court of
First Instance held, in addition, that the freezing of funds did not constitute an arbitrary, inappropriate or disproportionate interference with the right to private property of the persons concerned and could not, therefore, be regarded as contrary to jus cogens, having regard to the following facts:

- the measures in question pursue an objective of fundamental public interest for the international community, that is to say, the campaign against international terrorism, and the United Nations are entitled to undertake protective action against the activities of terrorist organisations;

- freezing of funds is a temporary precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof;

- the resolutions of the Security Council at issue provide for a means of reviewing, after certain periods, the overall system of sanctions;

- those resolutions set up a procedure enabling the persons concerned to present their case at any time to the Sanctions Committee for review, through the Member State of their nationality or that of their residence.

As regards, secondly, the alleged breach of the right to be heard, and more particularly, first, the applicants’ alleged right to be heard by the Community institutions before the contested regulation had been adopted, the Court of First Instance held as follows in paragraph 258 of Kadi, to which paragraph 328 of Yusuf and Al Barakaat corresponds, mutatis mutandis:

“In this instance, as is apparent from the preliminary observations above on the relationship between the international legal order under the United Nations and the Community legal order, the Community institutions were required to transpose into the Community legal order resolutions of the Security Council and decisions of the Sanctions Committee that in no way authorised them, at the time of actual implementation, to provide for any Community mechanism whatsoever for the examination or re-examination of individual situations, since both the substance of the measures in question and the mechanisms for re-examination (see paragraphs 262 et seq. ...) fell wholly within the purview of the Security Council and its Sanctions Committee. As a result, the Community institutions had no power of investigation, no opportunity to check the matters taken to be facts by the Security Council and the Sanctions Committee, no discretion with regard to those matters and no discretion either as to whether it was appropriate to adopt sanctions vis-à-vis the applicants. The principle of Community law relating to the right to be heard cannot apply in such circumstances, where to hear the person concerned could not in any case lead the institution to review its position.”

The Court of First Instance concluded in Kadi, paragraph 259, that the Council was not obliged to hear the applicant on the subject of his inclusion in the list of persons and entities affected by the sanctions, in the context of the adoption and implementation of the contested regulation and, in Yusuf and Al Barakaat, paragraph 329, that the Council was not obliged to hear the applicants before the contested regulation was adopted.

With regard, second, to breach of the applicants’ alleged right to be heard by the Sanctions Committee in connection with their inclusion in the summary list, the Court of First Instance held in paragraph 261 of Kadi and paragraph 306 of Yusuf and Al Barakaat that no such right was provided for by the Security Council’s resolutions at issue.

It further held in Yusuf and Al Barakaat, paragraph 307, that no mandatory rule of public international law requires a prior hearing for the persons concerned in circumstances such as those of the case in point.

The Court of First Instance observed, moreover, that although the resolutions of the Security Council concerned and the subsequent regulations that put them into effect in the Community do not provide for any right of audience for individual persons, they nevertheless set up a mechanism for the re-examination of individual cases, by providing that the persons concerned may address a request to the Sanctions Committee, through their national authorities, in order either to be removed from the summary list or to obtain exemption from the freezing of funds (Kadi, paragraph 262, and Yusuf and Al Barakaat, paragraph 309).

Referring, in Kadi, paragraph 264, and in Yusuf and Al Barakaat, paragraph 311, to the ‘Guidelines of the [Sanctions] Committee for the conduct of its work’, as adopted by that committee on 7 November 2002 and amended on 10 April 2003 (‘the Sanctions Committee’s Guidelines’), and, in Kadi, paragraph 266, and Yusuf and Al Barakaat, paragraph 313, to various resolutions of the Security Council, the Court of First Instance noted, in those paragraphs, the importance attached by the Security Council, in so far as possible, to the fundamental rights of the persons entered in the list, and especially to their right to be heard.

In Kadi, paragraph 268, and in Yusuf and Al Barakaat, paragraph 315, the Court of First Instance found that the fact, noted in the previous paragraph of both judgments, that the re-examination procedure confers no right directly on the persons concerned themselves to be heard by the Sanctions Committee – the only authority competent to give a decision, on a State’s petition, on the re-examination of their case – with the result that those persons are dependent, essentially, on the diplomatic protection afforded by the States to their nationals, is not to be deemed improper in the light of the mandatory prescriptions of the public international order.

The Court of First Instance added that it is open to the persons involved to bring an action for judicial review based on domestic law, indeed even directly on the contested regulation and the reasons why the Security Council, which it puts into effect, against any wrongful refusal by the competent national authority to submit their cases to the Sanctions Committee for re-examination (Kadi, paragraph 270, and Yusuf and Al Barakaat, paragraph 317).

The Court of First Instance held, in addition, that in circumstances such as those of the cases in point, in which what is at issue is a temporary precautionary measure restricting the availability of the applicants’ property, observance of the fundamental rights of the persons concerned does not require the facts and evidence adduced against them to be communicated to them, once the Security Council or its Sanctions Committee is of the view that there are grounds concerning the international community’s security that militate against it (Kadi, paragraph 274, and Yusuf and Al Barakaat, paragraph 320).

Having regard to those considerations, the Court of First Instance held in Kadi, paragraph 276, and Yusuf and Al Barakaat, paragraph 330, that the applicants’ plea alleging breach of the right to be heard must be rejected.

Lastly, with regard to the plea alleging breach of the right to effective judicial review, the Court of First Instance found as follows in paragraphs 278 to 285 of Kadi, drawn up in terms essentially identical to those of paragraphs 333 to 340 of Yusuf and Al Barakaat:

278 In the circumstances of this case, the applicant has been able to bring an action for annulment before the Court of First Instance under Article 230 EC.

279 In dealing with that action, the Court carries out a complete review of the lawfulness of the contested regulation with regard to observance by the institutions of the rules of jurisdiction and the rules of external lawfulness and the essential procedural requirements which bind their actions.
The Court also reviews the lawfulness of the contested regulation having regard to the Security Council’s regulations which that act is supposed to put into effect, in particular from the viewpoints of procedural and substantive appropriateness, internal consistency and whether the regulation is proportionate to the resolutions.

Giving a decision pursuant to that review, the Court finds that it is not disputed that the applicant is indeed one of the natural persons entered in the summary list on 19 October 2001.

In this action for annulment, the Court has moreover held that it has jurisdiction to review the lawfulness of the contested regulation and, indirectly, the lawfulness of the resolutions of the Security Council at issue, in the light of the higher rules of international law falling within the ambit of jus cogens, in particular the mandatory prescriptions concerning the universal protection of the rights of the human person.

On the other hand, as has already been observed in paragraph 225 above, it is not for the Court to review indirectly whether the Security Council’s resolutions in question are themselves compatible with fundamental rights as protected by the Community legal order.

Nor does it fall to the Security Council to verify that there has been no error of assessment of the facts and evidence relied on by the Security Council in support of the measures it has taken or, subject to the limited extent defined in paragraph 282 above, to check indirectly the appropriateness and proportionality of those measures. It would be impossible to carry out such a check without trespassing on the Security Council’s prerogatives under Chapter VII of the Charter of the United Nations in relation to determining, first, whether there exists a threat to international peace and security and, second, the appropriate measures for confronting or settling such a threat. Moreover, the question whether an individual or organisation poses a threat to international peace and security, like the question of what measures must be adopted vis-à-vis the persons concerned in order to frustrate that threat, entails a political assessment and value judgments which in principle fall within the exclusive competence of the authority to which the international community has entrusted primary responsibility for the maintenance of international peace and security.

It must thus be concluded that, to the extent set out in paragraph 284 above, there is no judicial remedy available to the applicant, the Security Council not having thought it advisable to establish an independent international court responsible for ruling, in law and on the facts, in actions brought against individual decisions taken by the Security Council."

In this respect, the Court of First Instance found as follows in paragraphs 288 to 290 of Kadi, drawn up in terms essentially identical to those of paragraphs 343 to 345 of Yusuf and Al Barakaat:

"In this instance, the Court considers that the limitation of the applicant's right of access to a court, as a result of the immunity from jurisdiction enjoyed as a rule, in the domestic legal order of the Member States of the United Nations, by resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations, in accordance with the relevant principles of international law (in particular Article 25 and 103 of that Charter), is inherent in that right as it is guaranteed by jus cogens."

Such a limitation is justified both by the nature of the decisions that the Security Council is led to take under Chapter VII of the Charter of the United Nations and by the legitimate objective pursued. In the circumstances of this case, the applicant's interest in having a court hear his case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council in accordance with the Charter of the United Nations. In this regard, special significance must attach to the fact that, far from providing for measures for an unlimited period of application, the resolutions successively adopted by the Security Council have always provided a mechanism for re-examining whether it is appropriate to maintain those measures after 12 or 18 months at most have elapsed ...

Last, the Court considers that, in the absence of an international court having jurisdiction to ascertain whether acts of the Security Council are lawful, the setting-up of a body such as the Sanctions Committee and the opportunity, provided for by the legislation, of applying at any time to that committee in order to have any individual case re-examined, by means of a procedure involving both the "petitioned government" and the "designating government", constitute another reasonable method of affording adequate protection of the applicant's fundamental rights as recognised by jus cogens."

Consequently the Court of First Instance dismissed the pleas alleging breach of the right to effective judicial review and, as a result, the actions in their entirety.

**Forms of order sought by the parties to the appeal**

By his appeal, Mr Kadi claims that the Court should:
- set aside in whole the judgment in Kadi;
- declare the contested regulation null and void, and
- order the Council and/or the Commission to pay the costs in this appeal and those incurred in the proceedings before the Court of First Instance.

By its appeal, Al Barakaat claims that the Court should:
- set aside the judgment in Yusuf and Al Barakaat;
- declare the contested regulation null and void, and
- order the Council and the Commission to pay the costs relating to the present appeal and to the proceedings before the Court of First Instance.

The Council contends in both cases that the Court should reject the appeal and order the appellant to pay the costs.

In Case C-402/05 P the Commission contends that the Court should:
- declare that none of the grounds of appeal put forward by the appellant is capable of impugning the operative part of the judgment in Kadi, and replace the grounds of that judgment with those proposed in its response;
- in consequence, reject the appeal; and
- order the appellant to pay the costs.
111 In Case C-415/05 P the Commission contends that the Court should:

– reject the appeal in its entirety, and

– order the appellant to pay the costs.

112 The United Kingdom has brought a cross-appeal contending that the Court should:

– dismiss the appeals, and

– set aside that part of the judgments under appeal which deal with the question of jus cogens, that is to say, paragraphs 226 to 231 of Kadi and paragraphs 277 to 281 of Yusuf and Al Barakaat.

113 The Kingdom of Spain, granted leave to intervene in support of the forms of order sought by the Council by orders of the President of the Court of 27 April 2006 (Case C-402/05 P) and 15 May 2006 (Case C-415/05 P), contends that the Court should:

– reject the appellants’ appeals in their entirety and uphold in their entirety the judgments under appeal, and

– order the appellants to pay the costs;

– dismiss the Commission’s contentions in relation to the first ground of each appeal, upholding the judgments under appeal, and

– order the Commission to pay the costs;

– in the alternative, if the Court should set aside the judgment under appeal and, consequently, annul Regulation No 881/2002, order the effects of that regulation to be maintained, pursuant to Article 231 EC, until a new regulation is adopted replacing it.

114 The French Republic, granted leave to intervene in support of the forms of order sought by the Council by orders of the President of the Court of 27 April 2006 (Case C-402/05 P) and 15 May 2006 (Case C-415/05 P), contends that the Court should:

– reject the appellants’ appeals, allow the cross-appeal of the United Kingdom and carry out a substitution of the grounds as regards the part of the judgments under appeal which concerns jus cogens, and

– order the appellants to pay the costs.

115 The Kingdom of the Netherlands, granted leave to intervene in support of the form of order sought by the Council by orders of the President of the Court of 27 April 2006 (Case C-402/05 P) and 15 May 2006 (Case C-415/05 P), contends in both cases that the Court should dismiss the appeal, with the proviso that there should be substitution of the grounds with regard to the scope of the review of legality or, alternatively, to the question whether norms of jus cogens have been infringed.

The grounds of challenge to the judgments under appeal

116 Mr Kadi puts forward two grounds of appeal, the first alleging lack of any legal basis for the contested regulation and the second concerning breach of several rules of international law by the Court of First Instance and the consequences of that breach as regards the assessment of his arguments relating to the infringement of certain of his fundamental rights which he pleaded before the Court of First Instance.

117 Al Barakaat puts forward three grounds of appeal, the first alleging lack of any legal basis for the contested regulation, the second infringement of Article 249 EC and the third infringement of certain of its fundamental rights.

118 In its cross-appeal the United Kingdom puts forward a single ground relating to the error of law allegedly committed by the Court of First Instance in concluding in the judgments under appeal that it was competent to consider whether the Security Council's resolutions at issue were compatible with the rules of jus cogens.

Concerning the appeals

119 By order of 13 November 2007 the President of the Court ordered the name of Ahmed Ali Yusuf to be struck from the Court’s register in response to his abandonment of the appeal that he had brought jointly with Al Barakaat in Case C-415/05 P.

120 The parties and the Advocate General having been heard in this regard, it is appropriate, on account of the connection between them, to join the present cases for the purposes of the judgment, in accordance with Article 43 of the Rules of Procedure of the Court.

Concerning the grounds of appeal relating to the legal basis of the contested regulation

Arguments of the parties

121 By his first ground of appeal Mr Kadi claims that the Court of First Instance erred in law when it held, in paragraph 135 of Kadi, that it was possible for the contested regulation to be adopted on the joint basis of Articles 60 EC, 301 EC and 308 EC.

122 That plea falls into three parts.

123 In the first part Mr Kadi maintains that the Court of First Instance erred in law in ruling that Articles 60 EC and 301 EC could be regarded as constituting a partial legal basis for the contested regulation. Furthermore, the Court of First Instance did not explain how those provisions, which can provide a basis only for measures against third countries, could be envisaged, together with Article 308 EC, as the legal basis of the contested regulation, when the latter contains only restrictive measures directed against individuals and non-State entities.

124 In the second part, Mr Kadi asserts that, if Articles 60 EC and 301 EC were nevertheless to be held to constitute a partial legal basis for the contested regulation, the Court of First Instance erred in law because it misconstrued Article 301 EC and its function as a 'bridge', for that article in no circumstances includes the power to take measures intended to attain an objective of the EU Treaty.

125 In the third part, Mr Kadi argues that the Court of First Instance erred in law by interpreting Article 308 EC in such a way that that article might provide a legal basis for legislation for which the necessary powers have not been provided in the EC Treaty and which was not necessary in order to attain one of the Community’s objectives. In Kadi, paragraphs 122 to 134, the Court of First Instance wrongly assimilated the objectives of the two integrated but separate legal orders.
constituted by the Union and the Community and thus misinterpreted the limitations of Article 308 EC.

Furthermore, such a view is, to his mind, incompatible with the principle of conferred powers laid down in Article 5 EC. It follows from paragraphs 28 to 35 of Opinion 2/94 of 28 March 1996 (ECR I-1759) that the fact that an objective is mentioned in the Treaty on European Union cannot make good the lack of that objective in the list of the objectives of the EC Treaty.

The expression 'economic relations' covers a vast range of activities. Any economic sanction, even and the country only indirectly. The wording of Article 301 EC, especially the term 'in part', does not call for a partial measure to be directed against a particular section of the countries entities that were not, therefore, covered by those two articles.

For its part, the United Kingdom maintains that Article 308 EC was used as a means of supplementing the instrumental powers provided for by Articles 60 EC and 301 EC, those articles not constituting, therefore, a partial legal basis for the contested regulation. The Kingdom of Spain raises in essence the same line of argument.

With regard to the second part of that ground of appeal, the Council maintains that the raison d'être of the bridge provided for in Article 301 EC is precisely to give it the power to adopt measures intended to attain an objective of the EU Treaty.

The Kingdom of Spain, the French Republic and the United Kingdom maintain that it is Article 308 EC, and not Articles 60 EC and 301 EC, that enabled the adoption of restrictive measures aimed at individuals and non-State entities, so enlarging the ambit of those two articles.

So far as the third part of Mr Kadi’s first ground of appeal is concerned, the Council argues that the whole point of the bridge provided by Article 301 EC is, exceptionally, to use those powers conferred on the Community to impose economic and financial sanctions for the purpose of attaining an objective of the CFSP, and so of the Union, rather than a Community objective.

The United Kingdom and the Member States intervening in the appeal broadly support that position.

The United Kingdom clarifies its position by stating that, in its view, the action provided for by the contested regulation can be regarded as contributing to the attainment, not of an objective of the Union but of an objective of the Community, namely, the implicit and purely instrumental objective underlying Articles 60 EC and 301 EC of providing effective means of giving effect, exclusively by way of coercive economic measures, to acts adopted under the power conferred upon the Union by Title V of the EU Treaty.

According to that Member State, when attainment of that instrumental objective requires forms of economic coercion beyond the powers specifically conferred on the Council by Articles 60 EC and 301 EC, it is appropriate to have recourse to Article 308 EC to supplement those powers.

The Commission, having declared that it had reconsidered its point of view, argues, primarily, that Articles 60 EC and 301 EC, having regard to their wording and context, constituted in themselves appropriate and sufficient legal bases for the adoption of the contested regulation.

In this connection the Commission raises the following arguments:

- the wording of Article 301 EC is sufficiently broad to cover economic sanctions against individuals – provided that they are present in or otherwise associated with a third country.

The expression 'economic relations' covers a vast range of activities. Any economic sanction, even directed at a third country, such as an embargo, directly affects the individuals concerned and the country only indirectly. The wording of Article 301 EC, especially the term 'in part', does not call for a partial measure to be directed against a particular section of the countries in question, such as the government. Allowing, as it does, the Community to break off completely economic relations with all countries, that provision must also authorise it to interrupt economic relations with a limited number of individuals in a limited number of countries;

- the fact that similar words are used in Article 41 of the Charter of the United Nations and in Article 301 EC shows that the authors of that latter provision clearly intended to provide a platform for the implementation by the Community of all measures adopted by the Security Council that call for action by the Community;

- Article 301 EC puts in place a procedural bridge between the Community and the Union, but seeks neither to increase nor to reduce the ambit of Community competence. As a result, that provision has to be interpreted as broadly as the relevant Community powers.

The Commission maintains that the measures at issue fall within the ambit of the common commercial policy, having regard to the effect on trade of measures prohibiting the movement of economic resources, and even that those measures constitute provisions relating to the free movement of capital, since they involve the prohibition of transferring economic resources to individuals in third countries.

The Commission also argues that it is clear from Article 56(1) and (2) EC that movements of capital and payments between the Community and third countries fall within Community competence, the Member States being able to adopt sanction measures only within the framework of Article 60(2) EC and not of Article 58(1)(b) EC.

In consequence, the Commission believes that recourse may not be had to Article 308 EC for the adoption of the contested regulation, since power to act is provided for in Articles 60 EC and 301 EC. The Commission, referring in particular to Case C-94/03 Commission v Council [2006] ECR I-1, paragraph 35, argues that those articles provide the basis for the main or predominant component of the contested regulation, in relation to which other components such as the freezing of the assets of persons who are both nationals of Member States of the Union and associated with a foreign terrorist group are merely secondary.

Alternatively, the Commission contends that, before resorting to Article 308 EC, it is necessary to examine the applicability of the articles of the EC Treaty dealing with the common commercial policy and the free movement of capital and payments.

In the further alternative, it maintains that, if Article 308 EC were to be held to be the legal basis of the contested regulation, it would be the sole legal basis, for recourse to that provision must be based on the consideration that action by the Community is necessary in order to attain one of the objectives of the Community and not, as the Court of First Instance held, the objectives of the EU Treaty in the sphere of external relations, in this case the CFSP.

The Community objectives involved in this instance are the common commercial policy, mentioned in Article 3(1)(b) EC, and the free movement of capital, referred to by implication in Article 3(1)(c) EC, read in conjunction with the relevant provisions of the EC Treaty, namely those contained in Article 56 EC relating to the free movement of capital to and from third countries. The measures at issue, producing effects on trade, regardless of the fact that they were adopted in pursuit of foreign policy objectives, fall within the ambit of those Community objectives.
In contrast, Mr Kadi objects to those requests, claiming that the contested regulation constitutes a serious breach of fundamental rights. In any case, an exception must be made for persons who, like the applicant, have already brought an action against the regulation.

The Commission's alternative argument is also challenged by both Mr Kadi and the Kingdom of Spain.

Finally, the Council is of the view that the applicant's complaint concerning the efficiency and proportionality of the legal basis of the regulation is irrelevant to the issue of the appropriateness of the legal basis for restrictive measures against individuals or entities. That provision concerning only the application of the measure freezing funds provided for by that regulation is not capable of giving rise to any credible and serious danger of divergence between Member States. The objective of the measures against individuals or entities is, in accordance with Article 308 EC, not relevant either, given that the freezing of the funds of an individual in no way linked to the government of a third country does not concern trade with such a country.

With regard, first, to the challenges made by Al Barakaat to paragraphs 112, 113, 115 and 116 of the operative part of the judgment brought by Al Barakaat, given that, as held in paragraph 1 of the operative part of that judgment, the contested regulation is not relevant to the issue of the measures against third countries, the measures at issue could have been adopted only within the category of movements of capital referred to in Article 308(1) EC.

As to the rest, the arguments raised by the Kingdom of Spain, the United Kingdom and the Commission, are, in substance, the same as those raised by those parties in connection with the appeal brought by Al Barakaat.

With regard to that second complaint, the United Kingdom too takes the view that it has no bearing on the appeal brought by Al Barakaat, given that, as held in paragraph 1 of the operative part of that judgment, the contested regulation is not relevant to the issue of the measures against third countries.

As indicated by the Court of First Instance in paragraphs 12, 13, 15 and 16 of its judgment, the United Kingdom, the Kingdom of Spain and the French Republic, have also made a request to that effect.
Al Barakaat had adjusted its claims for relief and pleas in law to the contested regulation, was annulment of that latter regulation, in so far as it concerns that applicant.

In those circumstances, those claims cannot in any case lead to the setting aside of that judgment and must therefore be regarded as immaterial.

In any event, the considerations of Yusuf and Al Barakaat to which those claims relate, treated by the Court of First Instance as premises of its reasoning with regard to the legal basis of the contested regulation, are reproduced in later paragraphs of that judgment and in Kadi and will be examined during the assessment of the grounds of appeal challenging those paragraphs.

There is, therefore, no reason to examine those heads of claim in so far as they relate to the legal basis of Regulation No 467/2001.

It is appropriate to rule in the second place on the merits of the principal argument put forward by the Commission, that Articles 60 EC and 301 EC, in the light of their wording and context, are in themselves an appropriate and sufficient legal base for the contested regulation.

That argument is directed against paragraphs 92 to 97 of Kadi and paragraphs 128 to 133 of Yusuf and Al Barakaat, in which the Court of First Instance ruled to the contrary.

That argument must be rejected.

The Court of First Instance in fact rightly ruled that, having regard to the wording of Articles 60 EC and 301 EC, especially to the expressions ‘as regards the third countries concerned’ and ‘with one or more third countries’ used there, those provisions concern the adoption of measures vis-à-vis third countries, since that concept may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them.

The restrictive measures provided for by Resolution 1390 (2002), which the contested regulation was intended to put into effect, are measures notable for the absence of any link to the governing regime of a third country. Following the collapse of the Taliban regime, those measures were aimed directly at Usama bin Laden, the Al-Qaeda network and the persons and entities associated with them, as they appear in the summary list. They do not, therefore, as such, fall within the ambit of Articles 60 EC and 301 EC.

To accept the interpretation of Articles 60 EC and 301 EC proposed by the Commission, that it is enough for the restrictive measures at issue to be directed at persons or entities present in a third country or associated with one in some other way, would give those provisions an excessively broad meaning and would fail to take any account at all of the requirement, imposed by their very wording, that the measures decided on the basis of those provisions must be taken against third countries.

In addition, the essential purpose and object of the contested regulation is to combat international terrorism, in particular to cut it off from its financial resources by freezing the economic funds and resources of persons or entities suspected of involvement in activities linked to terrorism, and not to affect economic relations between the Community and each of the third countries where those persons or entities are, always supposing, moreover, that their place of residence is known.

The restrictive measures provided for by Resolution 1390 (2002) and put into effect by the contested regulation cannot be considered to be measures intended to reduce economic relations with each of those third countries, or, indeed, with certain Member States of the Community, in which are to be found persons or entities whose names are included in the list reproduced in Annex I to that regulation.

Nor can the argument supported by the Commission be justified by the expression ‘in part’ appearing in Article 301 EC.

In point of fact, that expression refers to the possible limitation of the scope ratione materiae or personae of the measures that might, by definition, be taken under that provision. It has, however, no effect on the necessary status of the persons to whom those measures might be addressed and cannot, therefore, warrant extending the application of the measures to such persons who are in no way linked to the governing regime of a third country and who, by the same token, do not fall within the ambit of that provision.

The Commission’s argument relating to the similarity of the words used in Article 41 of the Charter of the United Nations and in Article 301 EC, from which it deduces that the latter provision constitutes a platform for the implementation by the Community of all measures adopted by the Security Council that call for action by the Community, cannot succeed either.

Article 301 EC specifically refers to the interruption of economic relations ‘with one or more third countries’, whereas such an expression is not used in Article 41 of the Charter of the United Nations.

What is more, in other respects the ambit of Article 41 of the Charter of the United Nations does not coincide with that of Article 301 EC, for the first provision enables the adoption of a series of measures other than those referred to by the second, including measures of a fundamentally different nature from those intended to interrupt or reduce economic relations with third countries, such as the breaking off of diplomatic relations.

The Commission’s argument that Article 301 EC builds a procedural bridge between the Community and the European Union, so that it must be interpreted as broadly as the relevant Community competences, including those relating to the common commercial policy and the free movement of capital, must also be rejected.

That interpretation of Article 301 EC threatens to reduce the ambit and, therefore, the practical effect of that provision, for, having regard to its actual wording, the subject of that provision is the adoption of potentially very diverse measures affecting economic relations with third countries which, therefore, by necessary inference, must not be limited to spheres falling within other material powers of the Community such as those in the domain of the common commercial policy or of the free movement of capital.

Moreover, that interpretation finds no support in the wording of Article 301 EC, which confers a material competence on the Community the scope of which is, in theory, autonomous in relation to that of other Community competences.

It is necessary to examine in the third place the alternative argument raised by the Commission that, if it was not possible for the contested regulation to be adopted on the sole legal basis of Articles 60 EC and 301 EC, recourse to Article 308 EC would not be justified, for that latter provision is, in particular, applicable only if no other provision of the EC Treaty confers the powers necessary to adopt the measure concerned. The restrictive measures imposed by the contested regulation fall within the Community’s powers of action, in particular its powers in the sphere of the common commercial policy and free movement of capital.

In this connection, the Court of First Instance held, in paragraphs 100 of Kadi and 136 of Yusuf and Al Barakaat, that no specific provision of the EC Treaty provides for the adoption of measures of the kind laid down in the contested regulation relating to the campaign against international terrorism and, more particularly, to the imposition of economic and financial sanctions, such as the freezing of funds, in respect of individuals and entities suspected of contributing to the funding of...
international terrorism, where no connection whatsoever has been established with the governing regime of a third State, with the result that the first condition for the applicability of Article 301 EC was satisfied in the case in point.

181 That conclusion must be upheld.

182 According to the Court's settled case-law, the choice of legal basis for a Community measure must rest on objective factors which are amenable to judicial review, including, in particular, the aim and the content of the measure (see, inter alia, Case C-440/05 Commission v Council [2007] ECR I-9097, paragraph 61 and the case-law there cited).

183 A Community measure falls within the competence in the field of the common commercial policy provided for in Article 133 EC only if it relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade in the products concerned (see, inter alia, Case C-347/03 Regione autonoma Friuli-Venezia Giulia and ERSA [2005] ECR I-3785, paragraph 75 and the case-law there cited).

184 With regard to its essential purpose and object, as explained in paragraph 169 above, the contested regulation is intended to combat international terrorism and it provides to that end a series of restrictive measures of an economic and financial kind, such as freezing the economic resources and funds and resources of persons or entities suspected of contributing to the funding of international terrorism.

185 Having regard to that purpose and object, it cannot be considered that the regulation relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade.

186 Furthermore, although that regulation may indeed produce effects on international trade, it is plainly not its purpose to give rise to direct and immediate effects of that nature.

187 The contested regulation could not, therefore, be based on the powers of the Community in the sphere of the common commercial policy.

188 On the other hand, according to the Commission, in so far as the contested regulation prohibits the transfer of economic resources to individuals in third countries, it falls within the ambit of the provisions of the EC Treaty on the free movement of capital and payments.

189 That assertion too must be rejected.

190 With regard, first of all, to Article 57(2) EC, the restrictive measures imposed by the contested regulation do not fall within any of the categories of measures listed in that provision.

191 Nor can Article 60(1) EC furnish the basis for the contested regulation, for its ambit is determined by that of Article 301 EC.

192 As has already been held in paragraph 167 above, that latter provision is not concerned with the adoption of restrictive measures such as those at issue, which are notable for the absence of any link to the governing regime of a third country.

193 As regards, finally, Article 60(2) EC, this provision does not include any Community competence to that end, given that it does no more than enable the Member States to take, on certain exceptional grounds, unilateral measures against a third country with regard to capital movements and payments, subject to the power of the Council to require a Member State to amend or abolish such measures.

194 In the fourth place it is appropriate to examine the claims directed by Mr Kadi, in the second and third parts of his first ground of appeal, against paragraphs 122 to 135 of Kadi, by Al Barakaat against paragraphs 158 to 170 of Yusuf and Al Barakaat, and the Commission's criticisms of those same paragraphs of the judgments under appeal.

195 In those paragraphs, the Court of First Instance ruled that it was possible for the contested regulation to be adopted on the joint basis of Articles 60 EC, 301 EC and 308 EC, on the ground that, by reason of the bridge explicitly established between Community actions imposing economic sanctions under Articles 60 EC and 301 EC, on the one hand, and the objectives of the EU Treaty in the sphere of external relations, on the other, recourse to Article 308 EC in the particular context envisaged by the two former articles is justified in order to attain such objectives, in this instance the objective of the CFSP pursued by the contested regulation, that is to say, the campaign against international terrorism and its funding.

196 In this regard it must be held that the judgments under appeal are indeed vitiated by an error of law.

197 In point of fact, while it is correct to consider, as did the Court of First Instance, that a bridge has been constructed between the actions of the Community involving economic measures under Articles 60 EC and 301 EC and the objectives of the EU Treaty in the sphere of external relations, including the CFSP, neither the wording of the provisions of the EC Treaty nor the structure of the latter provides any foundation for the view that that bridge extends to other provisions of the EC Treaty, in particular to Article 308 EC.

198 With specific regard to Article 308 EC, if the position of the Court of First Instance were to be accepted, that provision would allow, in the special context of Articles 60 EC and 301 EC, the adoption of Community measures concerning not one of the objectives of the Community but one of the objectives under the EU Treaty in the sphere of external relations, including the CFSP.

199 The inevitable conclusion is that such a view runs counter to the very wording of Article 308 EC.

200 Recourse to that provision demands that the action envisaged should, on the one hand, relate to the 'operation of the common market' and, on the other, be intended to attain 'one of the objectives of the Community'.

201 That latter concept, having regard to its clear and precise wording, cannot on any view be regarded as including the objectives of the CFSP.

202 Furthermore, the coexistence of the Union and the Community as integrated but separate legal orders, and the constitutional architecture of the pillars, as intended by the framers of the Treaties now in force, referred to by the Court of First Instance in paragraphs 120 of Kadi and 156 of Yusuf and Al Barakaat, constitute considerations of an institutional kind militating against any extension of the bridge to articles of the EC Treaty other than those with which it explicitly creates a link.

203 In addition, Article 308 EC, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the EC Treaty as a whole and, in particular, by those defining the tasks and the activities of the Community (Opinion 2/94, paragraph 30).

204 Likewise, Article 3 EU, referred to by the Court of First Instance in paragraphs 126 to 128 of Kadi and 162 to 164 of Yusuf and Al Barakaat, in particular its second paragraph, cannot supply a base
for any widening of Community powers beyond the objects of the Community.

205 The effect of that error in law on the validity of the judgments under appeal will be considered later, after the evaluation of the other claims raised against the explanations given in those judgments concerning the possibility of including Article 308 EC in the legal basis of the contested regulation jointly with Articles 60 EC and 301 EC.

206 Those other claims may be divided into two categories.

207 The first category includes, in particular, the first part of Mr Kadi’s first ground of appeal, in which he argues that the Court of First Instance erred in law when it accepted that it was possible for Article 308 EC to supplement the legal basis of the contested regulation formed by Articles 60 EC and 301 EC. In his submission, those two latter articles cannot form the legal basis, even in part, of the contested regulation because, according to the interpretation given by the Court of First Instance itself, measures directed against persons or entities in no way linked to the governing regime of a third country – the only persons to whom the contested regulation is addressed – do not fall within the ambit of those articles.

208 That criticism may be compared with that made by the Commission, to the effect that, if it were to be held that recourse to Article 308 EC could be allowed, it would have to be as the sole legal basis, and not jointly with Articles 60 EC and 301 EC.

209 The second category includes the Commission’s criticisms of the Court of First Instance’s decision, in paragraphs 116 and 121 of Kadi and 152 and 157 of Yusuf and Al Barakaat, that, for the purposes of the application of Article 308 EC, the objective of the contested regulation, namely, according to the Court of First Instance, the fight against international terrorism, and more particularly the imposition of economic and financial sanctions, such as the freezing of funds, in respect of individuals and entities suspected of contributing to the funding of terrorism, cannot be made to refer to one of the objects which the EC Treaty entrusts to the Community.

210 The Commission maintains in this respect that the implementing measures imposed by the contested regulation in the area of economic and financial sanctions fall, by their very nature, within the scope of the objects of the Community, that is to say, first, the common commercial policy and, second, the free movement of capital.

211 With regard to that first category of claims, it is to be borne in mind that Article 308 EC is designed to fill the gap where no specific provisions of the Treaty confer on the Community institutions express or implied powers to act, if such powers appear none the less to be necessary to enable the Community to carry out its functions with a view to attaining one of the objectives laid down by the Treaty (Opinion 2/94, paragraph 29).

212 The Court of First Instance correctly held that Article 308 EC could be included in the legal basis of the contested regulation, jointly with Articles 60 EC and 301 EC.

213 The contested regulation, inasmuch as it imposes restrictive measures of an economic and financial nature, plainly falls within the ambit ratione materiae of Articles 60 EC and 301 EC.

214 To that extent, the inclusion of those articles in the legal basis of the contested regulation was therefore justified.

215 Furthermore, those provisions are part of the extension of a practice based, before the introduction of Articles 60 EC and 301 EC by the Maastricht Treaty, on Article 113 of the EC Treaty (now, after amendment, Article 133 EC) (see, to that effect, Case C-70/84 Werner [1995] ECR I-3189, paragraphs 8 to 10, and Case C-124/95 Centro-Com [1997] ECR I-81, paragraphs 28 and 29), which consisted of entrusting to the Community the implementation of actions decided on in the context of European political cooperation and involving the imposition of restrictive measures of an economic nature in respect of third countries.

216 Since Articles 60 EC and 301 EC do not, however, provide for any express or implied powers of action to impose such measures on addressees in no way linked to the governing regime of a third country such as those to whom the contested regulation applies, that lack of power, attributable to the limited ambit ratione materiae of those provisions, could be made good by having recourse to Article 308 EC as a legal basis for that regulation in addition to the first two provisions providing a foundation for that measure from the point of view of its material scope, provided, however, that the other conditions to which the applicability of Article 308 EC is subject had been satisfied.

217 The claims in that first category must therefore be rejected as unfounded.

218 With regard to the other conditions for the applicability of Article 308 EC, the second category of claims will now be considered.

219 The Commission maintains that, although Common Position 2002/402, which the contested regulation is intended to put into effect, pursues the objective of the campaign against international terrorism, an objective covered by the CFSP, that regulation must be considered to lay down an implementing measure intended to impose economic and financial sanctions.

220 That objective falls within the scope of the objectives for the purpose of Article 308 EC, in particular those relating to the common commercial policy and the free movement of capital.

221 The United Kingdom takes the view that the purely instrumental specific objective of the contested regulation, namely, the introduction of coercive economic measures, must be distinguished from the underlying CFSP objective of maintaining international peace and security. That specific objective contributes to the implicit Community objective underlying Articles 60 EC and 301 EC, which is to supply effective means to put into effect, solely by coercive economic measures, acts adopted under the CFSP.

222 The object pursued by the contested regulation is immediately to prevent persons associated with Usama bin Laden, the Al-Qaeda network or the Taliban from having at their disposal any financial or economic resources, in order to impede the financing of terrorist activities (Case C-117/06 Möllendorf and Möllendorf-Niehuus [2007] ECR I-3861, paragraph 63).

223 Contrary to what the Court of First Instance held in paragraphs 116 of Kadi and 152 of Yusuf and Al Barakaat, that objective can be made to refer to one of the objectives which the EC Treaty entrusts to the Community. The judgments under appeal are therefore vitiated by an error of law on this point also.

224 In this regard it may be recalled that, as explained in paragraph 203 above, Article 308 EC, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the EC Treaty as a whole.

225 The objective pursued by the contested regulation may be made to refer to one of the objectives of the Community for the purpose of Article 308 EC, with the result that the adoption of that regulation did not amount to disregard of the scope of Community powers stemming from the provisions of the EC Treaty as a whole.
adding Article 308 EC to the legal basis of the contested regulation enabled the European Parliament to take part in the decision-making process relating to the measures at issue, which are specifically addressed in the contested regulation. As a result, the legal basis of the contested regulation must be dismissed in their entirety as unfounded.

226 Accordingly, the grounds of appeal directed against the judgments under appeal inasmuch as by the later the Court of First Instance decided that Articles 60 EC, 301 EC and 308 EC concerned Article 249 EC.

Concerning the ground of appeal relating to infringement of Article 249 EC concerning the nature in order to implement actions decided on under the CFSP, Articles 60 EC and 301 EC are aimed at individuals whereas, under Articles 60 EC and 301 EC, no role is provided for that institution.

227 That objective may be regarded as constituting an objective of the Community for the purpose of Article 249 EC.

228 That interpretation is supported by Article 51 EC. Although the former provision on making possible adoption such measures through the efficient use of a Community instrument.

229 Implementing restrictive measures of an economic nature through the use of a Community instrument does not go beyond the general framework created by the provisions of the EC Treaty, a framework within which measures have been adopted pursuant to article 249 EC, as set out in paragraphs 200 above.

230 If economic and financial measures such as those imposed by the contested regulation, consisting of the, in principle generalised, freezing of all the funds and other economic resources of the persons and entities concerned, were imposed unilaterally by every Member State, the measures would become directly applicable, as a whole, because such measures are not addressed to persons or entities of the same kind.

231 It is to be borne in mind that, according to case-law, if the grounds of a judgment of the Court of First Instance reveal an infringement of Community law but its operative part appears well founded - as in the present case - that fact that the persons and entities who are the subject of the restrictive measures are directly addressed to the persons or entities of the same kind, as a whole, because such measures are not addressed to persons or entities of the same kind.

232 The Council's statement in the fourth recital in the preamble to the contested regulation that Community legislation was necessary 'notably with a view to avoiding distortion of competition' is shown, therefore, to be relevant in this connection.

233 The contested regulation, like Resolution 1390 (2002) which it is designed to put into effect, lays down a prohibitive for all persons or entities (see, to that effect, as set out in paragraph 200 above).

234 In fact, while it is true that the contested regulation imposes restrictive measures on the persons and entities whose names appear in the exhaustive list that constitutes Annex I to the contested regulation, it is not clear that those persons or entities were acting in the interest of the Community, as is required by the provisions of the EC Treaty.

235 It is therefore to be inferred from what was stated above - in particular what was stated in paragraphs 200 above - that there were no economic reasons for that advantage or disadvantage.

236 Clearly the conclusion reached by the Court of First Instance in paragraphs 196 of the judgment, in so far as the contested regulation, like Resolution 1390 (2002) which it is designed to put into effect, lays down a prohibitive for all persons or entities (see, to that effect, as set out in paragraph 200 above), is to be regarded as constituting an objective of the Community for the purpose of Article 249 EC.

237 By its second ground of appeal, the Kingdom of Spain, the United Kingdom, the Council and the Commission broadly endorse the analysis of the Court of First Instance.

238 Al Barakaat maintains that an wrongful to consider the person whose funds must reasonably be bound to a legal measure directed against them in the Annex to the regulation.

239 What is more, according to the judgment the contested regulation satisfies the condition of having an implicit underlying objective, namely, that of making it possible to adopt such measures through the efficient use of a Community instrument.

240 If economic and financial measures such as those imposed by the contested regulation, consisting of the, in principle generalised, freezing of all the funds and other economic resources of the persons and entities concerned, were imposed unilaterally by every Member State, the measures would become applicable, as a whole, because such measures are not addressed to persons or entities of the same kind.

241 The Kingdom of Spain, the United Kingdom, the Council and the Commission broadly endorse the analysis of the Court of First Instance.
resources in question.

245. That being so, the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

246. So far as the law of the United Nations offers no adequate protection for those whose claim is to be heard in the Community, the interpretation of Article 249 EC must also be dismissed as unfounded.

247. By his second claim, Mr Kadi alleges that the Court of First Instance erred in law when, in paragraphs 225 to 232 of that judgment, it took as a premise that the obligations under the Charter of the United Nations, on which the Community action is based, form part of the sphere of law and/or competence of the United Nations.

248. By the third claim, Mr Kadi maintains that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

249. By the fourth claim, Mr Kadi submits that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

250. By his second claim, Mr Kadi claims that the Court of First Instance erred in law when, in paragraphs 225 to 232 of that judgment, it took as a premise that the obligations under the Charter of the United Nations, on which the Community action is based, form part of the sphere of law and/or competence of the United Nations.

251. By the third claim, Mr Kadi maintains that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

252. By the fourth claim, Mr Kadi submits that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

253. By the fifth claim, Mr Kadi argues that the fact that the Community Council has not established an independent international court responsible for enforcing the law, and that the Community has no judicial power, does not mean that the Member States have no lawful power by adopting reasonable measures, to eliminate the effects of facts underlying the imposition of sanctions, to prevent the Committee from exercising its authority, or to compel the persons affected by them, or of an exception with regard to implementation of resolutions of the Security Council to the effect that a Community regulation intended to carry out such implementation need not accord with Community rules on the adoption of regulations.

254. In the light of the foregoing, Al Barakaat's ground of appeal relating to infringement of Article 249 EC must also be dismissed as unfounded.

255. So far as the law of the United Nations offers no adequate protection for those whose claim is to be heard in the Community, the interpretation of Article 249 EC must also be dismissed as unfounded.

256. By his second claim, Mr Kadi claims that the Court of First Instance erred in law when, in paragraphs 225 to 232 of that judgment, it took as a premise that the obligations under the Charter of the United Nations, on which the Community action is based, form part of the sphere of law and/or competence of the United Nations.

257. By the third claim, Mr Kadi maintains that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

258. By the fourth claim, Mr Kadi submits that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

259. By the fifth claim, Mr Kadi argues that the fact that the Community Council has not established an independent international court responsible for enforcing the law, and that the Community has no judicial power, does not mean that the Member States have no lawful power, by adopting reasonable measures, to eliminate the effects of facts underlying the imposition of sanctions, to prevent the Committee from exercising its authority, or to compel the persons affected by them, or of an exception with regard to implementation of resolutions of the Security Council to the effect that a Community regulation intended to carry out such implementation need not accord with Community rules on the adoption of regulations.

260. Conversely, the French Republic, the Kingdom of the Netherlands, the United Kingdom and the United States argue that, in so far as the law of the United Nations offers no adequate protection for those whose claim is to be heard in the Community, the interpretation of Article 249 EC must also be dismissed as unfounded.

261. By his second claim, Mr Kadi claims that the Court of First Instance erred in law when, in paragraphs 225 to 232 of that judgment, it took as a premise that the obligations under the Charter of the United Nations, on which the Community action is based, form part of the sphere of law and/or competence of the United Nations.

262. By the third claim, Mr Kadi maintains that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.

263. By the fourth claim, Mr Kadi submits that the judgment relating to the application of Article 249 EC must also be dismissed as unfounded.
of fundamental rights, and so for that reason enjoys immunity from jurisdiction.

However, unlike the Court of First Instance, those parties take the view that no review of the internal lawfulness of resolutions of the Security Council may be carried out by the Community judicature. They therefore complain that the Court of First Instance decided that such review was possible in the light of jus cogens.

They argue that the judgments under appeal, by allowing an exception in that regard, but without identifying its legal basis, in particular under the provisions of the Treaty, are inconsistent, inasmuch as the arguments excluding in a general manner the exercise of judicial review by the Community judicature of resolutions of the Security Council also militate against the recognition of powers to carry out such a review solely in the light of jus cogens.

Further, the French Republic, the Kingdom of the Netherlands, the United Kingdom and the Commission consider that the Court of First Instance erred in law when it ruled that the fundamental rights at issue in these cases fell within the scope of jus cogens.

A norm may be classified as jus cogens only when no derogation from it is possible. The rights invoked in the cases in point – the right to a fair hearing and the right to respect for property – are, however, subject to limitations and exceptions.

The United Kingdom has brought a cross-appeal in this connection, seeking to have set aside the parts of the judgments under appeal dealing with jus cogens, viz., paragraphs 226 to 231 of Kadi and 277 to 281 of Yusuf and Al Barakaat.

For their part, the French Republic and the Kingdom of the Netherlands suggest that the Court should undertake a replacement of grounds, claiming that Mr Kadi’s and Al Barakaat’s pleas in law in relating to jus cogens should be dismissed by reason of the absolute lack of jurisdiction of the Community judicature to carry out any review of resolutions of the Security Council, even in the light of jus cogens.

The Commission maintains that two reasons may justify not giving effect to an obligation to implement resolutions of the Security Council such as those at issue, whose strict terms leave the Community authorities no discretion in their implementation; they are, first, the case in which the resolution concerned is contrary to jus cogens and, second, the case in which that resolution falls outside the ambit of or violates the purposes and principles of the United Nations and was therefore adopted ultra vires.

The Commission takes the view that, given that, according to Article 24(2) of the Charter of the United Nations, the Security Council is bound by the purposes and principles of the United Nations, including, according to Article 1(3) of the Charter, the development of human rights and their promotion, an act adopted by that body in breach of human rights, including the fundamental rights of the individuals at issue, might be regarded as having been adopted ultra vires and, therefore, as not binding on the Community.

In the Commission’s view, however, the Court of First Instance was right to hold that the Community judicature cannot in principle review the validity of a resolution of the Security Council in the light of the purposes and principles of the United Nations.

If, nevertheless, the Court were to accept that it could carry out such a review, the Commission argues that the Court, as the judicature of an international organisation other than the United Nations, could express itself on this question only if the breach of human rights was particularly flagrant and glaring, referring here to Racke.

That is not, in the Commission’s view, the case here, owing to the existence of the re-examination procedure before the Sanctions Committee and because it must be supposed that the Security Council had weighed the requirements of international security at issue against the fundamental rights concerned.

With regard to the guidance given in Bosphorus, the Commission maintains that, in contrast to the case giving rise to that judgment, the question of the lawfulness and possible nullity of the resolution in question could arise with regard to the contested regulation if the Court were to rule that the Community may not implement a binding resolution of the Security Council because the standards applied by that body in the sphere of human rights, especially in respect of the right to be heard, are insufficient.

In addition, the United Kingdom is of the view that Mr Kadi’s arguments that the lawfulness of any legislation adopted by the Community institutions in order to give effect to a resolution of the Security Council remains subject, by virtue of Community law, to full review by the Court, regardless of its origin, constitute a new ground of appeal because they were put forward for the first time in that appellant’s reply. That Member State submits that in accordance with Articles 42 (2) and 118 of the Rules of Procedure, those arguments must therefore be rejected.

In the alternative, the United Kingdom maintains that the special status of resolutions adopted under Chapter VII of the Charter of the United Nations, as a result of the interaction of Articles 25, 48 and 103 of that Charter, recognised by Article 297 EC, implies that action taken by a Member State to perform its obligations with a view to maintaining international peace and security is protected against any action founded on Community law. The primacy of those obligations clearly extends to principles of Community law of a constitutional nature.

That Member State maintains that, in Bosphorus, the Court did not declare that it had jurisdiction to determine the validity of a regulation intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations, but did no more than interpret the purpose of determining whether a measure laid down by that regulation had to be applied by the authorities of a Member State in a given case. The French Republic essentially agrees with that interpretation of Bosphorus.

Findings of the Court

Before addressing the substance of the question, the Court finds it necessary to reject the objection of inadmissibility raised by the United Kingdom in respect of the line of argument put forward by Mr Kadi in his reply, to the effect that the lawfulness of any legislation adopted by the Community institutions, including an act intended to give effect to a resolution of the Security Council remains subject, by virtue of Community law, to full review by the Court, regardless of its origin.

In point of fact, as Mr Kadi has stated, that is an additional argument supplementing the ground of appeal set out earlier, at least implicitly, in the notice of appeal and closely connected to that ground, to the effect that the Community, when giving effect to a resolution of the Security Council, was bound to ensure, as a condition of the lawfulness of the legislation it intended thus to introduce, that that legislation should observe the minimum criteria in the field of human rights (see, to that effect, inter alia, the order in Case C-430/00 P Dürbeck v Commission [2001] ECR I-8547, paragraph 17).

The Court will now consider the heads of claim in which the appellants complain that the Court of First Instance, in essence, held that it followed from the principles governing the relationship between the international legal order under the United Nations and the Community legal order that the contested regulation, since it is designed to give effect to a resolution adopted by the Security
Council under Chapter VII of the Charter of the United Nations affording no latitude in that respect, could
not be subject to judicial review of its internal lawfulness, save with regard to its compatibility with
the provisions of the EC Treaty. In that regard, the Court has consistently annulled or set aside, in such
instances, a decision by the Council approving an international body's decision to send armed forces
to a given country, where the Court has found that the implementation of that decision constitutes
1910, paragraphs 25 to 28).

290. However, any judgment given by the Community judicature deciding that a Community measure
given effect to a resolution adopted by the Security Council under Chapter VII of the Charter of the
United Nations is required to be treated as having the effect of a resolution adopted by the Security
Council can only be viewed as one of the inter partes remedies available to the Community. It is
not within the competence of the Community judicature to determine what and who poses a threat
to international peace and security and to take the measures necessary to maintain or restore them.

291. In this respect it is first to be borne in mind that the European Community must respect
its act with the basic constitutional charter, the EC Treaty, which established a complete system
of legal remedies designed to enable the Court of Justice to review the legality of a contested
regulation in the light of fundamental freedoms is in principle excluded, notwithstanding the
fact that, as is clear from the decisions referred to in paragraphs 281 to 284 above, such
review is constitutionally required in the case of the United Nations, the Security Council, or
other international organisations.

292. Moreover, in the sphere of the maintenance of international peace and security when the Community
acts in accordance with the Geneva Convention on the Prevention and Punishment of the Crime of
Genocide, the adoption by the Security Council of a resolution under Chapter VII of the Charter of
the United Nations relating to such implementation does not, in itself, afford the Community with
regard to the Community act, the conclusion of this amendment, which is established by the
Court in the context of the interpretation of the 'Geneva Convention on the Prevention and
Punishment of the Crime of Genocide' (Case C-206/93 Denmark v. Germany [1995] ECR II
458).

293. Moreover, the Court has held that the powers of the Community provided for by Articles 177 and
187 EC and of the Member States, the Community, and the Security Council under Chapter VII of
the Charter of the United Nations are subject to the same obligations in the area of military
action. As is clear from the decisions referred to in paragraphs 281 to 284 above, such review is
constituted by the Court in the context of the interpretation of the United Nations Convention
on the Prevention and Punishment of the Crime of Genocide (Case C-206/93 Denmark v. Germany

294. In the exercise of that latter power it is necessary for the Community to attach special importance
to the fact that, in accordance with Article 24 of the Charter of the United Nations, the adoption by
the Security Council of resolutions under Chapter VII of the Charter constitutes the exercise of the
primary responsibility with which that international body is invested for the maintenance of peace
and security at the global level, a responsibility which, under Chapter VII, includes the power to
determine what and who poses a threat to international peace and security and to take the
measures necessary to maintain or restore them.

295. It follows from the above considerations that the obligations imposed by an international agreement
cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include
the system of legal remedies established by the Court of Justice established in that order, and to take the
measures necessary to maintain or restore them.

296. In this regard it must be emphasised that, in circumstances such as those of these cases, the
Court has consistently annulled or set aside, in such instances, a decision by the Council approving
an international body's decision to send armed forces to a given country, where the Court has
found that the implementation of that decision constitutes an act of international law in the exercise of

297. Furthermore, the Court has previously annulled a decision of the Court of Justice in the case of
Möllendorf and Möllendorf-Niehuus v. Germany (Case C-536/98 Möllendorf and Möllendorf-Niehuus
v. Germany [2001] ECR I 5229) for finding a breach of a general principle of Community law, in that
instance the general principle of non-discrimination (Case C-22/90 Germany v. France [1991] ECR I
973).

298. However, any judgment given by the Community judicature deciding that a Community measure
given effect to a resolution adopted by the Security Council under Chapter VII of the Charter of
the United Nations, is not, therefore, within the competence of the Community judicature, under the exclusive
jurisdiction clause, to give effect to a resolution adopted by the Security Council under Chapter VII of
the Charter of the United Nations relating to such implementation.
Chapter VII of the Charter, since they are to be given effect in accordance with the procedure applicable to resolutions adopted under Chapter VII of the Charter of the United Nations, as an expression of the will of all Member States of the United Nations to give effect to the resolutions of the Security Council. While, in certain cases, the Court has considered that a resolution of the Security Council, in the exercise of its powers under Chapter VII of the Charter of the United Nations, is intended to give effect to a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations, it has also considered that a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations is intended to give effect to a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations. In other cases, the Court has considered that a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations is intended to give effect to a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations. In still other cases, the Court has considered that a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations is intended to give effect to a resolution of the Security Council in the exercise of its powers under Chapter VII of the Charter of the United Nations.

In the instant case it must be declared that the contested regulation cannot be considered to be an act directly attributable to the United Nations as an action of one of its subsidiary organs created under Chapter VII of the Charter of the United Nations or an action falling within the exercise of powers lawfully delegated by the Security Council pursuant to that chapter.

In addition and in any event, the question of the Court's jurisdiction to rule on the lawfulness of the contested regulation has arisen in fundamentally different circumstances. As noted above, in paragraph 285, the review by the Court of the validity of any order of the Community, within whose ambit the contested regulation falls, must be considered stemming from the exercise of powers lawfully delegated by the Security Council.

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It follows from all those considerations that it is not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of the contested regulation in the light of fundamental freedoms is excluded by virtue of the fact that that measure is intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations, §151).

Nor can an immunity from jurisdiction for the contested regulation with regard to the review of its compatibility with fundamental rights, arising from the alleged absolute primacy of the resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations, be found in the ECHR, and the nature of other measures with regard to which the Court's jurisdiction would seem to be unaffected by such resolutions, including the review by the Community judicature of the lawfulness of Community measures as regards that consistency with those fundamental rights.

127. Therefore, it follows that Article 307 EC may in no circumstances permit any challenge to the principles that form part of the very foundations of the Community legal order, one of which is the protection of fundamental rights, including the review by the Community judicature of the lawfulness of Community measures as regards that consistency with those fundamental rights.

307. This primary to the general principles of which fundamental rights form part.

308. That primary to the level of Community law would not, however, extend to primary law, in particular to the general principles of which fundamental rights form part.

310. Article 306(2) EC provides that agreements concluded under the conditions set out in that article are to be binding on the institutions of the Community and on Member States.

309. That interpretation is supported by Article 306(1) EC, which provides that an international agreement shall not be binding on the Community unless it is in accordance with Community law, which includes the general principles of which fundamental rights form part.
According to the Commission, so long as under that system of sanctions the individuals or entities involved in the activities referred to in Article 1 of the contested regulation, as amended, committed or are still committing such activities or as far as the United Nations is concerned, the effects of those activities are still felt, the measures taken against them, are intended to prevent them from continuing those activities.

Furthermore, given the in the context of the decisions of the Security Council, it is necessary to examine the United Kingdom's cross-appeal on this point either.

Concerning the actions before the Court of First Instance

As provided in the second sentence of the first paragraph of Article 61 of the Statute of the Court of First Instance, when it quashes the decision of the Court of First Instance, may give final judgment in the matter where the state of proceedings so permits.

In this regard, in the light of the actual circumstances, it is appropriate to examine the claims made by Mr. Yusuf and Al Barakaat, with regard to the review of the contested regulation in the light of the rules forming part of the general principles of Community law, the latter part of those judgments must also be set aside.

In the circumstances, the Court considers that the action for annulment of the contested regulation brought by the appellants is ready for judgment and that it is necessary to give final judgment in them.

The Court of First Instance erred in law, therefore, when it held, in paragraphs 212 to 231 of its judgment on 24 December 2006, that the rights of the defence, in particular the right to examination, to be heard, and the right to effective judicial review of those rights, were patently not respected.

The Court of First Instance erred, therefore, when it review forming part of the United Nations legal system, the Court must not intervene in any way whatsover.

It follows from the foregoing that the Community judicature must, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of the contested regulation in the light of the fundamental rights laid down by the EC Treaty, appears unjustified, for clearly that right to be heard, and the right to effective judicial review of those rights, were patently not respected.

The Guidelines of the Sanctions Committee, as last amended on 12 February 2007, make it plain that an applicant submitting a request for removal from the list may in no way assert his rights himself during the procedure before the Sanctions Committee or be represented for that purpose, the Government of his State of residence or of citizenship alone having the right to submit observations on that request.

Moreover, those Guidelines do not require the Sanctions Committee to communicate to the competent authorities of the individuals or entities concerned having no real opportunity of asserting their rights and that committee taking its decisions by consensus, each of its members having a right of veto.

In the light of these considerations, the Court of First Instance erred in law, therefore, when it held, in paragraphs 212 to 231 of its judgment on 24 December 2006, that the rights of the defence, in particular the right to examination, to be heard, and the right to effective judicial review of those rights, were patently not respected.

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The effectiveness of the measures for the freezing of funds as they were imposed on the appellants by the contested regulation.
It has next to be pointed out that the Council at no time informed the appellants of the evidence adduced against them that allegedly justified the inclusion of their names in Annex I to the contested regulation or, at any rate, as late as after the contested regulation had been brought before the Community judicature. Since then, it has not provided for the appellants the right to be heard on that evidence. Therefore, the appellants were not entitled to the right to a hearing. It is true that Regulation No 761/2001 as amended by Regulations Nos 2062/2001 and 2199/2001, which aims at further regulating restrictive measures and the Commission’s right to derogate from those measures in exceptional circumstances, also sets out, in the terms of Article 5 thereof, that any person or entity whose name has been included for the first time in Annex I to the contested regulation and to whom restrictive measures are addressed to defend their rights in the best possible manner the rights of defence and the right to an effective legal remedy, the appellants were also unable to defend the principles of security and terrorism. The Court cannot, therefore, do other than find that it is not able to undertake the review of the entire Regulation in the context of the present case. Nor has the obligation to inform the appellants of the evidence adduced against them that allegedly justified the inclusion of their names in Annex I to the contested regulation been fulfilled at any stage of the proceedings. As the Court of First Instance stated in paragraph 308 of its judgment in the case Yusuf and Al Barakaat, such prior measures as those imposed on the applicant by reason of Article 26(4) of the Treaty cannot, therefore, be required to communicate those grounds beforehand. As a result, the Community judicature was not in a position to make its own findings on that evidence. The appellants' rights of defence, in particular the right to be heard, were not respected, which has had the further consequence that the principle of effective judicial protection has been infringed. It follows from all the foregoing considerations that the pleas in law raised by Mr Kadi and Al Barakaat in support of their actions for annulment of the contested regulation and alleging breach of their rights of defence and of the principle of effective judicial protection are well founded. It therefore follows that the contested regulation is annulled in so far as it concerns the appellants.

Restrictive measures such as those imposed by the contested regulation escape all review by the Community judicature once it has been claimed that the act laying them down concerns national security and terrorism. Such restrictions in fact correspond to objectives of public interest pursued by the Community and of its Member States which may militate against the communication of certain matters to the persons concerned and, therefore, against their being heard on those matters.
462

Giulia and ERSA, paragraph 119 and case-law cited; see also, to that effect in the context of a system of restrictive measures, Bosphorus, paragraph 21).

356 In order to assess the extent of the fundamental right to respect for property, a general principle of Community law, accounted is to be taken of, in particular, Article 1 of the First Additional Protocol to the ECHR, which enshrines that right.

357 Next, it falls to be examined whether the freezing measure provided by the contested regulation amounts to disproportionate and intolerable interference impairing the very substance of the fundamental right to respect for the property of persons who, like Mr Kadi, are mentioned in the list set out in Annex I to that regulation.

358 That freezing measure constitutes a temporary precautionary measure which is not supposed to deprive those persons of their property. It does, however, undeniably entail a restriction of the exercise of Mr Kadi's right to property that must, moreover, be classified as considerable, having regard to the general application of the freezing measure and the fact that it has been applied to him since 20 October 2001.

359 The question therefore arises whether that restriction of the exercise of Mr Kadi's right to property can be justified.

360 In this respect, according to the case-law of the European Court of Human Rights, there must also exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Court must determine whether a fair balance has been struck between the demands of the public interest and the interest of the individuals concerned. In so doing, the Court recognises that the legislature enjoys a wide margin of appreciation, with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the public interest for the purpose of achieving the object of the law in question (see, to that effect, in particular, European Court of Human Rights, judgment in J.A. Pye (Oxford) Ltd. and J.A. Pye (Oxford) Land Ltd. v. United Kingdom of 30 August 2007, Reports of Judgments and Decisions 2007-0000, §§ 55 and 75).

As the Court has already held in connection with another Community system of restrictive measures of an economic nature also giving effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations, the importance of the aims pursued by a Community act is such as to justify negative consequences, even of a substantial nature, for some operators, including those who are in no way responsible for the situation which led to the adoption of the measures in question, but who find themselves affected, particularly as regards their property rights (see, to that effect, Bosphorus, paragraphs 22 and 23).

362 In the case in point, the restrictive measures laid down by the contested regulation contribute to the implementation, at Community level, of the restrictive measures decided on by the Security Council against Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and other individuals, groups, undertakings and entities associated with them.

363 With reference to an objective of general interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified by the Security Council or the Sanctions Committee as being associated with Usama bin Laden, members of the Al-Qaeda organisation and the Taliban cannot per se be regarded as inappropriate or disproportionate (see, to that effect, Bosphorus, paragraph 26, and the judgment of the European Court of Human Rights in Bosphorus Hava Yollan Turizm ve Ticaret Anonim Şirketi v. Ireland, § 167).

364 On this point, it is also to be taken into consideration that the contested regulation, in the version amended by Regulation No 561/2003, adopted following Resolution 1452 (2002), provides, among other derogations and exemptions, that, on a request made by an interested person, and unless the Sanctions Committee expressly objects, the competent national authorities may declare the freezing of funds to be incapable of covering the funds necessary to cover basic expenses, including payments for foodstuffs, rent, medicines and medical treatment, taxes or public utility charges. In addition, funds necessary for any 'extraordinary expense' whatsoever may be unfrozen, on the express authorisation of the Sanctions Committee.

365 It is further to be noted that the resolutions of the Security Council to which the contested regulation is intended to give effect provide for a mechanism for the periodic re-examination of the general system of measures they enact and also for a procedure enabling the persons concerned at any time to submit their case to the Sanctions Committee for re-examination, by means of a request that may now be made direct to the Committee at what is called the 'focal' point.

366 It must therefore be found that the restrictive measures imposed by the contested regulation constitute restrictions of the right to property which might, in principle, be justified.

367 In addition, it must be considered whether, when that regulation was applied to Mr Kadi, his right to property was respected in the circumstances of the case.

368 It is to be borne in mind in this respect that the applicable procedures must also afford the person concerned a reasonable opportunity of putting his case to the competent authorities. In order to ascertain whether this condition, which constitutes a procedural requirement inherent in Article 1 of Protocol No 1 to the ECHR, has been satisfied, a comprehensive view must be taken of the applicable procedures (see, to that effect, the judgment of the European Court of Human Rights in Jokela v. Finland of 21 May 2002, Reports of Judgments and Decisions 2002-IV, § 45 and case-law cited, and § 55).

369 The contested regulation, in so far as it concerns Mr Kadi, was adopted without furnishing any guarantee enabling him to put his case to the competent authorities, in a situation in which the restriction of his property rights must be regarded as significant, having regard to the general application and actual continuation of the freezing measures affecting him.

370 It must therefore be held that, in the circumstances of the case, the imposition of the restrictive measures laid down by the contested regulation in respect of Mr Kadi, by including him in the list contained in Annex I to that regulation, constitutes an unjustified restriction of his right to property.

371 The plea raised by Mr Kadi that his fundamental right to respect for property has been infringed is therefore well founded.

372 It follows from all the foregoing that the contested regulation, so far as it concerns the appellants, must be annulled.

373 However, the annulment to that extent of the contested regulation with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures imposed by the regulation and which the Community is required to implement, because in the interval preceding its replacement by a new regulation Mr Kadi and Al Barakaat might take steps seeking to prevent measures freezing funds from being applied to them again.

374 Furthermore, in so far as it follows from this judgment that the contested regulation must be annulled so far as concerns the appellants, by reason of breach of principles applicable in the procedure followed when the restrictive measures introduced by that regulation were adopted, it cannot be excluded that, on the merits of the case, the imposition of those measures on the
appellants may for all that prove to be justified.

375 Having regard to those considerations, the effects of the contested regulation, in so far as it includes the names of the appellants in the list forming Annex I thereto, must, by virtue of Article 231 EC, be maintained for a brief period to be fixed in such a way as to allow the Council to remedy the infringements found, but which also takes due account of the considerable impact of the restrictive measures concerned on the appellants' rights and freedoms.

376 In those circumstances, Article 231 EC will be correctly applied in maintaining the effects of the contested regulation, so far as concerns the appellants, for a period that may not exceed three months running from the date of delivery of this judgment.

Costs

377 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The first paragraph of Article 69(4) provides that the Member States which have intervened in the proceedings are to bear their own costs.

378 Because Mr Kadi and Al Barakaat's appeals must be upheld and because the contested regulation must be annulled in so far as it concerns the appellants, the Council and the Commission must each be ordered to pay, in addition to their own costs, half of those incurred by Mr Kadi and Al Barakaat, both at first instance and in the present proceedings, in accordance with the forms of order sought to that effect by the appellants.

379 The United Kingdom of Great Britain and Northern Ireland is to bear its own costs both at first instance and in the appeals.

380 The Kingdom of Spain, the French Republic and the Kingdom of the Netherlands are to bear their own costs relating to the appeals.

On those grounds, the Court (Grand Chamber) hereby:


2. Annuls Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, in so far as it concerns Mr Kadi and the Al Barakaat International Foundation;

3. Orders the effects of Regulation No 881/2002 to be maintained, so far as concerns Mr Kadi and the Al Barakaat International Foundation, for a period that may not exceed three months running from the date of delivery of this judgment;

4. Orders the Council of the European Union and the Commission of the European Communities each to pay, in addition to their own costs, half of those incurred by Mr Kadi and Al Barakaat International Foundation both at first instance and in these appeals;

5. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs both at first instance and in these appeals;

6. Orders the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands to bear their own costs.

Signatures

* Languages of the case: English and Swedish.
Documents

1. An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping 470

2. Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the 484

   (A/55/305, S/2000/809)

4. Secretary-General’s Bulletin: Observance by United Nations forces of international 536
   humanitarian law, 1999 (ST/SGB/1999/13)
An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping
Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, 1992
(A/47/277, S/24111)
3. In these past months a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter - a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, "social progress and better standards of life in larger freedom". This opportunity must not be squandered. The Organization must never again be crippled as it was in the era that has now passed.

4. I welcome the invitation of the Security Council, early in my tenure as Secretary-General, to prepare this report. It draws upon ideas and proposals transmitted to me by Governments, regional agencies, non-governmental organizations, and institutions and individuals from many countries. I am grateful for these, even as I emphasize that the responsibility for this report is my own.

5. The sources of conflict and war are pervasive and deep. To reach them will require our utmost effort to enhance respect for human rights and fundamental freedoms, to promote sustainable economic and social development for wider prosperity, to alleviate distress and to curtail the existence and use of massively destructive weapons. The United Nations Conference on Environment and Development, the largest summit ever held, has just met at Rio de Janeiro. Next year will see the second World Conference on Human Rights. In 1994 Population and Development will be addressed. In 1995 the World Conference on Women will take place, and a World Summit for Social Development has been proposed. Throughout my term as Secretary-General I shall be addressing all these great issues. I hear them all in mind as, in the present report, I turn to the problems that the Council has specifically requested I consider: preventive diplomacy, peacemaking and peace-keeping - to which I have added a closely related concept, post-conflict peace-building.

6. The manifest desire of the membership to work together is a new source of strength in our common endeavour. Success is far from certain, however. While my report deals with ways to improve the Organization's capacity to pursue and preserve peace, it is crucial for all Member States to bear in mind that the search for improved mechanisms and techniques will be of little significance unless this new spirit of commonality is propelled by the will to take the hard decisions demanded by this time of opportunity.

7. It is therefore with a sense of moment, and with gratitude, that I present this report to the Members of the United Nations.

I. THE CHANGING CONTEXT

8. In the course of the past few years the immense ideological barrier that for decades gave rise to distrust and hostility - and the terrible tools of destruction that were their inseparable companions - has collapsed. Even as the issues between States north and south grow more acute, and call for attention at the highest levels of government, the improvement in relations between States east and west affords new possibilities, some already realized, to meet successfully threats to common security.
9. Authoritarian regimes have given way to more democratic forces and responsive Governments. The form, scope and intensity of these processes differ from Latin America to Africa to Europe to Asia, but they are sufficiently similar to indicate a global phenomenon. Parallel to these political changes, many States are seeking more open forms of economic policy, creating a world-wide sense of dynamism and movement.

10. To the hundreds of millions who gained their independence in the surge of decolonization following the creation of the United Nations, have been added millions more who have recently gained freedom. Once again new States are taking their seats in the General Assembly. Their arrival reconfirms the importance and indispensability of the sovereign State as the fundamental entity of the international community.

11. We have entered a time of global transition marked by uniquely contradictory trends. Regional and continental associations of States are evolving ways to deepen cooperation and ease some of the contentious characteristics of sovereign and nationalistic rivalries. National boundaries are blurred by advanced communications and global commerce, and by the decisions of States to yield some sovereign prerogatives to larger, common political associations. At the same time, however, fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife. Social peace is challenged on the one hand by new assertions of discrimination and exclusion and, on the other, by acts of terrorism seeking to undermine evolution and change through democratic means.

12. The concept of peace is easy to grasp; that of international security is more complex, for a pattern of contradictions has arisen here as well. As nuclear Power and other threats to security increase and conventional arms continue to be amassed in many parts of the world. As racism becomes recognized for the destructive force it is and as apartheid is being dismantled, new racial tensions are rising and finding expression in violence. Technological advances are altering the nature and the expectation of life all over the globe. The revolution in communications has united the world in awareness in aspiration and in greater solidarity against injustice. But progress also brings new risks for stability: ecological damage, disruption of family and community life, greater intrusion into the lives and rights of individuals.

13. This new dimension of insecurity must not be allowed to obscure the continuing and devastating problems of unchecked population growth, crushing debt burdens, barriers to trade, drugs and the growing disparity between rich and poor. Poverty, disease, famine, oppression and despair abound, joining to produce 17 million refugees, 20 million displaced persons and massive migrations of peoples within and beyond national borders. These are both sources and consequences of conflict that require the ceaseless attention and the highest priority in the efforts of the United Nations. A porous ozone shield could pose a greater threat to an exposed population than a hostile army. Drought and disease can decimate no less mercilessly than the weapons of war. So at this moment of renewed opportunity, the efforts of the Organisation to build peace, stability and security must encompass matters beyond military threats in order to break the cycle of strife and warfare that have characterized the past. But armed conflicts today, as they have throughout history, continue to bring fear and horror to humanity, requiring our urgent involvement to try to prevent, contain and bring them to an end.

14. Since the creation of the United Nations in 1945, over 100 major conflicts around the world have left some 20 million dead. The United Nations was rendered powerless to deal with many of these crises because of the vetoes - 270 of them - cast in the Security Council, which were a vivid expression of the divisions of that period.

15. With the end of the cold war there have been no such vetoes since 31 May 1990, and demands on the United Nations have surged. Its security arm, once disabled by circumstances it was not created or equipped to control, has emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace. Our aims must be:

- To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results;
- Where conflict erupts, to engage in peacemaking aimed at resolving the issues that have led to conflict;
- Through peacekeeping, to work to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peacemakers;
- To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war;
- At the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression. It is possible to discern an increasingly common moral perception that spans the world's nations and peoples, and which is finding expression in international law, many owing their genesis to the work of this Organization.

16. This wider mission for the world Organization will demand the concerted attention and effort of individual States, of regional and non-governmental organizations and of all of the United Nations system, with each of the principal organs functioning in the balance and harmony that the Charter requires. The Security Council has been assigned by all Member States the primary responsibility for the maintenance of international peace and security under the Charter. In its broadest sense this responsibility must be shared...
by the General Assembly and by all the functional elements of the world Organisation. Each has a special and indispensable role to play in an integrated approach to human security. The Secretary-General's contribution rests on the pattern of trust and cooperation established between him and the deliberative organs of the United Nations.

17. The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. Commerce, communications and environmental matters transcend administrative borders; but inside those borders is where individuals carry out the first order of their economic, political and social lives. The United Nations has not closed its door. Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve.

18. One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic. The League of Nations provided a machinery for the international protection of minorities. The General Assembly soon will have before it a declaration on the rights of minorities. That instrument, together with the increasingly effective machinery of the United Nations dealing with human rights, should enhance the situation of minorities as well as the stability of States.

19. Globalism and nationalism need not be viewed as opposing trends, doomed to a conflict of extremes. The healthy globalism of contemporary life requires in the first instance solid identities and fundamental freedoms. The sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead. Respect for democratic principles at all levels of social existence is crucial: in communities, within States and within the community of States. For constant duty should be to maintain the integrity of each while finding a balanced design for all.

II. DEFINITIONS

20. The terms preventive diplomacy, peacemaking and peace-keeping are integrally related and as used in this report are defined as follows:

Preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.

/...
Measures to build confidence

24. Mutual confidence and good faith are essential to reducing the likelihood of conflict between States. Many such measures are available to Governments that have the will to employ them. Systematic exchange of military missions, formation of regional or subregional risk reduction centres, arrangements for the free flow of information, including the monitoring of regional arms agreements, are examples. I ask all regional organizations to consider what further confidence-building measures might be applied in their areas and to inform the United Nations of the results. I will undertake periodic consultations on confidence-building measures with parties to potential, current or past disputes and with regional organizations, offering such advisory assistance as the Secretariat can provide.

Fact-finding

25. Preventive steps must be based upon timely and accurate knowledge of the facts. Beyond this, an understanding of developments and global trends, based on sound analysis, is required. And the willingness to take appropriate preventive action is essential. Given the economic and social roots of many potential conflicts, the information needed by the United Nations must encompass economic and social trends as well as political developments that may lead to dangerous tensions.

(a) An increased resort to fact-finding is needed, in accordance with the Charter, initiated either by the Secretary-General, to enable him to meet his responsibilities under the Charter, including Article 99, or by the Security Council or the General Assembly. Various forms may be employed selectively as the situation requires. A request by a State for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay.

(b) Contacts with the Governments of Member States can provide the Secretary-General with detailed information on issues of concern. I ask that all Member States be ready to provide the information needed for effective preventive diplomacy. I will supplement my own contacts by regular: sending senior officials on missions for consultations in capitals or other locations. Such contacts are essential to gain insight into a situation and to assess its potential ramifications.

(3) Formal fact-finding can be mandated by the Security Council or by the General Assembly, either of which may elect to send a mission under its immediate authority or may invite the Secretary-General to take the necessary steps, including the designation of a special envoy. In addition to collecting information on which a decision for further action can be taken, such a mission can in some instances help to defuse a dispute by its presence, indicating to the parties that the Organization, and in particular the Security Council, is actively seized of the matter as a present or potential threat to international security.

26. In exceptional circumstances the Council may meet away from Headquarters as the Charter provides, in order not only to inform itself directly, but also to bring the authority of the Organization to bear on a given situation.

Early warning

"In recent years the United Nations system has been developing a valuable network of early warning systems concerning environmental threats, the risk of nuclear accident, natural disasters, mass movements of populations, the threat of famine and the spread of disease. There is a need, however, to strengthen arrangements in such a manner that information from these sources can be synthesized with political indicators to assess whether a threat to peace exists and to analyse what action might be taken by the United Nations to alleviate it. This is a process that will continue to require the close cooperation of the various specialized agencies and functional offices of the United Nations. The analyses and recommendations for preventive action that emerge will be made available by me, as appropriate, to the Security Council and other United Nations organs. I recommend in addition that the Security Council invites the reinvigorated and restructured Economic and Social Council to provide reports, in accordance with Article 65 of the Charter, on those economic and social developments that may, unless mitigated, threaten international peace and security.

27. Regional arrangements and organizations have an important role in early warning. I seek regional organizations that have not yet sought observer status at the United Nations to do so and to be linked, through appropriate arrangements, with the security mechanisms of this Organization.

Preventive deployment

28. United Nations operations in areas of crisis have generally been established after conflict has occurred. The time has come to plan for circumstances warranting preventive deployment, which could take place in a variety of instances and ways. For example, in conditions of national crisis there could be preventive deployment at the request of the Government or all parties concerned, or with their consent; in inter-State disputes such deployment could take place when two countries feel that a United Nations presence on both sides of their border can discourage hostilities; furthermore, preventive deployment could take place when a country feels threatened and requests the deployment of an appropriate United Nations presence along its side of the border alone. In each situation, the mandate and composition of the United Nations presence would need to be carefully defined and be clear to all.

29. In conditions of crisis within a country, when the Government requests or all parties consent, preventive deployment could help in a number of ways to alleviate suffering and to limit or control violence. Humanitarian assistance, impartially provided, could be of critical importance; assistance in maintaining security, whether through military, police or civic
personnel, could save lives and develop conditions of safety in which negotiations can be held; the United Nations could also help inconciliation efforts if this should be the wish of the parties. In certain circumstances, the United Nations may well need to draw upon the specialized skills and resources of various parts of the United Nations system; such operations may also on occasion require the participation of non-governmental organizations.

30. In these situations of internal crisis the United Nations will need to respect the sovereignty of the State; to do otherwise would not be in accordance with the understanding of Member States in accepting the principles of the Charter. The Organization must remain mindful of the carefully negotiated balance of the guiding principles annexed to General Assembly resolution 46/182 of 19 December 1991. Those guidelines stressed, inter alia, that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality; that the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations; and that, in this context, humanitarian assistance should be provided with the consent of the affected country and, in principle, on the basis of an appeal by that country. The guidelines also stressed the responsibility of States to take care of the victims of emergencies occurring on their territory and the need for access to those requiring humanitarian assistance. In the light of these guidelines, a Government's request for United Nations involvement, or consent to it, would not be an infringement of that State's sovereignty or be contrary to Article 2, paragraph 7, of the Charter which refers to matters essentially within the domestic jurisdiction of any State.

31. In inter-State disputes, when both parties agree, I recommend that if the Security Council concludes that the likelihood of hostilities between neighbouring countries could be removed by the preventive deployment of a United Nations presence on the territory of each State, such action should be taken. The nature of the tasks to be performed would determine the composition of the United Nations presence.

32. In cases where one nation fears a cross-border attack, if the Security Council concludes that a United Nations presence on one side of the border, with the consent only of the requesting country, would serve to deter conflict, I recommend that preventive deployment take place. Here again, the specific nature of the situation would determine the mandate and the personnel required to fulfil it.

Demilitarized zones

33. In the past, demilitarized zones have been established by agreement of the parties at the conclusion of a conflict. In addition to the deployment of United Nations personnel in such zones as part of pre-stopping operations, consideration should now be given to the usefulness of such zones as a form of preventive deployment, on both sides of a border, with the agreement of the two parties, as a means of separating potential belligerents, or on one side of the line, at the request of one party, for the purpose of removing any pretence for attack. Demilitarized zones would serve as symbols of the international community's concern that conflict be prevented.

IV. PEACEMAKING

34. Between the tasks of seeking to prevent conflict and keeping the peace lies the responsibility to try to bring hostile parties to agreement by peaceful means. Chapter VI of the Charter sets forth a comprehensive list of such means for the resolution of conflict. These have been amplified in various declarations adopted by the General Assembly, including the Manila Declaration of 1982 on the Peaceful Settlement of International Disputes 2/ and the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field. 2/ They have also been the subject of various resolutions of the General Assembly, including resolution 44/21 of 15 November 1989 on enhancing international peace, security and international cooperation in all its aspects in accordance with the Charter of the United Nations. The United Nations has had wide experience in the application of these peaceful means. If conflicts have gone unresolved, it is not because techniques for peaceful settlement were unknown or inadequately. The fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter, and second, in the lack of leverage at the disposal of a third party if this is the procedure chosen. The indifference of the international community to a problem, or the marginalization of it, can also thwart the possibilities of solution. We must look primarily to these areas if we hope to enhance the capacity of the Organization for achieving peaceful settlements.

35. The present determination in the Security Council to resolve international disputes in the manner foreseen in the Charter has opened the way for a more active Council role. With greater unity has come leverage and persuasive power to lead hostile parties towards negotiations. I urge the Council to take full advantage of the provisions of the Charter under which it may recommend appropriate procedures or methods for dispute settlement and, if all the parties to a dispute so request, make recommendations to the parties for a pacific settlement of the dispute.

36. The General Assembly, like the Security Council and the Secretary-General, also has an important role assigned to it under the Charter for the maintenance of international peace and security. As a universal forum, its capacity to consider and recommend appropriate action must be recognized. To that end it is essential to promote its utilization by all Member States so as to bring greater influence to bear in pre-empting or containing situations which are likely to threaten international peace and security.
37. Mediation and negotiation can be undertaken by an individual designated by the Security Council, by the General Assembly or by the Secretary-General. There is a long history of the utilization by the United Nations of distinguished statesmen to facilitate the processes of peace. They can bring a personal prestige that, in addition to their experience, can encourage the parties to enter serious negotiations. There is a wide willingness to serve in this capacity, from which I shall continue to benefit as the need arises. Frequently it is the Secretary-General himself who undertakes the task. While the mediator’s effectiveness is enhanced by strong and evident support from the Council, the General Assembly and the relevant Member States acting in their national capacity, the good offices of the Secretary-General may at times be employed most effectively when conducted independently of the deliberative bodies. Close and continuous consultation between the Secretary-General and the Security Council is, however, essential to ensure full awareness of how the Council’s influence can best be applied and to develop a common strategy for the peaceful settlement of specific disputes.

The World Court

38. The docket of the International Court of Justice has grown fuller but it remains an under-used resource for the peaceful adjudication of disputes. Greater reliance on the Court would be an important contribution to United Nations peacemaking. In this connection, I call attention to the power of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanisms. I recommend that the Secretary-General be authorized, pursuant to Article 96, paragraph 2, of the Charter, to take advantage of the advisory competence of the Court and that other United Nations organs that already enjoy such authorization turn to the Court more frequently for advisory opinions.

39. I recommend the following steps to reinforce the role of the International Court of Justice:

(a) All Member States should accept the general jurisdiction of the International Court under Article 36 of its Statute, without any reservation, before the end of the United Nations Decade of International Law in the year 2000. In instances where domestic structures prevent this, States should agree bilaterally or multilaterally to a comprehensive list of matters they are willing to submit to the Court and should withdraw their reservations to its jurisdiction in the dispute settlement clauses of multilateral treaties;

(b) When submission of a dispute to the full Court is not practical, the Chambers jurisdiction should be used;

(c) States should support the Trust Fund established to assist countries unable to afford the cost involved in bringing a dispute to the Court, and such countries should take full advantage of the Fund in order to resolve their disputes.

Amelioration through assistance

40. Peacemaking is at times facilitated by international action to ameliorate circumstances that have contributed to the dispute or conflict. If, for instance, assistance to displaced persons within a society is essential to a solution, then the United Nations should be able to draw upon the resources of all agencies and programmes concerned. At present, there is no adequate mechanism in the United Nations through which the Security Council, the General Assembly or the Secretary-General can mobilize the resources needed for such positive leverage and engage the collective efforts of the United Nations system for the peaceful resolution of conflict. I have raised this concept in the Administrative Committee on Coordination, which brings together the executive heads of United Nations agencies and programmes; we are exploring methods by which the inter-agency system can improve its contribution to the peaceful resolution of disputes.

Sanctions and special economic problems

41. In circumstances when peacemaking requires the imposition of sanctions under Article 41 of the Charter, it is important that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed. I recommend that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties. Such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council.

Use of military force

42. It is the essence of the concept of collective security as contained in the Charter that if peaceful means fail, the measures provided in Chapter VII should be used, on the decision of the Security Council, to maintain or restore international peace and security in the face of a "threat to the peace, breach of the peace, or act of aggression". The Security Council has not so far made use of the most coercive of these measures - the action by military force foreseen in Article 42. In the situation between Iraq and Kuwait, the Council chose to authorize Member States to take measures on its behalf. The Charter, however, provides a detailed approach which now merits the attention of all Member States.

43. Under Article 42 o . Charter, the Security Council has the authority to take military action to maintain or restore international peace and security. While such action should only be taken when all peaceful means have failed, the option of taking it is essential to the credibility of the United Nations as a guarantor of international security. This will require bringing into being, through negotiations, the special agreements foreseen in Article 43 of the Charter, whereby Member States undertake to make armed forces, assistance and facilities available to the Security Council for the
purposes stated in Article 42, not only on an ad hoc basis but on a permanent basis. Under the political circumstances that now exist for the first time since the Charter was adopted, the long-standing obstacles to the conclusion of such special agreements should no longer prevail. The ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of the peace since a potential aggressor would know that the Council had at its disposal a means of response. Forces under Article 43 may perhaps never be sufficiently large or well equipped to deal with a threat from a major army equipped with sophisticated weapons. They would be useful, however, in meeting any threat posed by a military force of a lesser order. I recommend that the Security Council initiate negotiations in accordance with Article 43, supported by the Military Staff Committee, which may be augmented if necessary by other in accordance with Article 47, paragraph 2, of the Charter. It is my view that the role of the Military Staff Committee should be seen in the context of Chapter VII, and not that of the planning or conduct of peace-keeping operations.

Peace-enforcement units

44. The mission of forces under Article 43 would be to respond to outright aggression, imminent or actual. Such forces are not likely to be available for some time to come. Cease-fires have often been agreed to but not complied with, and the United Nations has sometimes been called upon to send forces to restore and maintain the cease-fire. This task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors. I recommend that the Council consider the utilisation of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available on call and would consist of troops that have volunteered for such service and would therefore be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorisation of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General. I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter. Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression or with the military personnel which Governments may agree to keep on standby for possible contribution to peace-keeping operations.

45. Just as diplomacy will continue across the span of all the activities dealt with in the present report, so there may not be a dividing line between peacekeeping and peacekeeping. Peacemaking is often a prelude to peacekeeping - just as the deployment of a United Nations presence in the field may expand possibilities for the prevention of conflict, facilitate the work of peacemaking and in many cases serve as a prerequisite for peace-building.

V. PEACE-KEEPING

46. Peace-keeping can rightly be called the invention of the United Nations. It has brought a degree of stability to numerous areas of tension around the world.

Increasing demands

47. Thirteen peace-keeping operations were established between the years 1945 and 1967; 13 others since then. An estimated 528,000 military, police and civilian personnel had served under the flag of the United Nations until January 1992. Over 800 of them from 43 countries have died in the service of the Organization. The costs of these operations have aggregated some $83.3 billion till 1992. The unpaid arrears towards them stand at over $800 million, which represent a debt owed by the Organization to the troop-contributing countries. Peace-keeping operations approved at present are estimated to cost close to $2 billion in the current 12-month period, while patterns of payment are unacceptably slow. Against this, global defence expenditures at the end of the last decade had approached $1 trillion a year, or $2 million per minute.

48. THE CONTRAST BETWEEN the costs of United Nations peace-keeping and the costs of the alternative, war - between the demands of the Organization and the means provided to meet them - would be fanciful were the consequences not so damaging to global stability and to the credibility of the Organization. At a time when nations and peoples increasing are looking to the United Nations for assistance in keeping the peace - and holding it responsible when this cannot be so - fundamental decisions must be taken to enhance the capacity of the Organization in this innovative and productive exercise of its function. I am conscious that the present volume and unpredictability of peace-keeping assessments poses real problems for some Member States. For this reason, I strongly support proposals in some Member States for their peace-keeping contributions to be financed from defence, rather than foreign affairs, budgets and I recommend such action to others. I urge the General Assembly to encourage this approach.

49. The demands on the United Nations for peace-keeping and peace-building operations will in the coming years continue to challenge the capacity, the political and financial will and the creativity of the Secretariat and Member States. Like the Security Council, I welcome the increase and broadening of the tasks of peace-keeping operations.

New departures in peace-keeping

50. The nature of peace-keeping operations has evolved rapidly in recent years. The established principles and practices of peace-keeping have responded flexibly to new demands of recent years, and the basic conditions for success remain unchanged: a clear and practicable mandate; the cooperation of the parties in implementing that mandate; the continuing support of the Security Council; the readiness of Member States to contribute...
the military, police and civilian personnel, including specialists, required to effect United Nations command at Headquarters and in the field; and adequate financial and logistic support. As the international climate has changed and peace-keeping operations are increasingly fielded to help implement settlements that have been negotiated by peacemakers, a new array of demands and problems has emerged regarding logistics, equipment, personnel and finance, all of which could be corrected if Member States so wished and were ready to make the necessary resources available.

**Personnel**

51. Member States are keen to participate in peace-keeping operations. Military observers and infantry are invariably available in the required numbers, but logistic units present a greater problem, as fewer units can afford to spare such units for an extended period. Member States were requested in 1990 to state what military personnel they were in principle prepared to make available; few replied. I reiterate the request to all Member States to reply frankly and promptly. Stand-by arrangements should be confirmed, as appropriate, through exchanges of letters between the Secretariat and Member States concerning the kind and number of skilled personnel they will be prepared to offer the United Nations as the needs of new operations arise.

52. Increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugees and humanitarian aid specialists and police play a central role as the military. Police personnel have proved increasingly difficult to obtain in the numbers required. I recommend that arrangements be reviewed and improved for training peace-keeping personnel — civilian, police, or military — using the varied capabilities of Member State Governments, of non-governmental organizations and the facilities of the Secretariat. As efforts go forward to include additional States as contributors, some States with considerable potential should focus on language training for police contingents which may serve with the Organization. As for the United Nations itself, special personnel procedures, including incentives, should be instituted to permit the rapid transfer of Secretariat staff members to service with peace-keeping operations. The strength and capability of military staff serving in the Secretariat should be augmented to meet new and heavier requirements.

**Logistics**

53. Not all Governments can provide their battalions with the equipment they need for service abroad. While some equipment is provided by troop-contributing countries, a great deal has to come from the United Nations, including equipment to fill gaps in under-equipped national units. The United Nations has no standing stock of such equipment. Orders must be placed with manufacturers, which creates a number of difficulties. A pre-positioned stock of basic peace-keeping equipment should be established, so that at least some vehicles, communications equipment, generators, etc., would be immediately available at the start of an operation. Alternatively,

Governments should commit themselves to keeping certain equipment, specified by the Secretary-General, on stand-by for immediate sale, loan or donation to the United Nations when required.

54. Member States in a position to do so should make air- and sea-lift capacity available to the United Nations free of cost or at lower than commercial rates, as was the practice until recently.

VI. POST-CONFLICT PEACE-BUILDING

55. Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, those may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.

56. In the aftermath of international war, post-conflict peace-building may take the form of concrete cooperative projects which link two or more countries in a mutually beneficial undertaking that can not only contribute to economic and social development but also enhance the confidence that is so fundamental to peace. I have in mind, for example, projects that bring States together to develop agriculture, improve transportation or utilize resources such as water or electricity that they need to share, or joint programmes through which barriers between nations are brought down by means of freer travel, cultural exchanges and mutually beneficial youth and educational projects. Reducing hostile perceptions through educational exchanges and curriculum reform may be essential to forestall a re-emergence of cultural and national tensions which could spark renewed hostilities.

57. In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counterpart of preventive diplomacy, which seeks to avoid the breakdown of peaceful conditions. When conflict breaks out, mutually reinforcing efforts at peacemaking and peace-keeping come into play. Once those have achieved their objectives, only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation. Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence.

58. Increasingly it is evident that peace-building after civil or international strife must address the serious problem of land mines, many tens of millions of which remain scattered in present or former combat zones. De-mining should be emphasized in the terms of reference of peace-keeping operations and is crucially important in the restoration of activity when
peace-building is underway; agriculture cannot be revived without demining and the restoration of transport may require the laying of hard surface roads to prevent re-mining. In such instances, the link becomes evident between peace-keeping and peace-building. Just as demilitarized zones may serve the cause of preventive diplomacy and preventive deployment to avoid conflict, so may demilitarization assist in keeping the peace or in post-conflict peace-building, as a measure for heightening the sense of security and encouraging the parties to turn their energies to the work of peaceful restoration of their societies.

59. There is a new requirement for technical assistance which the United Nations has an obligation to develop and provide when requested. Support for the transformation of deficient national structures and capabilities, and for the strengthening of new democratic institutions. The authority of the United Nations system to act in this field would rest on the consensus that social peace is as important as strategic or political peace. There is an obvious connection between democratic practices - such as the rule of law and transparency in decision-making - and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities.

VI. COOPERATION WITH REGIONAL ARRANGEMENTS AND ORGANIZATIONS

60. The Covenant of the League of Nations, in its Article 21, noted the validity of regional understandings for securing the maintenance of peace. The Charter devotes Chapter VIII to regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action and consistent with the Purposes and Principles of the United Nations. The cold war impaired the proper use of Chapter VIII and indeed, in that era, regional arrangements worked on occasion against resolving disputes in the manner foreseen in the Charter.

61. The Charter deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action which also would contribute to the maintenance of international peace and security. Such associations or entities could include treaty-based organisations, whether created before or after the founding of the United Nations, regional organisations for mutual security and defence, organisations for general regional development or for cooperation on a particular economic, social, or cultural issue of current concern.

62. In this regard, the United Nations has recently encouraged a rich variety of complementary efforts. Just as no two regions or situations are the same, so the design of cooperative work and its division of labour must adapt to the realities of each case with flexibility and creativity. In Africa, three different regional groups - the Organisation of African Unity, the League of Arab States and the Organisation of the Islamic Conference - joined efforts with the United Nations regarding Somalia. In the Asian context, the Association of South-East Asian Nations and individual States from several regions were brought together with the parties to the Cambodian conflict at an international conference in Paris, to work with the United Nations. For El Salvador, a unique arrangement - "The Friends of the Secretary-General" - contributed to agreements reached through the mediation of the Secretary-General. The end of the war in Nicaragua involved a highly complex effort which was initiated by leaders of the region and conducted by individual States, groups of States and the Organization of American States. Efforts undertaken by the European Community and its member States, with the support of States participating in the Conference on Security and Cooperation in Europe, have been of central importance in dealing with the crisis in the Balkans and neighbouring areas.

63. In the past, regional arrangements often were created because of the absence of a universal system for collective security; thus their activities could on occasion work at cross-purposes with the sense of solidarity required for the effectiveness of the world Organization. But in this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the Purposes and Principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.

64. It is not the purpose of the present report to set forth any formal pattern of relationship between regional organisations and the United Nations, or to call for any specific division of labour. What is clear, however, is that regional arrangements or agencies in many cases possess a potential that should be utilized in serving the functions covered in this report: preventive diplomacy, peace-keeping, peacemaking and post-conflict peace-building. Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralisation, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs.

65. Regional arrangements and agencies have not in recent decades been considered in this light, even when originally designed in part for a role in maintaining or restoring peace within their regions of the world. Today a new sense exists that they save contributions to make. Consultations between the United Nations and regional arrangements or agencies could do much to build international consensus on the nature of a problem and the measures required to address it. Regional organisations participating in complementary efforts with the United Nations in joint undertakings would encourage States outside the region to act supportively. And should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lead the weight of the United Nations to the validity of the regional effort. Carried
forward to the spirit of the Charter, and as envisioned in Chapter VIII, the approach outlined here could strengthen a general sense that democratization is being encouraged at all levels in the task of maintaining international peace and security, it being essential to continue to recognize that the primary responsibility will continue to reside in the Security Council.

VIII. SAFETY OF PERSONNEL

66. When United Nations personnel are deployed in conditions of strife, whether for preventive diplomacy, peacemaking, peace-keeping, peace-building or humanitarian purposes, the need arises to ensure their safety. There has been an unconscionable increase in the number of fatalities. Following the conclusion of a cease-fire and in order to prevent further outbreaks of violence, United Nations guards were called upon to assist in volatile conditions in Iraq. Their presence afforded a measure of security to United Nations personnel and supplies and, in addition, introduced an element of reassurance and stability that helped to prevent renewed conflict. Depending upon the nature of the situation, different configurations and compositions of security deployments will need to be considered. As the variety and scale of threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel.

67. Experience has demonstrated that the presence of a United Nations operation has never been sufficient to deter nations from committing acts of violence in areas of danger can never be risk-free; United Nations personnel must expect to go in harm’s way at times. The courage, commitment and idealism shown by United Nations personnel should be respected by the entire international community. Those men and women deserve to be properly recognized and rewarded for the perilous tasks they undertake. Their interests and those of their families must be given due regard and protection.

68. Given the pressing need to afford adequate protection to United Nations personnel engaged in life-endangering circumstances, I recommend that the Security Council, unless it elects immediately to withdraw the United Nations presence in order to preserve the credibility of the Organization, seriously consider what action should be taken towards those who put United Nations personnel in danger. Before deployment takes place, the Council should keep open the option of considering in advance collective measures, possibly including those under Chapter VII when a threat to international peace and security is also involved. To come into effect should the purpose of the United Nations operation systematically be frustrated and hostilities occur.

IX. FINANCING

69. A chasm has developed between the tasks entrusted to this Organization and the financial means provided to it. The truth of the matter is that our vision cannot really extend to the prospect opening before us as long as our financing remains myopic. There are two major areas of concern: the ability of the Organization to function over the longer term; and immediate requirements to respond to a crisis.

70. To remedy the financial situation of the United Nations in all its aspects, my distinguished predecessor repeatedly drew the attention of Member States to the increasingly impossible situation that has arisen and, during the forty-sixth session of the General Assembly, made a number of proposals. These proposals which remain before the Assembly, and with which I am in broad agreement, are the following:

Proposal one. This suggests the adoption of a set of measures to deal with the cash flow problems caused by the exceptionally high level of unpaid contributions as well as with the problem of inadequate working capital reserves:

(a) Charging interest on the amounts of assessed contributions that are not paid on time;

(b) Suspending certain financial regulations of the United Nations to permit the retention of budgetary surpluses;

(c) Increasing the Working Capital Fund to a level of $250 million and endorsing the principle that the level of the Fund should be approximately 25 per cent of the annual assessment under the regular budget;

(d) Establishment of a temporary Peace-keeping Reserve Fund, at a level of $50 million, to meet initial expenses of peace-keeping operations pending receipt of assessed contributions;

(e) Authorization to the Secretary-General to borrow commercially, should other sources of cash be inadequate.

Proposal two. This suggested the creation of a Humanitarian Revolving Fund in the order of $50 million, to be used in emergency humanitarian situations. The proposal has since been implemented.

Proposal three. This suggested the establishment of a United Nations Peace Endowment Fund, with an initial target of $1 billion. The Fund would be created by a combination of assessed and voluntary contributions, with the latter being sought from Governments, the private sector as well as individuals. Once the Fund reached its target level, the proceeds from the investment of its principal would be used to finance the initial costs of authorized peace-keeping operations, other conflict resolution measures and related activities.

71. In addition to these proposals, others have been added in recent months in the course of public discussion. These ideas include: a levy on arms sales that could be related to maintaining an Arms Register by the United Nations; a levy on international air travel, which is dependent on the maintenance of peace; authorization for the United Nations to borrow from the...
World Bank and the International Monetary Fund - for peace and development are interdependent; general tax exemption for contributions made to the United Nations by foundations, businesses and individuals; and changes in the formula for calculating the scale or assessments for peace-keeping operations.

72. As such ideas are debated, a stark fact remains: the financial foundations of the Organization daily grow weaker, debilitating its political will and practical capacity to undertake new and essential activities. This state of affairs must not continue. Whatever decisions are taken on financing the Organization, there is one inscrutable necessity: Member States must pay their assessed contributions in full and on time. Failure to do so puts them in breach of their obligations under the Charter.

73. In these circumstances I deal on the assumption that Member States will be ready to finance operations for peace in a manner commensurate with their present, and welcome, readiness to establish them. I recommend the following:

(a) Immediate establishment of a revolving peace-keeping reserve fund of $50 million;

(b) Agreement that one third of the estimated cost of each new peace-keeping operation be appropriated by the General Assembly as soon as the Security Council decides to establish the operation; this would give the Secretary-General the necessary commitment authority and ensure an adequate cash flow; the balance of the costs would be appropriated after the General Assembly approved the operation’s budget;

(c) Acknowledgement by Member States that, under exceptional circumstances, political and operational considerations may make it necessary for the Secretary-General to employ his authority to place contracts without competitive bidding.

74. Member States wish the Organization to be managed with utmost efficiency and care. I am in full accord. I have taken important steps to streamline the Secretariat in order to avoid duplication and overlap while increasing its productivity. Additional changes and improvements will take place. As regards the United Nations system more widely, I continue to review the situation in consultation with my colleagues in the Administrative Committee on Coordination. The question of assuring financial security to the Organization over the long term is of such importance and complexity that public awareness and support must be heightened. I have therefore asked a select group of qualified persons of high international repute to examine this entire subject and to report to me. I intend to present their advice, together with my comments, for the consideration of the General Assembly, in full recognition of the special responsibility that the Assembly has, under the Charter, for financial and budgetary matters.

X. AN AGENDA FOR PEACE

75. The nations and peoples of the United Nations are fortunate in a way that those of the League of Nations were not. We have been given a second chance to create the world of our Charter that they were denied. With the cold war ended we have drawn back from the brink of a confrontation that threatened the world and, too often, paralysed our Organization.

76. Even as we celebrate our restored possibilities, there is a need to ensure that the lessons of the past four decades are learned and that the errors, or variations of them, are not repeated. For there may not be a third opportunity for our planet which, now for different reasons, remains endangered.

77. The tasks ahead must engage the energy and attention of all components of the United Nations system – the General Assembly and other principal organs, the agencies and programmes. Each has, in a balanced scheme of things, a role and a responsibility.

78. Never again must the Security Council lose the collegiality that is essential to its proper functioning, an attribute that it has gained after such trial. A genuine sense of consensus deriving from shared interests must govern its work, not the threat of the veto or the power of any group of nations. And it follows that agreement among the permanent members must have the deeper support of the other members of the Council, and the membership more widely, if the Council’s decisions are to be effective and endure.

79. The Summit Meeting of the Security Council of 31 January 1992 provided a unique forum for exchanging views and strengthening cooperation. I recommend that the Heads of State and Government of the members of the Council meet in alternate years, just before the general debate commences in the General Assembly. Such sessions would permit exchanges on the challenges and dangers of the moment and stimulate ideas on how the United Nations may best serve to steer change into peaceful courses. I propose in addition that the Security Council continue to meet at the Foreign Minister level, as it has effectively done in recent years, whenever the situation warrants such meetings.

80. Power brings special responsibilities, and temptations. The powerful must resist the dual but opposite calls of unilateralism and isolationism if the United Nations is to succeed. For just as unilateralism at the global or regional level can shake the confidence of others, so can isolationism, whether it results from political choice or constitutional circumstance, enfeeble the global undertaking. Peace at home and the urgency of rebuilding and strengthening our individual societies necessitates peace abroad and cooperation among nations. The endeavours of the United Nations will require the fullest engagement of all of its Members, large and small, if the present renewed opportunity is to be seized.

81. Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the Charter. It requires as well a
We must be guided not by precedents alone, however wise these may be, but by the needs of the future and by the shape and content that we wish to give it.

86. I am committed to broad dialogue between the Member States and the Secretary-General. And I am committed to fostering a full and open interplay between all institutions and elements of the Organization so that the Charter's objectives may not only be better served, but that this Organization may emerge as greater than the sum of its parts. The United Nations was created with a great and courageous vision. Now is the time, for its nations and peoples, and the men and women who serve it, to seize the moment for the sake of the future.

Notes
1/ See S/23509, statement by the President of the Council, section entitled "Peacemaking and peace-keeping".

2/ General Assembly resolution 37/10, annex.

2/ General Assembly resolution 43/51, annex.

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Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, 1995 (A/50/60, S/1995/1)
I. INTRODUCTION

1. On 31 January 1992, the Security Council met for the first time at the level of heads of State or Government. The cold war had ended. It was a time of hope and change and of rising expectations for - and of - the United Nations. The members of the Council asked me to prepare an “analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping” (see S/23500). Five months later, in June 1992, I submitted my report entitled “An Agenda for Peace” (A/47/277-S/24111). It dealt with the three problems the Council had requested me to consider, to which I added the related concept of post-conflict peace-building. It also touched on peace enforcement.

2. In submitting my recommendations on how to improve the Organization’s capacity to maintain peace and security, I said that the search for improved mechanisms and techniques would be of little significance unless the new spirit of commonality that had emerged, of which the Summit was such a clear manifestation, was “propelled by the will to take the hard decisions demanded by this time of opportunity” (ibid., para. 6).

3. Subsequent discussion of “An Agenda for Peace” in the General Assembly, in the Security Council and in Member States’ parliaments established that there was general support for the recommendations I had put forward. That discussion, and the new process initiated in 1994 for the elaboration of “An Agenda for Development” (see A/48/915), have also served to advance international consensus on the crucial importance of economic and social development as the most secure basis for lasting peace.

4. Since the Security Council Summit the pace has accelerated. There have been dramatic changes in both the volume and the nature of the United Nations activities in the field of peace and security. New and more comprehensive concepts to guide those activities, and their links with development work, are emerging. Old concepts are being modified. There have been successes and there have been failures. The Organization has attracted intense media interest, often laudatory, more often critical, and all too often focused on only one or two of the many peace-keeping operations in which it is engaged, overshadowing other major operations and its vast effort in the economic, social and other fields.

5. All this confirms that we are still in a time of transition. The end of the cold war was a major movement of tectonic plates and the after-shocks continue to be felt. But even if the ground beneath our feet has not yet settled, we still live in a new age that holds great promise for both peace and development.

6. Our ability to fulfil that promise depends on how well we can learn the lessons of the Organization’s successes and failures in these first years of the post-cold-war age. Most of the ideas in “An Agenda for Peace” have proved themselves. A few have not been taken up. The purpose of the present position paper, however, is not to revise “An Agenda for Peace” nor to call into question
structures and procedures that have been tested by time. Even less is it intended to be a comprehensive treatise on the matters it discusses. Its purpose is, rather, to highlight selectively certain areas where unforeseen, or only partly foreseen, difficulties have arisen and where there is a need for the Member States to take the "hard decisions" I referred to two and a half years ago.

7. The Organization's half-century year will provide the international community an opportunity to address these issues, and the related, major challenge of elaborating "An Agenda for Development", and to indicate in a comprehensive way the direction the Member States want the Organization to take. The present position paper is offered as a contribution to the many debates I hope will take place during 1995 and perhaps beyond, inside and outside the intergovernmental bodies, about the current performance and future role of our Organization.

II. QUANTITATIVE AND QUALITATIVE CHANGES

8. It is indisputable that since the end of the cold war there has been a dramatic increase in the United Nations activities related to the maintenance of peace and security. The figures speak for themselves. The following table gives them for three dates: 31 January 1988 (when the cold war was already coming to an end); 31 January 1992 (the date of the first Security Council Summit); and today, on the eve of the fiftieth anniversary of the United Nations.

9. This increased volume of activity would have strained the Organization even if the nature of the activity had remained unchanged. It has not remained unchanged, however: there have been qualitative changes even more significant than the quantitative ones.

10. One is the fact that so many of today's conflicts are within States rather than between States. The end of the cold war removed constraints that had inhibited conflict in the former Soviet Union and elsewhere. As a result there has been a rash of wars within newly independent States, often of a religious or ethnic character and often involving unusual violence and cruelty. The end of the cold war seems also to have contributed to an outbreak of such wars in Africa. In addition, some of the proxy wars fuelled by the cold war within States remain unresolved. Inter-State wars, by contrast, have become infrequent.

11. Of the five peace-keeping operations that existed in early 1988, four related to inter-state wars and only one (20 per cent of the total) to an intra-state conflict. Of the 21 operations established since then, only 8 have related to inter-state wars, whereas 13 (62 per cent) have related to intra-state conflicts, though some of them, especially those in the former Yugoslavia, have some inter-state dimensions also. Of the 11 operations established since January 1992 all but 2 (82 per cent) relate to intra-state conflicts.

Table. Some statistics on United Nations activities related to peace and security, 1988 to 1994

<table>
<thead>
<tr>
<th>As at 31 January 1988</th>
<th>As at 31 January 1992</th>
<th>As at 16 December 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security Council resolutions adopted in the preceding 12 months</td>
<td>15</td>
<td>53</td>
</tr>
<tr>
<td>Disputes and conflicts in which the United Nations was actively involved in preventive diplomacy or peacemaking in the preceding 12 months</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>Peace-keeping operations deployed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Classical</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Multifunctional</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Military personnel deployed</td>
<td>9 570</td>
<td>11 495</td>
</tr>
<tr>
<td>Civilian police deployed</td>
<td>35</td>
<td>155</td>
</tr>
<tr>
<td>International civilian personnel deployed</td>
<td>1 516</td>
<td>2 206</td>
</tr>
<tr>
<td>Countries contributing military and police personnel</td>
<td>26</td>
<td>56</td>
</tr>
<tr>
<td>United Nations budget for peace-keeping operations (on an annual basis) (millions of United States dollars)</td>
<td>230.4</td>
<td>1 689.6</td>
</tr>
<tr>
<td>Countries in which the United Nations had undertaken electoral activities in the preceding 12 months</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Sanctions regimes imposed by the Security Council</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

a/ Projected.
12. The new breed of intra-state conflicts have certain characteristics that present United Nations peace-keepers with new and difficult challenges. These conflicts are partly characterized by the fact that they are not exclusively armed clashes between conventional military units of the state, but cross-cut the entire society. They do not involve military opposition, but involve the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, breakdown of law and order, and general anarchy. These conflicts involve the mobilization of forces in ways that go beyond military and humanitarian tasks and must include the promotion of national reconciliation and the re-establishment of effective government.

13. Another feature of such conflicts is the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, breakdown of law and order, and general anarchy. These conflicts involve the mobilization of forces in ways that go beyond military and humanitarian tasks and must include the promotion of national reconciliation and the re-establishment of effective government.

14. Peace-keeping in such contexts is far more complex and more expensive than when its tasks were mainly to monitor cease-fires and control buffer zones with the consent of the states involved in the conflict. Peace-keeping today can involve constant danger.

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16. I cannot praise too highly or adequately express my gratitude and admiration for the courage and sacrifice of United Nations personnel, military and civilian, in the new era of challenge to peace-keeping operations. Many must persevere despite the loss of family members and friends. It has been estimated by an overburdened government, that in field deployment, the cost of the peace-keeping operation is approximately twice the cost of the operation's civilian staff.

17. This has led to the recognition by the United Nations that there are new and difficult challenges in peace-keeping operations. The use of force is authorized under Chapter VII of the United Nations Charter, and the United Nations has the responsibility to keep the peace, to maintain law and order, and to protect the civilian population.

18. Peace-keeping in such contexts is far more complex and more expensive than when its tasks were mainly to monitor cease-fires and control buffer zones with the consent of the states involved in the conflict. Peace-keeping today can involve constant danger.

19. Peace-keeping in such contexts is far more complex and more expensive than when its tasks were mainly to monitor cease-fires and control buffer zones with the consent of the states involved in the conflict. Peace-keeping today can involve constant danger.
political field. As I pointed out in "An Agenda for Development" (A/48/935), only sustained efforts to resolve underlying socio-economic, cultural and humanitarian problems can place an achieved peace on a durable foundation.

III. INSTRUMENTS FOR PEACE AND SECURITY

23. The United Nations has developed a range of instruments for controlling and resolving conflicts between and within States. The most important of them are preventive diplomacy and peacemaking; peace-keeping; peace-building; disarmament; sanctions; and peace enforcement. The first three can be employed only with the consent of the parties to the conflict. Sanctions and enforcement, on the other hand, are coercive measures and thus, by definition, do not require the consent of the party concerned. Disarmament can take place on an agreed basis or in the context of coercive action under Chapter VII.

24. The United Nations does not have or claim a monopoly of any of these instruments. All can be, and most of them have been, employed by regional organizations, by ad hoc groups of States or by individual States, but the United Nations has unparalleled experience of them and it is to the United Nations that the international community has turned increasingly since the end of the cold war. The United Nations system is also better equipped than regional organizations or individual Member States to develop and apply the comprehensive, long-term approach needed to ensure the lasting resolution of conflicts.

25. Perceived shortcomings in the United Nations performance of the tasks entrusted to it have recently, however, seemed to incline Member States to look for other means, especially, but not only, sanctions and enforcement. This is as true of inter-state conflicts as it is of internal ones, even though United Nations action on the former is fully within the Charter, whereas in the latter case it must be reconciled with Article 2, paragraph 7.

26. It is evidently better to prevent conflicts through early warning, quiet diplomacy and, in some cases, preventive deployment than to have to undertake major politico-military efforts to resolve them after they have broken out. The Security Council's declaration of 31 January 1992 (S/23500) mandated me to give priority to preventive and peacemaking activities. Accordingly created a Department of Political Affairs to handle a range of political functions that had previously been performed in various parts of the Secretariat. That Department has since passed through successive phases of restructuring and is now organized to follow political developments worldwide, so that it can provide early warning of impending conflicts and analyze possibilities for preventive action by the United Nations, as well as for action to help resolve existing conflicts.

27. Experience has shown that the greatest obstacle to success in these endeavours is not, as is widely supposed, lack of information, analytical capacity or ideas for United Nations initiatives. Success is often blocked at the outset by the reluctance of one or other of the parties to accept United Nations help. This is as true of inter-state conflicts as it is of internal ones, even though United Nations action on the former is fully within the Charter, whereas in the latter case it must be reconciled with Article 2, paragraph 7.

28. Collectively Member States encourage the Secretary-General to play an active role in this field; individually they are often reluctant that he should do so when they are a party to the conflict. It is difficult to know how to overcome this reluctance. Clearly the United Nations cannot impose its preventive and peacemaking services on Member States who do not want them. Legally and politically their request for, or at least acquiescence in, United Nations action is a sine qua non. The solution can only be long-term. It may lie in creating a climate of opinion, or ethos, within the international community in which the norm would be for Member States to accept an offer of United Nations good offices.

29. There are also two practical problems that have emerged in this field. Given Member States' frequently expressed support for preventive diplomacy and peacemaking, I take this opportunity to recommend that early action be taken to resolve them.

30. The first is the difficulty of finding senior persons who have the diplomatic skills and who are willing to serve for a while as special representatives or special envoys of the Secretary-General. As a result of the streamlining of the senior levels of the Secretariat, the extra capacity that was there in earlier years no longer exists.

31. The second problem relates to the establishment and financing of small field missions for preventive diplomacy and peacemaking. Accepted and well-tried procedures exist for such action in the case of peace-keeping operations. The same is required in the preventive and peacemaking field. Although special envoys can achieve much on a visiting basis, their capacity is greatly enhanced if continuity can be assured by the presence on the ground of a small support mission on a full-time basis. There is no clear view amongst Member States about whether legislative authority for such matters rests with the Security Council or the General Assembly, nor are existing budgetary procedures well-geared to meet this need.

32. Two solutions are possible. The first is to include in the regular budget a contingency provision, which might be in the range of $25 million per biennium, for such activities. The second would be to enlarge the existing provision for unforeseen and extraordinary activities and to make it available for all preventive and peacemaking activities, not just those related to international peace and security strictly defined.

B. Peace-keeping

33. The United Nations can be proud of the speed with which peace-keeping has evolved in response to the new political environment resulting from the end of the cold war, but the last few years have confirmed that respect for certain basic principles of peace-keeping are essential to its success. Three
particularly important principles are the consent of the parties, impartiality and the non-use of force except in self-defence. Analysis of recent successes and failures shows that in all the successes those principles were respected and in most of the less successful operations one or other of them was not.

34. There are three aspects of recent mandates that, in particular, have led peace-keeping operations to forfeit the consent of the parties, to behave in a way that was perceived to be partial and/or to use force other than in self-defence. These have been the tasks of protecting humanitarian operations during continuing warfare, protecting civilian populations in designated safe areas and pressing the parties to achieve national reconciliation at a pace faster than they were ready to accept. The cases of Somalia and Bosnia and Herzegovina are instructive in this respect.

35. In both cases, existing peace-keeping operations were given additional mandates that required the use of force and therefore could not be combined with existing mandates requiring the consent of the parties, impartiality and the non-use of force. It was also not possible for them to be executed without much stronger military capabilities than had been made available, as is the case in the former Yugoslavia. In reality, nothing is more dangerous for a peace-keeping operation than to ask it to use force when its existing composition, armament, logistic support and deployment deny it the capacity to do so. The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel.

36. International problems cannot be solved quickly or within a limited time. Conflicts the United Nations is asked to resolve usually have deep roots and have defied the peacemaking efforts of others. Their resolution requires patient diplomacy and the establishment of a political process that permits, over a period of time, the building of confidence and negotiated solutions to long-standing differences. Such processes often encounter frustrations and set-backs and almost invariably take longer than hoped. It is necessary to resist the temptation to use military power to speed them up. Peace-keeping and the use of force (other than in self-defence) should be seen as alternative techniques and not as adjacent points on a continuum, permitting easy transition from one to the other.

37. In peace-keeping, too, a number of practical difficulties have arisen during the last three years, especially relating to command and control, to the availability of troops and equipment, and to the information capacity of peace-keeping operations.

38. As regards command and control, it is useful to distinguish three levels of authority:

(a) Overall political direction, which belongs to the Security Council;

(b) Executive direction and command, for which the Secretary-General is responsible;

(c) Command in the field, which is entrusted by the Secretary-General to the chief of mission (special representative or force commander/chief military observer).

The distinctions between these three levels must be kept constantly in mind in order to avoid any confusion of functions and responsibilities. It is as inappropriate for a chief of mission to take upon himself the formulation of his/her mission's overall political objectives as it is for the Security Council or the Secretary-General in New York to decide on matters that require a detailed understanding of operational conditions in the field.

39. There has been an increasing tendency in recent years for the Security Council to micro-manage peace-keeping operations. Given the importance of the issues at stake and the volume of resources provided for peace-keeping operations, it is right and proper that the Council should wish to be closely consulted and informed. Procedures for ensuring this have been greatly improved. To assist the Security Council in being informed about the latest developments I have appointed one of my Special Advisers as my personal representative to the Council. As regards information, however, it has to be recognized that, in the inevitable fog and confusion of the near-war conditions in which peace-keepers often find themselves, as for example in Angola, Cambodia, Somalia and the former Yugoslavia, the best advice is to rely on the accuracy of initial reports. Understandably, chiefs of mission have to be more restrained than the media in broadcasting facts that have not been fully substantiated.

40. Troop-contributing Governments, who are responsible to their parliaments and electorates for the safety of their troops, are also understandably anxious to be kept fully informed, especially when the operation concerned is in difficulty. I have endeavoured to allay their concerns by providing them with regular briefings and by engaging them in dialogue about the conduct of the operation in question. Members of the Security Council have been included in such meetings and the Council has recently decided to formalize them. It is important that this should not lead to any blurring of the distinct levels of authority referred to above.

41. Another important principle is unity of command. The experience in Somalia has underlined again the necessity for a peace-keeping operation to function as an integrated whole. That necessity is all the more imperative when the mission is operating in dangerous conditions. There must be no opening for the parties to undermine its cohesion by singling out some contingents for favourable and others for unfavourable treatment. Nor must there be any attempt by troop-contributing Governments to provide guidance, let alone give orders, to their contingents on operational matters. To do so creates division within the force, adds to the difficulties already inherent in a multinational operation and increases the risk of casualties. It can also create an impression amongst the parties that the operation is serving the policy objectives of the contributing Governments rather than the collective will of the United Nations as formulated by the Security Council. Such impressions inevitably undermine an operation's legitimacy and effectiveness.
42. That said, commanders in the field are, as a matter of course, instructed to consult the commanders of national forces and the troop-contributing Governments, whose negotiating partner must always be the Secretariat in New York.

43. As regards the availability of troops and equipment, problems have become steadily more serious. Availability has palpably declined as measured against the Organization's requirements. A number of troop-contributing countries (including UNAMIR, not one of the 19 Governments that at that time had undertaken to have troops on stand-by) have refused to comply with the Organization's requirements. The percentage of troops available as compared to the Organization's requirements has declined to the extent that the United Nations now has even less confidence in its ability to respond to an emergency. This will be a complicated and expensive arrangement, but I believe that the time has come to undertake it.

44. Equipment and adequate training is another area of growing concern. The principle is that contributing Governments are to ensure that their troops arrive with all the equipment needed to be effective. The United Nations needs to be able to respond to emergencies in a timely manner. This will be a complicated and expensive arrangement, but I believe that the time has come to undertake it.

C. Post-conflict peace-building

47. The validity of the concept of post-conflict peace-building has received wide recognition. The measures that can be used to achieve this goal can also be found in the Organization's experience. The measures that can be taken to achieve this goal can also be found in the Organization's experience.

48. The implementation of post-conflict peace-building can be achieved through the following means:

49. The United Nations has undertaken to have a rapid reaction force ready within 48 hours of notification. This force would be composed of troops from a number of different countries. The force would be equipped with the necessary equipment and trained to conduct peace-building operations.

50. The rapid reaction force would be deployed in emergencies on a rotating basis. The United Nations would be responsible for the overall coordination of the operation.

51. The United Nations would also be responsible for the provision of technical and financial assistance to the Governments of the countries in which the rapid reaction force is deployed. The United Nations would also provide a mechanism for monitoring the progress of the operation.

52. The rapid reaction force would be deployed in emergencies on a rotating basis. The United Nations would be responsible for the overall coordination of the operation. The United Nations would also provide a mechanism for monitoring the progress of the operation.

53. The timing and modalities of the deployment of the rapid reaction force are to be determined by the United Nations. The timing and modalities of the deployment of the rapid reaction force are to be determined by the United Nations. The United Nations would also provide a mechanism for monitoring the progress of the operation.

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53. Most of the activities that together constitute peace-building fall within the mandates of the various programmes, funds, offices and agencies of the United Nations system with responsibilities in these areas. The General Assembly has recommended the negotiation of a comprehensive peace-building strategy and the setting up of a Peace-Building Support Office to coordinate activities and ensure the effective deployment of United Nations personnel

54. It may also be necessary in such cases to arrange the transfer of decision-making responsibility from the Security Council, which will have authorized the mandate and deployment of the United Nations peacekeeping force, to the Permanent Five, to ensure the continuity of the United Nations efforts in the field. This may be possible in some instances, if the proposed measures relate to areas such as security, the police or human rights.

55. The more difficult situation is when post-conflict (or preventive) peace-building activities are seen to be necessary in a country where the United Nations does not already have a peace-keeping presence. The United Nations may have to take the initiative of sending a mission, with the Government's agreement, to discuss with it measures it could usefully take.

56. In those circumstances, the early warning responsibility has to lie with United Nations Headquarters, using all the information available to it, to decide whether there are grounds for concern and to recommend to the President of the Security Council, on the advice of the Secretary-General, the need for further action, including the dispatch of a fact-finding mission to investigate the situation.

57. At their Summit on 31 January 1992, the members of the Security Council and the General Assembly emphasized the importance of the fight against drugs, including the role of the United Nations in that field. They endorsed their interest in and concern for disarmament, arms control and arms reduction, and they underlined their view that the United Nations should play a constructive role in efforts to achieve a comprehensive and effective international arms control regime.

58. The General Assembly has recommended the negotiation of a comprehensive international arms control treaty, to be concluded at an early date, which would prohibit the production and testing of nuclear weapons and the production of new delivery systems for chemical and biological weapons. The Assembly has also called for negotiations to ensure the non-proliferation of nuclear weapons, to stop the spread of nuclear weapons to new states and to reduce existing arsenals.

59. The United Nations has also called for negotiations to ensure the non-proliferation of chemical and biological weapons, to stop the spread of these weapons to new states and to reduce existing arsenals.

60. In those circumstances, the early warning responsibility has to lie with United Nations Headquarters, using all the information available to it, to decide whether there are grounds for concern and to recommend to the President of the Security Council, on the advice of the Secretary-General, the need for further action, including the dispatch of a fact-finding mission to investigate the situation.
settlements in which the United Nations has played a peace-keeping role. As a result, the Organization has an unrivalled experience in this field.

Micro-disarmament is equally relevant to post-conflict peace-building: Nicaragua has shown what can be achieved through imaginative programmes to mop up large numbers of small arms circulating in a country emerging from a long civil war. Disarmament can also follow enforcement action, as has been demonstrated in Iraq, where the United Nations Special Commission has played a pioneering role in practical disarmament, in this case involving weapons of mass destruction. All the sanctions regimes include an arms embargo and experience has confirmed the difficulty of monitoring cross-border arms flows into countries at war with their neighbours or within their own borders.

63. There are two categories of light weapons that merit special attention. The first is small arms, which are probably responsible for most of the deaths in current conflicts. The world is awash with them and traffic in them is very difficult to monitor, let alone intercept. The causes are many: the earlier supply of weapons to client States by the parties to the cold war, internal conflicts, competition for commercial markets, criminal activity and the collapse of governmental law and order functions (which both give free rein to the criminals and creates a legitimate reason for ordinary citizens to acquire weapons for their own defence). A pilot advisory mission I dispatched to Mali in August 1994 at the request of that country’s Government has confirmed the exceptional difficulty of controlling the illicit flow of small arms, a problem that can be effectively tackled only on a regional basis. It will take a long time to find effective solutions. I believe strongly that the search should begin now.

64. Secondly, there is the proliferation of anti-personnel mines. One of the positive developments in recent years has been the attention this problem has attracted. The international community has begun to focus its current efforts in the context of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. The International Committee of the Red Cross (ICRC) is developing new protocols to the Convention. Meanwhile work continues to try to deal with the approximately 110 million land-mines that have already been laid. This is an issue that must continue to receive priority attention. I agree with the view that the Register of Conventional Arms is important in these endeavours. In the wider context, it is essential that the Register be developed into a universal and non-discriminatory mechanism.

65. Progress since 1992 in the area of weapons of mass destruction and major weapons systems must be followed by parallel progress in conventional arms, particularly with respect to light weapons. It will take a long time to find effective solutions. I believe strongly that the search should begin now, and I intend to play my full part in this effort.

66. Under Article 41 of the Charter, the Security Council may call upon Member States to apply measures not involving the use of armed force in order to maintain or restore international peace and security. Such measures are commonly referred to as sanctions. This legal basis is recalled in order to underline that the purpose of sanctions is to modify the behaviour of a party that is threatening international peace and security and not to punish or otherwise exact retribution.

67. The Security Council’s greatly increased use of this instrument has brought to light a number of difficulties, relating especially to the objectives of sanctions, the monitoring of their application and impact, and their unintended effects.

68. The objectives for which specific sanctions regimes were imposed have not always been clearly defined. Indeed they sometimes seem to change over time. This combination of imprecision and mutability makes it difficult for the Security Council to agree on when the objectives can be considered to have been achieved and sanctions can be lifted. While recognizing that the Council is a political body rather than a judicial organ, it is of great importance that when it decides to impose sanctions it should at the same time define objective criteria for determining that their purpose has been achieved. If general support for the use of sanctions as an effective instrument is to be maintained, care should be taken to avoid giving the impression that the purpose of imposing sanctions is punishment rather than the modification of political behaviour or that criteria are being changed in order to serve purposes other than those which motivated the original decision to impose sanctions.

69. Experience has been gained by the United Nations of how to monitor the application of sanctions and of the part regional organizations can in some cases play in this respect. However, the task is complicated by the reluctance of Governments, for reasons of sovereignty or economic self-interest, to accept the international monitors or the international investigation of alleged violations by themselves or their nationals. Measuring the impact of sanctions is even more difficult because of the inherent complexity of such measurement and because of restrictions on access to the target country.

70. Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects. They can complicate the work of humanitarian agencies by denying them certain categories of supplies and by obliging them to go through arduous procedures to obtain the necessary exemptions. They can conflict with the development objectives of the Organization and do long-term damage to the productive capacity of the target country. They can have a severe effect on other countries that are neighbours or major economic partners of the target country. They can also defeat their own purpose by provoking a patriotic response against the international community, symbolized by the United Nations, and by rallying the population behind the leaders whose behaviour the sanctions are intended to modify.
71. To state these ethical and practical considerations is not to call in question the need for sanctions in certain cases, but it illustrates the need to consider ways of alleviating the effects described. Two possibilities are proposed for Member States' consideration.

72. The first is to ensure that, whenever sanctions are imposed, provision is made to facilitate the work of humanitarian agencies, work that will be all the more needed as a result of the impact of sanctions on vulnerable groups. It is necessary, for instance, to avoid banning imports that are required by local health industries and to devise a fast track for the processing of applications for exemptions for humanitarian activities.

73. Secondly, there is an urgent need for action to respond to the expectations raised by Article 50 of the Charter. Sanctions are a measure taken collectively by the United Nations to maintain or restore international peace and security. The costs involved in their application, like other such costs (e.g. for peacemaking and peace-keeping activities), should be borne equitably by all Member States and not exclusively by the few who have the misfortune to be neighbours or major economic partners of the target country.

74. In "An Agenda for Peace" I proposed that States suffering collateral damage from the sanctions regimes should be entitled not only to consult the Security Council but also to have a realistic possibility of having their difficulties addressed. For that purpose I recommended that the Security Council devise a set of measures involving the international financial institutions and other components of the United Nations system that could be put in place to address the problem. In response, the Council asked me to seek the views of the heads of the international financial institutions. In their replies, the latter acknowledged the collateral effects of sanctions and expressed the desire to help countries in such situations, but they proposed that this should be done under existing mandates for the support of countries facing negative external shocks and consequent balance-of-payment difficulties. They did not agree that special provisions should be made.

75. In order to address all the above problems, I should like to go beyond the recommendation I made in 1992 and suggest the establishment of a mechanism to carry out the following five functions:

(a) To assess, at the request of the Security Council, and before sanctions are imposed, their potential impact on the target country and on third countries;

(b) To monitor application of the sanctions;

(c) To measure their effects in order to enable the Security Council to fine tune them with a view to maximizing their political impact and minimizing collateral damage;

(d) To ensure the delivery of humanitarian assistance to vulnerable groups;

(e) To explore ways of assisting Member States that are suffering collateral damage and to evaluate claims submitted by such States under Article 50.

76. Since the purpose of this mechanism would be to assist the Security Council, it would have to be located in the United Nations Secretariat. However, it should be empowered to utilize the expertise available throughout the United Nations system, in particular that of the Bretton Woods institutions. Member States will have to give the proposal their political support both at the United Nations and in the intergovernmental bodies of the agencies concerned if it is to be implemented effectively.

F. Enforcement action

77. One of the achievements of the Charter of the United Nations was to empower the Organization to take enforcement action against those responsible for threats to the peace, breaches of the peace or acts of aggression. However, neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale. I believe that it is desirable in the long term that the United Nations develop such a capacity, but it would be folly to attempt to do so at the present time when the Organization is resource-starved and hard pressed to handle the less demanding peacemaking and peace-keeping responsibilities entrusted to it.

78. In 1950, the Security Council authorized a group of willing Member States to undertake enforcement action in the Korean peninsula. It did so again in 1990 in response to aggression against Kuwait. More recently, the Council has authorized groups of Member States to undertake enforcement action, if necessary, to create conditions for humanitarian relief operations in Somalia and Rwanda and to facilitate the restoration of democracy in Haiti.

79. In Bosnia and Herzegovina, the Security Council has authorized Member States, acting nationally or through regional arrangements, to use force to ensure compliance with its ban on military flights in that country's air space, to support the United Nations forces in the former Yugoslavia in the performance of their mandate, including defence of personnel who may be under attack, and to deter attacks against the safe areas. The Member States concerned decided to entrust those tasks to the North Atlantic Treaty Organization (NATO). Much effort has been required between the Secretariat and NATO to work out procedures for the coordination of this unprecedented collaboration. This is not surprising given the two organizations' very different mandates and approaches to the maintenance of peace and security. Of greater concern, as already mentioned, are the consequences of using force, other than for self-defence, in a peace-keeping context.

80. The experience of the last few years has demonstrated both the value that can be gained and the difficulties that can arise when the Security Council entrusts enforcement tasks to groups of Member States. On the positive side, this arrangement provides the Organization with an enforcement capacity it would not otherwise have and is greatly preferable to the unilateral use of force by
Member States without reference to the United Nations. On the other hand, the arrangement can have a negative impact on the Organization's stature and credibility. There is also the danger that the States concerned may claim international legitimacy and approval for forceful actions that were not in fact envisaged by the Security Council when it gave its authorization to them.

Member States so authorized have in recent operations reported more fully and more regularly to the Security Council about their activities.

IV. COORDINATION

81. Just as the United Nations does not claim a monopoly of the instruments discussed above, neither can it alone apply them. All the efforts of the Security Council, the General Assembly and the Secretary-General to control and resolve conflicts need the cooperation and support of other players on the international stage: the Governments that constitute the United Nations membership, regional and non-governmental organizations, and the various funds, programmes, offices and agencies of the United Nations system itself. If United Nations efforts are to succeed, the roles of the various players need to be carefully coordinated in an integrated approach to human security.

82. Governments are central to all the activities discussed in the present position paper. It is they who authorize the activities and finance them. It is they who provide directly the vast majority of the personnel required, as well as most of the equipment. It is they who set the policies of the specialized agencies of the United Nations system and of the regional organizations. It is they whose continuing support, and, as necessary, intervention with the parties, is essential if the Secretary-General is to succeed in carrying out the mandates entrusted to him. It is they who are parties, or at least one of the parties, to each conflict the United Nations is trying to control and resolve.

83. A new trend in recent years has been the establishment of informal groups of Member States, created on an ad hoc basis to support the Secretary-General in the discharge of peacemaking and peace-keeping mandates entrusted to him. They are normally referred to as "Friends of the Secretary-General for ...". They have no formal mandate from the General Assembly or the Security Council and comprise States with a particular interest in the conflict in question. They have material and diplomatic resources that can be used to support the Secretary-General's efforts. Their value to him is as a sounding-board, as a source of ideas and comment and as a diplomatic instrument for bringing influence to bear on the parties.

84. This arrangement has been of value in a number of instances. It is nevertheless necessary to maintain a clear understanding of who is responsible for what. The Secretary-General has the mandate from the relevant intergovernmental body and must remain in the lead. The members of the "Friends" group have agreed to support the Secretary-General at his request. If they take initiatives not requested by the Secretary-General, there is a risk of duplication or overlapping of efforts, which can be exploited by recalcitrant parties. Such initiatives can also raise questions in the intergovernmental body that expects the Secretary-General to retain responsibility for the mandate entrusted to him and to report to that body on his implementation of it.

85. As for regional organizations, Chapter VIII of the Charter defines the role they can play in the maintenance of peace and security. They have much to contribute. Since the Security Council Summit, the United Nations has extended considerably its experience of working with regional organizations in this field. On 1 August 1994, I convened a meeting in New York of the heads of a number of such organizations with which the United Nations had recently cooperated on the ground in peacemaking and peace-keeping. The meeting permitted a useful exchange of views and it is my intention to hold further meetings of this kind.

86. Cooperation between the United Nations and regional organizations takes a number of forms. At least five can be identified:

(a) Consultation: this has been well-established for some time. In some cases it is governed by formal agreements and reports are made to the General Assembly; in other cases it is less formal. The purpose is to exchange views on conflicts that both the United Nations and the regional organization may be trying to solve;

(b) Diplomatic support: the regional organization participates in the peacemaking activities of the United Nations and supports them by diplomatic initiatives (in a manner analogous to groups of "Friends" as described above) and/or by providing technical input, as the Organization for Security and Cooperation in Europe (OSCE) does, for instance, on constitutional issues relating to Abkhazia. In the same way, the United Nations can support the regional organization in its efforts (as it does for OSCE over Nagorny Karabakh);

(c) Operational support: the most developed example is the provision by NATO of air power to support the United Nations Protection Force (UNPROFOR) in the former Yugoslavia. For its part, the United Nations can provide technical advice to regional organizations that undertake peace-keeping operations of their own;

(d) Co-deployment: United Nations field missions have been deployed in conjunction with the Economic Community of West African States (ECOWAS) in Liberia and with the Commonwealth of Independent States (CIS) in Georgia. If those experiments succeed, they may herald a new division of labour between the United Nations and regional organizations, under which the regional organization carries the main burden but a small United Nations operation supports it and verifies that it is functioning in a manner consistent with positions adopted by the Security Council. The political, operational and financial aspects of the arrangement give rise to questions of some delicacy. Member States may wish at some stage to make an assessment, in the light of experience in Liberia and Georgia, of how this model might be followed in the future;

(e) Joint operations: the example is the United Nations Mission in Haiti, the staffing, direction and financing of which are shared between the United Nations and the Organization of American States (OAS). This arrangement has...
worked, and it too is a possible model for the future that will need careful assessment.

87. The capacity of regional organizations for peacemaking and peace-keeping varies considerably. None of them has yet developed a capacity which matches that of the United Nations, though some have accumulated important experience in the field and others are developing rapidly. The United Nations is ready to help them in this respect when requested to do so and when resources permit. Given their varied capacity, the differences in their structures, mandates and decision-making processes and the variety of forms that cooperation with the United Nations is already taking, it would not be appropriate to try to establish a universal model for their relationship with the United Nations. Nevertheless it is possible to identify certain principles on which it should be based.

88. Such principles include:

(a) Agreed mechanisms for consultation should be established, but need not be formal;

(b) The primacy of the United Nations, as set out in the Charter, must be respected. In particular, regional organizations should not enter into arrangements that assume a level of United Nations support not yet submitted to or approved by its Member States. This is an area where close and early consultation is of great importance;

(c) The division of labour must be clearly defined and agreed in order to avoid overlap and institutional rivalry where the United Nations and a regional organization are both working on the same conflict. In such cases it is also particularly important to avoid a multiplicity of mediators;

(d) Consistency by members of regional organizations who are also Member States of the United Nations is needed in dealing with a common problem of interest to both organizations, for example, standards for peace-keeping operations.

89. Non-governmental organizations also play an important role in all United Nations activities discussed in the present paper. To date, 1,003 non-governmental organizations have been granted consultative status with the United Nations and many of them have accredited representatives at United Nations Headquarters in New York and/or the United Nations Office at Geneva. The changed nature of United Nations operations in the field has brought non-governmental organizations into a closer relationship with the United Nations, especially in the provision of humanitarian relief in conflict situations and in post-conflict peace-building. It has been necessary to devise procedures that do not compromise their non-governmental status but do ensure that their efforts are properly coordinated with those of the United Nations and its programmes, funds, offices and agencies. Non-governmental organizations have also had great success in mobilizing public support and funds for humanitarian relief in countries affected by international or domestic conflict.

90. Within the United Nations system there are three levels at which coordination is required: within the United Nations Secretariat; between United Nations Headquarters and the head offices of other funds, programmes, offices and agencies of the United Nations system; and in the field.

91. The multifunctional nature of both peace-keeping and peace-building has made it necessary to improve coordination within the Secretariat, so that the relevant departments function as an integrated whole under my authority and control. Proposals the Secretary-General makes to the General Assembly or the Security Council on peace and security issues need to be based on coordinated inputs from the Departments of Political Affairs, Peace-keeping Operations, Humanitarian Affairs and Administration and Management and others. Guidance to the field must similarly be coordinated, in order to ensure that chiefs of missions do not receive conflicting instructions from different authorities within the Secretariat.

92. In an international bureaucracy interdepartmental cooperation and coordination come even less naturally than they do in a national environment. It has required some effort to ensure that the above objectives are met. I have entrusted the main responsibility in this regard to my Task Force on United Nations Operations and to interdepartmental groups at the working level on each major conflict where the organization is playing a peacemaking or peace-keeping role.

93. Improved coordination is equally necessary within the United Nations system as a whole. The responsibilities involved in multifunctional peace-keeping operations and in peace-building transcend the competence and expertise of any one department, programme, fund, office or agency of the United Nations. Short-term programmes are needed for cease-fires, demobilization, humanitarian relief and refugee return; but it is the longer-term programmes that help rebuild societies and put them back on the path of development. Short-term and long-term programmes need to be planned and implemented in a coordinated way if they are to contribute to the consolidation of peace and development. The mechanism needed for more effective and more effective application of sanctions, which I have recommended earlier in the present position paper, will equally require close coordination between a large number of players on the United Nations stage.

94. Such coordination has to date proved difficult to achieve. Each of the agencies concerned has its own intergovernmental legislative body and its own mandate. In the past, there also has been insufficient interaction, in both directions, between those responsible in the Secretariat for designing and implementing peacemaking, peace-keeping and peace-building activities and the international financial institutions, who often have an all-important say in making sure that the necessary resources are available.

95. As regards coordination in the field, the current practice when a peace-keeping operation is deployed is to entrust this task to a special representative of the Secretary-General. Cambodia, El Salvador and Mozambique are successful examples, not least because of the cooperation extended to my Special Representatives by the various other components of the United Nations system.
96. For my part, I shall maintain my efforts in the Administrative Committee on Coordination and in my bilateral relations with the executive heads of the various funds, programmes, offices and agencies to achieve better coordination within the United Nations system in the context of peace and security. Governments of Member States can support those efforts. Many of the problems of coordination arise from the mandates decreed for the agencies by discrete intergovernmental bodies. As such, they defy the capacity for inter-Secretariat coordination. I accordingly recommend that Governments instruct their representatives in the various intergovernmental bodies to ensure that proper coordination is recognized to be an essential condition for the Organization's success and that it is not made hostage to inter-institutional rivalry and competition.

V. FINANCIAL RESOURCES

97. None of the instruments discussed in the present paper can be used unless Governments provide the necessary financial resources. There is no other source of funds. The failure of Member States to pay their assessed contributions for activities they themselves have voted into being makes it impossible to carry out those activities to the standard expected. It also calls in question the credibility of those who have willed the ends but not the means - and who then criticize the United Nations for its failures. On 12 October 1994, I put to the Member States a package of proposals, ideas and questions on finance and budgetary procedures that I believe can contribute to a solution (see A/49/PV.28).

98. The financial crisis is particularly debilitating as regards peace-keeping. The shortage of funds, in particular for reconnaissance and planning, for the start-up of operations and for the recruitment and training of personnel imposes severe constraints on the Organization's ability to deploy, with the desired speed, newly approved operations. Peace-keeping is also afflicted by Member States' difficulties in providing troops, police and equipment on the scale required by the current volume of peace-keeping activity.

99. Meanwhile, there is continuing damage to the credibility of the Security Council and of the Organization as a whole when the Council adopts decisions that cannot be carried out because the necessary troops are not forthcoming. The continuing problems with regard to the safe areas in Bosnia and Herzegovina and the expansion of UNAMIR in response to genocide in Rwanda are cases in point. In the future it would be advisable to establish the availability of the necessary troops and equipment before it is decided to create a new peace-keeping operation or assign a new task to an existing one.

100. Peace-building is another activity that is critically dependent on Member States' readiness to make the necessary resources available. It can be a long-term process and expensive - except in comparison with the cost of peacemaking and peace-keeping if the conflict should recur. One lesson learned in recent years is that, in putting together the peace-building elements in a comprehensive settlement plan, the United Nations should consult the international financial institutions in good time to ensure that the cost of implementing the plan is taken into account in the design of the economic plans of the Government concerned. The problems in this area are aggravated by many donors' reluctance to finance crucial elements such as the conversion of guerrilla movements into political parties, the creation of new police forces or the provision of credit for the purchase of land in "arms for land" programmes.

101. Compensation to Member States affected by sanctions on their neighbours or economic partners will also be possible only if the richer Member States recognize both the moral argument that such countries should not be expected to bear alone costs resulting from action collectively decided upon by the international community and the practical argument that such compensation is necessary to encourage those States to cooperate in applying decisions taken by the Security Council. I recognize that the sums involved will be large but I am convinced that they must be made available if the Council is to continue to rely on sanctions.

VI. CONCLUSION

102. The present position paper, submitted to the Member States at the opening of the United Nations fiftieth anniversary year, is intended to serve as a contribution to the continuing campaign to strengthen a common capacity to deal with threats to peace and security.

103. The times call for thinking afresh, for striving together and for creating new ways to overcome crises. This is because the different world that emerged when the cold war ceased is still a world not fully understood. The changed face of conflict today requires us to be perceptive, adaptive, creative and courageous, and to address simultaneously the immediate as well as the root causes of conflict, which all too often lie in the absence of economic opportunities and social inequities. Perhaps above all it requires a deeper commitment to cooperation and true multilateralism than humanity has ever achieved before.

104. This is why the pages of the present paper reiterate the need for hard decisions. As understanding grows of the challenges to peace and security, hard decisions, if postponed, will appear in retrospect as having been relatively easy when measured against the magnitude of tomorrow's troubles.

105. There is no reason for frustration or pessimism. More progress has been made in the past few years towards using the United Nations as it was designed to be used than many could ever have predicted. The call to decision should be a call to confidence and courage.

Notes


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Fifty-fifth year

Identical letters dated 21 August 2000 from the Secretary-General
to the President of the General Assembly and the President of the Security Council

On 7 March 2000, I convened a high-level Panel to undertake a thorough review of the United Nations peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities better in the future. I asked Mr. Lakhdar Brahimi, the former Foreign Minister of Algeria, to chair the Panel, which included the following eminent personalities from around the world, with a wide range of experience in the fields of peacekeeping, peace-building, development and humanitarian assistance: Mr. J. Brian Atwood, Ambassador Colin Granderson, Dame Ann Hercus, Mr. Richard Monk, General Klaus Naumann (retd.), Ms. Hisako Shimura, Ambassador Vladimir Shustov, General Philip Sibanda and Dr. Cornelio Sommaruga.

I would be grateful if the Panel’s report, which has been transmitted to me in the enclosed letter dated 17 August 2000 from the Chairman of the Panel, could be brought to the attention of Member States. The Panel’s analysis is frank yet fair; its recommendations are far-reaching yet sensible and practical. The expeditious implementation of the Panel’s recommendations, in my view, is essential to make the United Nations truly credible as a force for peace.

Many of the Panel’s recommendations relate to matters fully within the purview of the Secretary-General, while others will need the approval and support of the legislative bodies of the United Nations. I urge all Member States to join me in considering, approving and supporting the implementation of those recommendations. In this connection, I am pleased to inform you that I have designated the Deputy Secretary-General to follow up on the report’s recommendations and to oversee the preparation of a detailed implementation plan, which I shall submit to the General Assembly and the Security Council.

(Signed) Kofi A. Annan
Letter dated 17 August 2000 from the Chairman of the Panel on United Nations Peace Operations to the Secretary-General

The Panel on United Nations Peace Operations, which you convened in March 2000, was privileged to have been asked by you to assess the United Nations ability to conduct peace operations effectively, and to offer frank, specific and realistic recommendations for ways in which to enhance that capacity.

Mr. Brian Atwood, Ambassador Colin Granderson, Dame Ann Hercus, Mr. Richard Monk, General (ret.) Klaus Naumann, Ms. Hisako Shimura, Ambassador Vladimir Shustov, General Philip Sibanda, Dr. Cornelio Sommaruga and I accepted this challenge out of deep respect for you and because each of us believes fervently that the United Nations system can do better in the cause of peace. We admired greatly your willingness to undertake past highly critical analyses of United Nations operations in Rwanda and Srebrenica. This degree of self-criticism is rare for any large organization and particularly rare for the United Nations.

We also would like to pay tribute to Deputy Secretary-General Louise Fréchette and Chef de Cabinet S. Iqbal Riza, who remained with us throughout our meetings and who answered our many questions with unflagging patience and clarity. They have given us much of their time and we benefited immensely from their intimate knowledge of the United Nations present limitations and future requirements.

Producing a review and recommendations for reform of a system with the scope and complexity of United Nations peace operations, in only four months, was a daunting task. It would have been impossible but for the dedication and hard work of Dr. William Durch (with support from staff at the Stimson Center), Mr. Salman Ahmed of the United Nations and the willingness of United Nations officials throughout the system, including serving heads of mission, to share their insights both in interviews and in often comprehensive critiques of their own organizations and experiences. Former heads of peace operations and force commanders, academics and representatives of non-governmental organizations were equally helpful.

The Panel engaged in intense discussion and debate. Long hours were devoted to reviewing recommendations and supporting analysis that we knew would be subject to scrutiny and interpretation. Over three separate three-day meetings in New York, Geneva and then New York again, we forged the letter and the spirit of the attached report. Its analysis and recommendations reflect our consensus, which we convey to you with our hope that it serve the cause of systematic reform and renewal of this core function of the United Nations.

As we say in the report, we are aware that you are engaged in conducting a comprehensive reform of the Secretariat. We thus hope that our recommendations fit within that wider process, with slight adjustments if necessary. We realize that not all of our recommendations can be implemented overnight, but many of them do require urgent action and the unequivocal support of Member States.

Throughout these months, we have read and heard encouraging words from Member States, large and small, from the South and from the North, stressing the necessity for urgent improvement in the ways the United Nations addresses conflict situations. We urge them to act decisively to translate into reality those of our recommendations that require formal action by them.

The Panel has full confidence that the official we suggest you designate to oversee the implementation of our recommendations, both inside the Secretariat and with Member States, will have your full support, in line with your conviction to transform the United Nations into the type of twenty-first century institution it needs to be to effectively meet the current and future threats to world peace.

Finally, if I may be allowed to add a personal note, I wish to express my deepest gratitude to each of my colleagues on this Panel. Together, they have contributed to the project an impressive sum of knowledge and experience. They have consistently shown the highest degree of commitment to the Organization and a deep understanding of its needs. During our meetings and our contacts from afar, they have all been extremely kind to me, invariably helpful, patient and generous, thus making the otherwise intimidating task as their Chairman relatively easier and truly enjoyable.

(Signed) Lakhdar Brahimi
Chairman of the Panel on United Nations Peace Operations
# Report of the Panel on United Nations Peace Operations

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Executive Summary

The United Nations was founded, in the words of its Charter, in order “to save succeeding generations from the scourge of war.” Meeting this challenge is the most important function of the Organization, and to a very significant degree it is the yardstick with which the Organization is judged by the peoples it exists to serve. Over the last decade, the United Nations has repeatedly failed to meet the challenge, and it can do no better today. Without renewed commitment on the part of Member States, significant institutional change and increased financial support, the United Nations will not be capable of executing the critical peacekeeping and peace-building tasks that the Member States assign to it in coming months and years. There are many tasks which United Nations peacekeeping forces should not be asked to undertake and many places they should not go. But when the United Nations does send its forces to uphold the peace, they must be prepared to confront the lingering forces of war and violence, with the ability and determination to defeat them.

The Secretary-General has asked the Panel on United Nations Peace Operations, composed of individuals experienced in various aspects of conflict prevention, peacekeeping and peace-building, to assess the shortcomings of the existing system and to make frank, specific and realistic recommendations for change. Our recommendations focus not only on politics and strategy but also and perhaps even more so on operational and organizational areas of need.

For preventive initiatives to succeed in reducing tension and averting conflict, the Secretary-General needs clear, strong and sustained political support from Member States. Furthermore, as the United Nations has bitterly and repeatedly discovered over the last decade, no amount of good intentions can substitute for the fundamental ability to project credible force if complex peacekeeping, in particular, is to succeed. But force alone cannot create peace; it can only create the space in which peace may be built. Moreover, the changes that the Panel recommends will have no lasting impact unless Member States summon the political will to support the United Nations politically, financially and operationally to enable the United Nations to be truly credible as a force for peace.

Each of the recommendations contained in the present report is designed to remedy a serious problem in strategic direction, decision-making, rapid deployment, operational planning and support, and the use of modern information technology. Key assessments and recommendations are highlighted below, largely in the order in which they appear in the body of the text (the numbers of the relevant paragraphs in the main text are provided in parentheses). In addition, a summary of recommendations is contained in annex III.

Experience of the past (paras. 15-28)

It should have come as no surprise to anyone that some of the missions of the past decade would be particularly hard to accomplish: they tended to deploy where conflict had not resulted in victory for any side, where a military stalemate or international pressure or both had brought fighting to a halt but at least some of the parties to the conflict were not seriously committed to ending the confrontation. United Nations operations thus did not deploy into post-conflict situations but tried to create them. In such complex operations, peacekeepers work to maintain a secure local environment while peacebuilders work to make that environment self-sustaining.
Only such an environment offers a ready exit to peacekeeping forces, making peacekeepers and peacebuilders inseparable partners.

Implications for preventive action and peacebuilding: the need for strategy and support (para. 27-44)

The United Nations and its members face a pressing need to establish more effective strategies for conflict prevention, in both the long and short terms. In this context, the Panel endorses the recommendations of the Secretary-General (A/54/2000) and commends the United Nations for the strong focus on preventive action in its recent report. Although the peacebuilding strategy of the United Nations looks forward, a far greater emphasis on preventive action at the beginning of the conflict cycle is necessary. Furthermore, the Security Council and the General Assembly's Special Committee on Peacekeeping Operations, conscious that the United Nations will continue to face the prospect of having to deploy peacekeepers, have called for an expansion of fact-finding missions to areas of tension in support of short-term crisis-preventive action.

Among the changes that the Panel supports are: a doctrinal shift in the use of civilian police and related rule of law elements in peace operations that emphasizes a team approach to upholding the rule of law, which involves non-governmental organizations and the community at large; and better integration of electoral assistance into a broader strategy for the support of governance institutions.

Implications for peacekeeping: the need for robust doctrine and realistic mandates (para. 45-64)

The Panel concurs that consent of the local parties, impartiality and the use of force only in self-defence should remain the bedrock principles of peacekeeping. Experience shows, however, that in the context of the international system, a failure to distinguish between victim and aggressor is a fundamental deficiency in the way in which United Nations peacekeepers are deployed.

No failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish between victim and aggressor. In the past, the United Nations has often found itself unable to respond effectively to such challenges. It is a fundamental premise of the present report that the United Nations must be able to carry out its mission effectively and successfully. This means that all its components and the many mandates of the Security Council should be sufficiently robust and not force United Nations contingents to cede the initiative to the attackers.

This means, in turn, that the Secretary-General must not allow best-case planning assumptions to cloud the realities of the situation where the local actors have historically exhibited worst-case behavior. UN peacekeepers, in particular peacekeepers, who witness the activities of the parties, are the only force in a situation that is able to provide a credible deterrent. In fact, the field intelligence and other capabilities needed to mount an effective defense against violent challenges.

The secretariat must tell the Security Council what it needs to know, when what is needed from that council. The Council must meet the challenge of implementation. Security Council mandates, in turn, should reflect the clear and explicit mandate for civilian protection. The establishment of an independent organ of the Secretariat, in particular to provide for a new guard, a new system of fact-finding missions, and the resources for them, is an essential part of the immediate agenda. An independent organ could also assume primary responsibility for drawing up guidelines for implementation, which in turn would be subject to the collective wisdom of the Security Council.

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and the members of the Executive Committee on Peace and Security (ECPS). Without such capacity, the Secretariat will remain a reactive institution, unable to get ahead of daily events, and the ECPS will not be able to fulfill the role for which it was created.

The Panel’s proposed ECPS Information and Strategic Analysis Secretariat (EISAS) would create and maintain integrated databases on peace and security issues, distribute that knowledge efficiently within the United Nations system, generate policy analyses, formulate long-term strategies for ECPS and bring budding crises to the attention of the ECPS leadership. It could also propose and manage the agenda of ECPS itself, helping to transform it into the decision-making body anticipated in the Secretary-General’s initial reforms.

The Panel proposes that EISAS be created by consolidating the existing Situation Centre of the Department of Peacekeeping Operations (DPKO) with a number of small, scattered policy planning offices, and adding a small team of military analysts, experts in international criminal networks and information systems specialists. EISAS should serve the needs of all members of ECPS.

**Improved mission guidance and leadership (paras. 92-101)**

The Panel believes it is essential to assemble the leadership of a new mission as early as possible at United Nations Headquarters, to participate in shaping a mission’s concept of operations, support plan, budget, staffing and Headquarters mission guidance. To that end, the Panel recommends that the Secretary-General compile, in a systematic fashion and with input from Member States, a comprehensive list of potential special representatives of the Secretary-General (SRSGs), force commanders, civilian police commissioners, their potential deputies and potential heads of other components of a mission, representing a broad geographic and equitable gender distribution.

**Rapid deployment standards and “on-call” expertise (paras. 86-91 and 102-169)**

The first 6 to 12 weeks following a ceasefire or peace accord are often the most critical ones for establishing both a stable peace and the credibility of a new operation. Opportunities lost during that period are hard to regain.

The Panel recommends that the United Nations define “rapid and effective deployment capacity” as the ability to fully deploy traditional peacekeeping operations within 30 days of the adoption of a Security Council resolution establishing such an operation, and within 90 days in the case of complex peacekeeping operations.

The Panel recommends that the United Nations standby arrangements system (UNSAS) be developed further to include several coherent, multinational, brigade-size forces and the necessary enabling forces, created by Member States working in partnership, in order to better meet the need for the robust peacekeeping forces that the Panel has advocated. The Panel also recommends that the Secretariat send a team to confirm the readiness of each potential troop contributor to meet the requisite United Nations training and equipment requirements for peacekeeping operations, prior to deployment. Units that do not meet the requirements must not be deployed.

To support such rapid and effective deployment, the Panel recommends that a revolving “on-call list” of about 100 experienced, well qualified military officers, carefully vetted and accepted by DPKO, be created within UNSAS. Teams drawn from this list and available for duty on seven days’ notice would translate broad, strategic-level mission concepts developed at Headquarters into concrete operational and tactical plans in advance of the deployment of troop contingents, and would augment a core element from DPKO to serve as part of a mission start-up team.

Parallel on-call lists of civilian police, international judicial experts, penal experts and human rights specialists must be available in sufficient numbers to strengthen rule of law institutions, as needed, and should also be part of UNSAS. Pre-trained teams could then be drawn from this list to precede the main body of civilian police and related specialists into a new mission area, facilitating the rapid and effective deployment of the law and order component into the mission.

The Panel also calls upon Member States to establish enhanced national “pools” of police officers and related experts, earmarked for deployment to United Nations peace operations, to help meet the high demand for civilian police and related criminal justice/rule of law expertise in peace operations dealing with intra-State conflict. The Panel also urges Member States to consider forming joint regional partnerships and programmes for the purpose of training members of the respective national pools to United Nations civilian police doctrine and standards.

The Secretariat should also address, on an urgent basis, the needs: to put in place a transparent and decentralized recruitment mechanism for civilian field personnel; to improve the retention of the civilian specialists that are needed in every complex peace operation; and to create standby arrangements for their rapid deployment.

Finally, the Panel recommends that the Secretariat radically alter the systems and procedures in place for peacekeeping procurement in order to facilitate rapid deployment. It recommends that responsibilities for peacekeeping budgeting and procurement be moved out of the Department of Management and placed in DPKO. The Panel proposes the creation of a new and distinct body of streamlined field procurement policies and procedures; increased delegation of procurement authority to the field; and greater flexibility for field missions in the management of their budgets. The Panel also urges that the Secretary-General formulate and submit to the General Assembly, for its approval, a global logistics support strategy governing the stockpiling of equipment reserves and standing contracts with the private sector for common goods and services. In the interim, the Panel recommends that additional “start-up kits” of essential equipment be maintained at the United Nations Logistics Base (UNLB) in Brindisi, Italy.

The Panel also recommends that the Secretary-General be given authority, with the approval of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) to commit up to $50 million well in advance of the adoption of a Security Council resolution establishing a new operation once it becomes clear that an operation is likely to be established.
Enhance Headquarters capacity to plan and support peace operations
(paras. 170-197)

The Panel recommends that Headquarters support for peacekeeping be treated as a core activity of the United Nations, and as such the majority of its resource requirements should be funded through the regular budget of the Organization. DPKO and other offices that plan and support peacekeeping are currently primarily funded by the Support Account, which is renewed each year and funds only temporary posts. That approach to funding and staff seems to confuse the temporary nature of specific operations with the evident permanence of peacekeeping and other peace operations activities as core functions of the United Nations, which is obviously an untenable state of affairs.

The total cost of DPKO and related Headquarters support offices for peacekeeping does not exceed $50 million per annum, or roughly 2 per cent of total peacekeeping costs. Additional resources for those offices are urgently needed to ensure that more than $2 billion spent on peacekeeping in 2001 are well spent. The Panel therefore recommends that the Secretary-General submit a proposal to the General Assembly outlining the Organization’s requirements in full.

The Panel believes that a methodical management review of DPKO should be conducted but also believes that staff shortages in certain areas are plainly obvious. For example, it is clearly not enough to have 32 officers providing military planning and guidance to 27,000 troops in the field, nine civilian police staff to identify, vet and provide guidance for up to 8,600 police, and 15 political desk officers for 14 current operations and two new ones, or to allocate just 1.25 per cent of the total costs of peacekeeping to Headquarters administrative and logistics support.

Establish Integrated Mission Task Forces for mission planning and support
(paras. 198-245)

The Panel recommends that Integrated Mission Task Forces (IMTFs) be created, with staff from throughout the United Nations system seconded to them, to plan new missions and help them reach full deployment, significantly enhancing the support that Headquarters provides to the field. There is currently no integrated planning or support cell in the Secretariat that brings together those responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons, public information, logistics, finance and recruitment.

Structural adjustments are also required in other elements of DPKO, in particular to the Military and Civilian Police Division, which should be reorganized into two separate divisions, and the Field Administration and Logistics Division (FALD), which should be split into two divisions. The Lessons Learned Unit should be strengthened and moved into the DPKO Office of Operations. Public information planning and support at Headquarters also needs strengthening, as do elements in the Department of Political Affairs (DPA), particularly the electoral unit. Outside the Secretariat, the ability of the Office of the United Nations High Commissioner for Human Rights to plan and support the human rights components of peace operations needs to be reinforced.

Adapting peace operations to the information age (paras. 246-264)

Modern, well utilized information technology (IT) is a key enabler of many of the above-mentioned objectives, but gaps in strategy, policy and practice impede its effective use. In particular, Headquarters lacks a sufficiently strong responsibility centre for user-level IT strategy and policy in peace operations. A senior official with such responsibility in the peace and security arena should be appointed and located within EISAS, with counterparts in the offices of the SRSG in every United Nations peace operation.

Headquarters and the field missions alike also need a substantive, global, Peace Operations Extranet (POE), through which missions would have access to, among other things, EISAS databases and analyses and lessons learned.

Challenges to implementation (paras. 265-280)

The Panel believes that the above recommendations fall well within the bounds of what can be reasonably demanded of the Organization’s Member States. Implementing some of them will require additional resources for the Organization, but we do not mean to suggest that the best way to solve the problems of the United Nations is merely to throw additional resources at them. Indeed, no amount of money or resources can substitute for the significant changes that are urgently needed in the culture of the Organization.

The Panel calls on the Secretariat to heed the Secretary-General’s initiatives to reach out to the institutions of civil society; to constantly keep in mind that the United Nations they serve is the universal organization. People everywhere are fully entitled to consider that it is their organization, and as such pass judgement on its activities and the people who serve in it.

Furthermore, wide disparities in staff quality exist and those in the system are the first to acknowledge it; better performers are given unreasonable workloads to compensate for those who are less capable. Unless the United Nations takes steps to become a true meritocracy, it will not be able to reverse the alarming trend of qualified personnel, the young among them in particular, leaving the Organization. Moreover, qualified people will have no incentive to join it. Unless managers at all levels, beginning with the Secretary-General and his senior staff, seriously address this problem on a priority basis, reward excellence and remove incompetence, additional resources will be wasted and lasting reform will become impossible.

Member States also acknowledge that they need to reflect on their working culture and methods. It is incumbent upon Security Council members, for example, and the membership at large to breathe life into the words that they produce, as did, for instance, the Security Council delegation that flew to Jakarta and Dili in the wake of the East Timor crisis in 1999, an example of effective Council action at its best: res, non verba.

We — the members of the Panel on United Nations Peace Operations — call on the leaders of the world assembled at the Millennium Summit, as they renew their commitment to the ideals of the United Nations, to commit as well to
strengthen the capacity of the United Nations to fully accomplish the mission which is, indeed, its very raison d'être: to help communities engulfed in strife and to maintain or restore peace.

While building consensus for the recommendations in the present report, we have also come to a shared vision of a United Nations, extending a strong helping hand to a community, country or region to avert conflict or to end violence. We see an SRSG ending a mission well accomplished, having given the people of a country the opportunity to do for themselves what they could not do before: to build and hold onto peace, to find reconciliation, to strengthen democracy, to secure human rights. We see, above all, a United Nations that has not only the will but also the ability to fulfill its great promise, and to justify the confidence and trust placed in it by the overwhelming majority of humankind.
I. The need for change

1. The United Nations was founded, in the words of its Charter, in order "to save succeeding generations from the scourge of war." Meeting this challenge is the most important function of the Organization, and, to a very significant degree, the yardstick by which it is judged by the peoples it exists to serve. Over the last decade, the United Nations has repeatedly failed to meet the challenge; and it can do no better today. Without significant institutional change, increased financial support, and renewed commitment on the part of Member States, the United Nations will not be capable of executing the critical peacekeeping and peace-building tasks that the Member States assign it in coming months and years. There are many tasks which the United Nations peacekeeping forces should not be asked to undertake, and many places they should not go. But when the United Nations does send its forces to uphold the peace, they must be prepared to confront the lingering forces of war and violence with the ability and determination to defeat them.

2. The Secretary-General has asked the Panel on United Nations Peace Operations, composed of individuals experienced in various aspects of conflict prevention, peacekeeping and peace-building (Panel members are listed in annex I), to assess the shortcomings of the existing system and to make frank, specific and realistic recommendations for change. Our recommendations focus not only on politics and strategy but also on operational and organizational areas of need.

3. For preventive initiatives to reduce tension and avert conflict, the Secretary-General needs clear, strong and sustained political support from Member States. For peacekeeping to accomplish its mission, as the United Nations has discovered repeatedly over the last decade, no amount of good intentions can substitute for the fundamental ability to project credible force. However, force alone cannot create peace; it can only create a space in which peace can be built.

4. In other words, the key conditions for the success of future complex operations are political support, rapid deployment with a robust force posture and a sound peace-building strategy. Every recommendation in the present report is meant, in one way or another, to help ensure that these three conditions are met. The need for change has been rendered even more urgent by recent events in Sierra Leone and by the daunting prospect of expanded United Nations operations in the Democratic Republic of the Congo.

5. These changes — while essential — will have no lasting impact unless the Member States of the Organization take seriously their responsibility to train and equip their own forces and to mandate and enable their collective instruments to do together what they may succeed in meeting threats to peace. They must summon the political will to support the United Nations politically, financially and operationally — once they have decided to act as the United Nations — if the Organization is to be credible as a force for peace.

6. The recommendations that the Panel presents balance principle and pragmatism, while honouring the spirit and letter of the Charter of the United Nations and the respective roles of the Organization's legislative bodies. They are based on the following premises:

(a) The essential responsibility of Member States for the maintenance of international peace and security, and the need to strengthen both the quality and quantity of support provided to the United Nations system to carry out that responsibility;

(b) The pivotal importance of clear, credible and adequately resourced Security Council mandates;

(c) A focus by the United Nations system on conflict prevention and its early engagement, wherever possible;

(d) The need to have more effective collection and assessment of information at United Nations Headquarters, including an enhanced conflict early warning system that can detect and recognize the threat or risk of conflict or genocide;

(e) The essential importance of the United Nations system adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities;

(f) The need to build the United Nations capacity to contribute to peace-building, both preventive and post-conflict, in a genuinely integrated manner;

(g) The critical need to improve Headquarters planning (including contingency planning) for peace operations;

(h) The recognition that while the United Nations has acquired considerable expertise in planning, mounting and executing traditional peacekeeping operations, it has yet to acquire the capacity needed to deploy more complex operations rapidly and to sustain them effectively;

(i) The necessity to provide field missions with high-quality leaders and managers who are granted greater flexibility and autonomy by Headquarters, within clear mandate parameters and with clear standards of accountability for both spending and results;

(j) The imperative to set and adhere to a high standard of competence and integrity for both Headquarters and field personnel, who must be provided the training and support necessary to do their jobs and to progress in their careers, guided by modern management practices that reward meritorious performance and weed out incompetence;

(k) The importance of holding individual officials at Headquarters and in the field accountable for their performance, recognizing that they need to be given commensurate responsibility, authority and resources to fulfil their assigned tasks.

7. In the present report, the Panel has addressed itself to many compelling needs for change within the United Nations system. The Panel views its recommendations as the minimum threshold of change needed to give the United Nations system the opportunity to be an effective, operational, twenty-first century institution. (Key recommendations are summarized in bold type throughout the text; they are also combined in a single summary in annex III.)

8. The blunt criticisms contained in the present report reflect the Panel's collective experience as well as interviews conducted at every level of the system. More than 200 people were either interviewed or provided written input to the Panel. Sources included the Permanent Missions of Member States, including the Security Council members; the Special Committee on Peacekeeping Operations; and personnel in peace and security-related departments at United Nations Headquarters in New York, in the United Nations Office at Geneva, at the headquarters of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and of the Office of the United Nations High Commissioner for Refugees (UNHCR), at the headquarters of other United Nations funds and programmes; at the World Bank and in every current United Nations peace operation. (A list of references is contained in annex II.)

II. Doctrine, strategy and decision-making for peace operations

9. The United Nations system — namely the Member States, Security Council, General Assembly and Secretariat — must commit to peace operations carefully, reflecting honestly on the record of its performance over the past decade. It must adjust accordingly the doctrine upon which peace operations are established; fine-tune its analytical and decision-making capacities to respond to existing realities and anticipate future requirements; and summon the creativity, imagination and will required to implement alternative solutions to those situations in which peacekeepers cannot or should not go.

A. Defining the elements of peace operations

10. United Nations peace operations entail three principal activities: conflict prevention and peacemaking; peacekeeping; and peace-building. Long-term conflict prevention addresses the structural sources of conflict in order to build a solid foundation for peace. Where those foundations are crumbling, conflict prevention attempts to reinforce them, usually in the form of a diplomatic initiative. Such preventive action is, by definition, a low-profile activity; when successful, it may even go unnoticed altogether.

11. Peacemaking addresses conflicts in progress, attempting to bring them to a halt, using the tools of diplomacy and mediation. Peacemakers may be envoysof Governments, groups of States, regional organizations or the United Nations, or they may be unofficial and non-governmental groups, as was the case, for example, in the negotiations leading up to a peace accord for Mozambique. Peacemaking may even be the work of a prominent personality, working independently.

12. Peacekeeping is a 50-year-old enterprise that has evolved rapidly in the past decade from a traditional, primarily military model of observing ceasefires and force separations after inter-State wars, to incorporate a complex model of many elements, military and
B. Experience of the past

13. Peace-building is a term of more recent origin that, as used in the present report, defines activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations. These activities are often termed "peace-building" or "peace-making." They are generally understood to be activities that precede and are distinct from peace-keeping, and are intended to go beyond the establishment of ceasefires to create the conditions necessary for sustainable peace. Peace-building activities are often referred to as "peace-constituting" or "peace-enabling." Peace-building efforts are often focused on promoting conflict resolution and reconciliation, promoting democratic institutions, and building strong, accountable states. Peace-building activities are often coordinated with peace-keeping efforts, and are often carried out by United Nations missions or other international organizations.

14. Essential complements to effective peace-building include support for the fight against corruption, the implementation of humanitarian demining programmes, emphasis on education and health services, and actions aimed at reducing the impact of violence and crime. Peace-building efforts are often carried out in collaboration with local communities, and are often supported by international organizations such as the United Nations, the World Bank, and other donors. Peace-building efforts are often evaluated on the basis of their effectiveness in promoting peace and stability in the region, and on their potential to contribute to the overall development of the country.

15. The quiet successes of short-term conflict prevention and peacemaking are often difficult to document or even to recognize. However, the importance of addressing the root causes of conflicts and promoting sustainable peace cannot be underestimated. Peace-building activities are often carried out in collaboration with local communities, and are often supported by international organizations such as the United Nations, the World Bank, and other donors. Peace-building efforts are often evaluated on the basis of their effectiveness in promoting peace and stability in the region, and on their potential to contribute to the overall development of the country.

16. Those who favour focusing on the underlying causes of conflicts argue that such crisis-related efforts are often too little and too late. Attempted earlier, however, diplomatic initiatives may be rebuffed by a government that does not see or will not acknowledge a looming problem, or that may itself be part of the problem. Thus, long-term preventive strategies are a necessary complement to short-term initiatives.

17. Until the end of the cold war, United Nations peacekeeping operations mostly had traditional cease-fire-monitoring mandates and no direct peace-building tasks. However, this changed in the 1990s, when peacekeeping operations were increasingly tasked with supporting efforts to establish democratic institutions and to reassemble the foundations of peace. The end of the cold war and the collapse of the Soviet Union led to a greater emphasis on the role of the United Nations in conflict resolution and peace-building.

18. Since the end of the cold war, United Nations peacekeeping has often combined with peace-building in complex peace operations deployed into settings of instate/transnational conflict. These operations are often characterized by their complexity and the need for sustained peacemaking efforts that seek to transform a ceasefire accord into a durable and lasting peace settlement.

19. Risks and costs for operations that must function in such circumstances are much greater than for traditional peacekeeping. Moreover, the complexity of the tasks assigned to these operations is often greater than in traditional peacekeeping. United Nations missions have been given a variety of tasks, including relief-escort duties, where the security situation was so dangerous that humanitarian operations could not continue without high risks for humanitarian personnel; they have been given mandates to protect civilians, including women and children, from attacks by armed groups; and they have been given mandates to protect civilians, including women and children, from attacks by armed groups.

20. It should have come as no surprise to anyone that these missions would be hard to accomplish. Initially, the 1990s offered more positive prospects: operations implementing political or other agenda-driven initiatives were often successful in achieving specific objectives, such as the establishment of democratic institutions or the release of political prisoners. However, the complexity of the tasks assigned to these operations is often greater than in traditional peacekeeping. United Nations missions have been given a variety of tasks, including relief-escort duties, where the security situation was so dangerous that humanitarian operations could not continue without high risks for humanitarian personnel; they have been given mandates to protect civilians, including women and children, from attacks by armed groups; and they have been given mandates to protect civilians, including women and children, from attacks by armed groups.

21. As the United Nations soon discovered, local parties sign peace accords for a variety of reasons, not all of them favourable to peace. "Spoilers" — groups (including warlords, former rebels, or other agendas that drive the process) — are often unwilling to accept the peace agreements or to abide by their terms.

22. A growing number of reports on such conflicts have highlighted the need for effective peace-building efforts. Peace-building efforts are often carried out in collaboration with local communities, and are often supported by international organizations such as the United Nations, the World Bank, and other donors. Peace-building efforts are often evaluated on the basis of their effectiveness in promoting peace and stability in the region, and on their potential to contribute to the overall development of the country. Peace-building efforts are often carried out in collaboration with local communities, and are often supported by international organizations such as the United Nations, the World Bank, and other donors. Peace-building efforts are often evaluated on the basis of their effectiveness in promoting peace and stability in the region, and on their potential to contribute to the overall development of the country.
26. It is critically important that negotiations and the military action that the international community, including the Security Council, engage in order to prevent and contain potential new complex emergencies and thus prevent conflict, are not conditional on the Secretary-General's assessment of the political and military environment of the conflict situation. The Secretary-General, in his remarks before the Security Council, second session of the high-level open debate on conflict prevention in July 2008, also made a particular appeal to all who are engaged in the design, planning and execution of United Nations peacekeeping operations to address these challenges in a more integrated manner.

27. It is equally important to judge the extent to which local authorities are willing and able to take difficult but necessary political and economic decisions and to participate in the establishment of processes that would bring about the implementation of agreements in cases of internal conflict. Poverty and underdevelopment, global or national, often create a complex political-military environment that hinders effective decision-making and participation. A pattern of conflict is then likely to develop if local authorities are not able to take political and economic decisions and to participate in the implementation of agreements that would bring about meaningful conflict resolution. This pattern may not be able to continue without the peacekeepers' intervention.

28. When complex peace operations do go into the field, it is the task of the operation's peacekeepers to maintain a secure environment for peace-building, and the peacebuilders' task to support the political, social and economic development of the country in which the mission is engaged. Despite the fact that the United Nations system has viewed humanitarian and development assistance as equally important, peacekeeping has largely been identified as the United Nations Development Assistance Framework (UNDAF), to that country's development strategy.


30. At the heart of the question of short-term prevention lies the use of fact-finding missions and other initiatives by the Secretary-General. These have, however, been supplemented by a range of other preventive measures, including the development of early warning systems and the establishment of early warning mechanisms in the United Nations. The Secretary-General has identified the need for a comprehensive, integrated approach to conflict prevention, which includes the use of fact-finding missions, political dialogue, economic sanctions, and military intervention, as well as the development of early warning systems and the establishment of early warning mechanisms in the United Nations.

31. United Nations peace operations addressed to conflict prevention have been increasingly recognized as an important tool for preventing conflict, and the United Nations is increasingly investing in early warning and conflict prevention. However, the effectiveness of these operations is critically dependent on the political environment in which they are conducted. The United Nations has a role to play in the prevention of conflict, but it must work closely with the international community to ensure that the necessary political, economic and social conditions are in place for successful conflict prevention.

32. One of the key recommendations of the Panel is to ensure that the United Nations Peacebuilding Commission is given the necessary resources and support to carry out its mandate effectively. The Panel also recommends that the United Nations Security Council should establish a more effective system for conflict prevention and resolution, which includes improved early warning mechanisms and better integration of conflict prevention and peacebuilding into the United Nations agenda. The United Nations must also work closely with other organizations and institutions to ensure that conflict prevention is a priority in the international community.

33. The Panel endorses the recommendations of the Secretary-General with respect to conflict prevention contained in the Millennium Report and in his remarks before the Security Council's 2nd open meeting on conflict prevention in July 2008. The Panel supports the Secretary-General's call for a "zero tolerance policy" with respect to serious violations of international law by parties to conflicts. The Panel also recommends that the United Nations should develop a more integrated approach to conflict prevention, which includes the use of fact-finding missions, political dialogue, economic sanctions, and military intervention, as well as the development of early warning systems and the establishment of early warning mechanisms in the United Nations.
37. Effective peace-building requires active engagement with the local parties, and that engagement should be multidimensional in nature. First, all peace operations should be given the capacity to make a difference in the lives of the people they are supposed to serve and the local economy. The mission should establish a genuine capacity for the delivery of services, and it should have the ability to engage in development activities. The mission should also have the capacity to engage in development activities.

38. Second, "free and fair" elections should be viewed as part of broader efforts to strengthen governance institutions. Elections will be successfully held only in an environment of respect for human rights, lest elections merely ratify a tyranny of the majority or be overturned by force after a peace operation leaves.

39. Third, United Nations civilian police monitors are not peacebuilders if they simply document or attempt to discourage by their presence abusive or other unacceptable behavior of local police officials. The United Nations should establish a genuine capacity for the delivery of services, and it should have the ability to engage in development activities.

40. Effective peace-building also requires a focal point to coordinate the many different activities that building peace entails. In the view of the Panel, the United Nations should be considered the focal point for the development of peaceful settlements.

41. Fourth, the human rights component of a peace operation is indeed critical to effective peace-building. United Nations human rights personnel can play a leading role in ensuring that respect for human rights is upheld, through the organization's laws and regulations.

42. Fifth, the disarmament, demobilization and reintegration of former combatants — key to immediate post-conflict stability and reduced likelihood of conflict recurrence — must be conducted. Demobilized fighters, who almost never fully disarm, will tend to return to a life of violence if they find no legitimate livelihood, that is, if they are not "reintegrated" into the local economy. The mission should establish a genuine capacity to engage in development activities.

43. Disarmament, demobilization and reintegration has been a feature of at least 15 peacekeeping operations in the past 10 years. More than a dozen agencies are involved in planning and support for disarmament activities. The mission should establish a genuine capacity for the delivery of services, and it should have the ability to engage in development activities.

44. The Panel recommends that the Executive Committee on Peace and Security discuss and recommend to the Secretary-General a plan to strengthen the permanent capacity of the United Nations to develop peace-building strategies and to implement programmes in support of those strategies.
E. Implications for peacekeeping doctrine and strategy

48. The Panel concurs that consent of the local parties, impartiality and use of force only in self-defence should remain the bedrock principles of peacekeeping. Experience shows, however, that in the context of modern peace operations dealing with intra-State/transnational conflicts, consent may be manipulated in many ways by the local parties. A party may give its consent to United Nations presence merely to gain time to retool its fighting forces and withdraw consent when the peacekeeping operation no longer serves its interests. A party may seek to limit an operation’s freedom of movement, adopt a policy of persistent non-compliance with the provisions of an agreement or withdraw its consent altogether. Moreover, regardless of faction leaders’ commitment to the peace, fighting forces may simply be under much looser control than the conventional armies with which traditional peacekeepers work, and such forces may split into factions whose existence and implications were not contemplated in the peace agreement under the colour of which the United Nations mission operates.

49. In the past, the United Nations has often found itself unable to respond effectively to such challenges. It is a fundamental premise of the present report, however, that peacekeeping operations should be conducted on the basis of a mandate with a clear, credible and achievable mandate that sets out precisely what the United Nations mission is to accomplish. In particular, mandates should specify where the United Nations peacekeepers are to go and what the United Nations mission is to do, including the expected length of time. Where enforcement action is required, such mandates should state who is to implement it (the United Nations mission or the Security Council). Peacekeeping operations must therefore be conducted on the basis of a clear, credible and achievable mandate, which defines precisely what the United Nations mission is to accomplish.

50. Impartiality for such operations must therefore mean adherence to the principles of the Charter and to the objectives of a mandate that is rooted in the principles of the Charter. If such mandates are to be achieved, the United Nations must ensure that it is clear to all parties to the conflict that it will implement the mandate in a manner that is impartial and that it will be decisive in its action. Where enforcement action is required, such mandates should state who is to implement it (the United Nations mission or the Security Council). Peacekeeping operations must therefore be conducted on the basis of a clear, credible and achievable mandate, which defines precisely what the United Nations mission is to accomplish.

F. Clear, credible and achievable mandates

56. As a political body, the Security Council focuses on consensus-building, even though it can take decisions with less than unanimity. But the compromises required to build consensus can be made at the expense of specificity, and the resulting ambiguity can have serious consequences in the field if the mandate is then subject to varying interpretation by different elements of a peace operation, or if local actors perceive a less than complete Council commitment to peace implementation that offers encouragement to spoilers. Ambiguity may also paper over differences that emerge later, under pressure of a crisis, to prevent urgent Council action. While it acknowledges the utility of political compromise in many cases, the Panel comes down in this case on the side of clarity, especially for operations that will deploy into dangerous circumstances. Rather than send an operation into danger with unclear instructions, the Panel urges that the Council refrain from mandating such a mission.

57. The outlines of a possible United Nations peace operation often first appear when negotiators working toward a peace agreement contemplate United Nations implementation of that agreement. Although peace negotiators (peacekeepers) may be skilled professionals in their craft, they are much less likely to know in detail the operational requirements of soldiers, police, relief providers or electoral advisers in United Nations field missions. Non-United Nations peacekeepers may have even less knowledge of these requirements. Yet the Secretariat has, in recent years, found itself required to execute mandates that were developed elsewhere and delivered to it via the Security Council with but minor changes.

58. The Panel believes that the Secretariat must be able to take a strong case to the Security Council that tasks to be undertaken by the United Nations are operationally achievable — with local responsibility for supporting resources at their disposal and the implications of those resources for the maintenance of peace. The Security Council and the Secretariat must also be able to win the confidence of troop contributors that the strategy and concept of operations for a new mission are sound and that they will be sending troops or police to serve under a competent mission with effective leadership.

59. The Charter clearly encourages cooperation with regional and subregional organizations to resolve conflict and establish and maintain peace and security. The United Nations is actively and successfully engaged in many such cooperation programmes in the field of conflict prevention, peacemaking, elections and electoral assistance, human rights monitoring and humanitarian work and other peace-building activities in various parts of the world. Where peacekeeping operations are concerned, however, caution seems appropriate, because military resources and capability are unevenly distributed around the world, and troops in the most crisis-prone areas are often less prepared for the demands of modern peacekeeping than is the case elsewhere. Providing training, equipment, logistical support and other resources to regional and subregional organizations could enable peacekeepers from all regions to participate in a United Nations peacekeeping operation or to set up regional peacekeeping operations on the basis of a Security Council resolution.

60. Summary of key recommendation on peacekeeping doctrine and strategy: once deployed, United Nations peacekeepers must be able to carry out their mandates professionally and successfully and be capable of defending themselves, other mission components and the mission’s mandate, with robust rules of engagement, against those who renge on their commitments to a peace accord or otherwise seek to undermine it by violence.
62. Finally, the desire on the part of the Secretary-General to extend additional protection to civilians in armed conflicts and the actions of the Security Council to give ... "the perception and the expectation of protection created by [an operation's] very presence" (see S/1999/1257, p. 51).

63. However, the Panel is concerned about the credibility and achievability of a blanket mandate in this area. There are hundreds of thousands of civilians in current ... a mandate to protect civilians, therefore, it also must be given the specific resources needed to carry out that mandate.

64. Summary of key recommendations on clear, credible and achievable mandates:

(a) The Panel recommends that, before the Security Council agrees to implement a ceasefire or peace agreement with a United Nations-led peacekeeping operation, the Council must first make sure that the United Nations has the authority to do so. This authority should be provided in the Security Council resolutions authorizing the operation. The resolutions should contain provisions that ensure that the operation will be clearly and specifically authorized to protect civilians.

(b) The Security Council should ensure that the operation has the resources needed to carry out its mandate. This includes providing the operation with the necessary personnel, equipment and supplies to carry out its mandate.

(c) Security Council resolutions should meet the requirements of peacekeeping operations when they deploy into potentially dangerous situations, especially those with implications for a mission's use of force.

65. A strategic approach by the United Nations to conflict prevention, peacemaking and peacemaking will require that the Secretary-General, the Security Council, the Secretary-General's Special Representative(s) and the United Nations Peacebuilding Commission coordinate their efforts to gather and analyse relevant information and to support ECPS, the nominal high-level decision-making forum for peace and security issues.

66. ECPS is one of four "sectoral" executive committees established in the Secretary-General's initial reform package of early 1997 (see A/51/829, sect. A). In the Secretary-General's Humanitarian Action for Peace initiative (see S/1999/1257, p. 51).

67. Current Secretariat staffing levels and job demands in the peace and security sector more or less preclude departmental policy planning. Although most of these activities are important, they are often time-consuming and resource-intensive.

68. The Secretary-General and the members of ECPS need a professional system in the Secretariat for accumulating knowledge about conflict situations, distributing that knowledge efficiently among the Secretariat and giving the Security Council what it needs to know, not what it wants to know, when formulating or changing mission mandates. The system must be able to respond quickly to changes in the situation and to provide information to the Security Council in a form that is easy to understand and use.

69. The bulk of EISAS should be formed by consolidating the various departmental units that are engaged in information-gathering, analysis, and strategic planning capacities. The bulk of EISAS should be formed by consolidating the various departmental units that are engaged in information-gathering, analysis, and strategic planning capacities.

70. The Secretary-General should encourage the establishment of a "common service," the United Nations Information System (UNISYS), to develop a capability to provide timely and accurate information to the Security Council and other peace and security decision-makers. The UNISYS should be established as a separate entity under the leadership of the Secretary-General.

71. The UNISYS should include a "data collection and analysis unit," which would be responsible for gathering and analysing relevant information and for supporting ECPS, the nominal high-level decision-making forum for peace and security issues.

72. A common service, the UNISYS, would be of both short-term and long-term value to ECPS members. It would strengthen the daily reporting function of the DPKO Situation Centre, generating all-source updates and summaries of developments in the field, and it would provide ECPS members with a central source for information on operational and political developments in the field. The UNISYS would also enable ECPS members to make informed decisions and to take timely action in response to developments in the field.
on mission activity and relevant global events. It could bring a budding crisis to the attention of ECPS leadership and brief them on that crisis using modern presentation techniques. It could serve as a focal point for timely analysis of cross-cutting thematic issues and preparation of reports for the Secretary-General on such issues. Finally, based on the prevailing mix of missions, crises, interests of the legislative bodies and inputs from ECPS members, EISAS could propose and manage the agenda of ECPS itself, support its deliberations and help to transform it into the decision-making body anticipated in the Secretary-General’s initial reforms.

73. EISAS should be able to draw upon the best available expertise — inside and outside the United Nations system — to fine-tune its analyses with regard to particular places and circumstances. It should provide the Secretary-General and ECPS members with consolidated assessments of United Nations and other efforts to address the sources and symptoms of ongoing and looming conflicts, and should be able to assess the potential utility — and implications — of further United Nations involvement. It should provide the basic background information for the initial work of the Integrated Mission Task Forces (ITMFs) that the Panel recommends below (see paras. 198-217), be established to plan and support the set up of peace operations, and continue to provide analyses and manage the information flow between mission and Task Force once the mission has been established.

74. EISAS should create, maintain and draw upon shared, integrated, databases that would eventually replace the proliferated copies of code cables, daily situation reports, daily news feeds and informal connections with knowledgeable colleagues that desk officers and decision makers alike currently use to keep informed of events in their areas of responsibility. With appropriate safeguards, such databases could be made available to users of a peace operations Intranet (see paras. 255 and 256 below). Such databases, potentially available to Headquarters and field alike via increasingly cheap commercial broadband communications services, would help to revolutionize the manner in which the United Nations accumulates knowledge and analyses key peace and security issues. EISAS should also eventually supersede the Framework for Coordination mechanism.

75. Summary of key recommendation on information and strategic analysis: the Secretary-General should establish an entity, referred to here as the ECPS Information and Strategic Analysis Secretariat (EISAS), that would support the information and analysis needs of all members of ECPS; for management purposes, it should be administered by and report jointly to the heads of DPA and DPKO.

H. The challenge of transitional civil administration

76. Until mid-1999, the United Nations had conducted just a small handful of field operations with elements of civil administration conduct or oversight. In June 1999, however, the Secretariat found itself directed to develop a transitional civil administration for Kosovo, and three months later for East Timor. The struggles of the United Nations to set up and manage those operations are part of the backdrop to the narratives on rapid deployment and on Headquarters staffing and structure in the present report.

77. These operations face challenges and responsibilities that are unique among United Nations field operations. No other operations must set and enforce the law, establish and run their own courts, oversee the administration of property, supervise the education and health systems, maintain order in the streets, ensure the protection of the human rights of all residents, and help to transform it into the decision-making body anticipated in the Secretary-General’s initial reforms.

80. Beyond such challenges lies the larger question of whether the United Nations should be in this business at all, and if so whether it should be considered an element of peace operations or should be managed by some other structure. Although the Security Council may not again direct the United Nations to do transitional civil administration, no one expected it to do so with respect to Kosovo or East Timor either. Intra-State conflicts continue and future instability is hard to predict, so that despite evident ambivalence about civil administration among United Nations Member States and within the Secretariat, other such missions may indeed be established in the future and on an equally urgent basis. Thus, the Secretariat faces an unpleasant dilemma: to assume that transitional administration is a transitory responsibility, not prepare for additional missions and do badly if it is once again flung into the breach, or to prepare well and be asked to undertake them more often because it is well prepared. Certainly, if the Secretariat anticipates future transitional administrations as the rule rather than the exception, then a dedicated and distinct responsibility for those tasks must be created somewhere within the United Nations system. In the interim, DPKO has to continue to support this function.

81. These missions’ tasks would have been much easier if a common United Nations justice package had allowed them to apply an interim legal code to which mission personnel could have been pre-trained while some other structure. Although the Security Council may not again direct the United Nations to do transitional civil administration, no one expected it to do so with respect to Kosovo or East Timor either. Intra-State conflicts continue and future instability is hard to predict, so that despite evident ambivalence about civil administration among United Nations Member States and within the Secretariat, other such missions may indeed be established in the future and on an equally urgent basis. Thus, the Secretariat faces an unpleasant dilemma: to assume that transitional administration is a transitory responsibility, not prepare for additional missions and do badly if it is once again flung into the breach, or to prepare well and be asked to undertake them more often because it is well prepared. Certainly, if the Secretariat anticipates future transitional administrations as the rule rather than the exception, then a dedicated and distinct responsibility for those tasks must be created somewhere within the United Nations system. In the interim, DPKO has to continue to support this function.

82. Summary of key recommendation on transitional civil administration: the Panel recommends that the Secretary-General invite a panel of international legal experts, including individuals with experience in United Nations operations that have transitional administration mandates, to evaluate the feasibility and utility of developing an interim criminal code, including any regional adaptations potentially required, for use by such operations pending the re-establishment of local rule of law and local law enforcement capacity.

84. Many observers have questioned why it takes so long for the United Nations to fully deploy operations following the adoption of a Security Council resolution. The reasons are several. The United Nations does not have a standing army, and it does not have a standing police force designed for field operations. There is no reserve corps of mission leadership: special representatives of the Secretary-General and heads of mission, force commanders, police commissioners, directors of administration and other leadership components are not sought until urgently needed. The Standby Arrangements System (UNHAS) currently in place for potential government-provided military, police and civilian expertise has yet to become a dependable supply of resources. The stockpile of essential equipment recycled from the large missions of the mid-1990s to the United Nations Logistics Base (UNLB) at Brindisi, Italy, has been depleted by the current surge in missions and there is as yet no budgetary vehicle for rebuilding it quickly. The
peacekeeping operations. Measures must be taken to ensure that adequate financial resources are available to support the mission. Furthermore, it is important for the United Nations to establish a system for regularly reviewing the costs associated with peacekeeping operations. This can help in identifying areas where cost savings can be made, thus allowing for more efficient use of resources.

A. Defining what "rapid and effective deployment" entails

86. The proceedings of the Security Council, the reports of the Special Committee on Peacekeeping Operations and input from Member States have contributed significantly to our understanding of the concept of rapid and effective deployment. The term "rapid" typically refers to the time required for a mission to deploy to a crisis area, while "effective" refers to the ability of the mission to achieve its objectives.

87. The first six to 12 weeks following a ceasefire or peace accord is often the most critical period for the United Nations to establish a credible presence in a conflict zone. This is because during this period, the United Nations must make a rapid deployment in order to anticipate and overcome one or more of the parties' second thoughts about taking a peace process forward.

88. Timelines for rapid and effective deployment will naturally vary depending on the political and military context. For example, in the case of a complex peacekeeping operation, the deployment timeline may be 90 days after the adoption of a Security Council resolution. In the case of a military operation, the timeline may be 15 days.

89. In order to meet these timelines, the Secretariat would need one or a combination of the following: (a) standing reserves of military, civilian police and civilian expertise, materiel and financing; (b) extremely reliable standby capacities to be called upon on short notice; or (c) sufficient lead-time to acquire these resources, which would require the establishment of a rapid and effective deployment capacity. Such a capacity must be able to forecast and coordinate any potential new missions several months ahead of time.

90. Many Member States have argued against the establishment of a standing United Nations army or police force, resisted entering into reliable standby arrangements, and opposed the development of rapid and effective deployment capacities. The analysis that follows argues that at least some of these circumstances must change to make rapid and effective deployment possible.

B. Effective mission leadership

92. Effective, dynamic leadership can make the difference between a cohesive mission with high morale and effectiveness, and one that is fractured and ineffective. The role of the mission commander is crucial in ensuring that the mission's political, military and logistic objectives are achieved.

93. In the case of a complex peacekeeping operation, the mission commander will have to establish the mission's political/military centre of gravity and sustain a potentially fragile peace process. This is because the mission's effectiveness will be determined by the character and ability of those who lead it.

94. Factoring in the politics of selection makes the process somewhat more understandable. Political sensitivities about a new mission may preclude the Secretary-General's canvassing potential candidates much before a mission has been established. In selecting SRSGs, RSGs or other heads of operations, the United Nations must agree on basic parameters for defining what "rapidity" and "effectiveness" entail.

95. Although political and geographical considerations are legitimate, in the Panel's view, managerial talent and experience must be accorded at least equal priority in choosing mission commanders. Based on the personal experience of the United Nations in deploying missions in the past, the United Nations must learn from these experiences.

96. To facilitate early selection, the Panel recommends the Secretary-General compile, in a systematic fashion, a comprehensive list of potential SRSGs, Force Commanders, Mission Managers and other heads of operations. Such a database would enable the Secretary-General to select a candidate for the position of mission commander.

97. The Secretariat should, as a matter of practice, provide mission leadership with strategic guidance and plans for anticipating and overcoming potential challenges. They must determine on their own how to implement the plans and adjust as necessary. In the case of a complex operation, financial experts will need to be involved in the planning process from the beginning.
98. The Panel believes that there should always be at least one member of the senior management team of a mission with relevant United Nations experience, preferably both in a field mission and at Headquarters. Such an individual should play a leading role in missions, providing a valuable ability to anticipate some of the many challenges they face. The Panel supports the candidacy of candidates who have held senior positions at Headquarters, but believes that candidates with strong field experience should also be considered. The Panel also supports the development of a systematic approach to the selection of mission leaders, beginning with the compilation of a comprehensive list of potential candidates or special representatives of the Secretary-General, and involving Member States and other contributing organizations, with the aim of ensuring that the most qualified candidates are selected.

99. The Panel notes the precedent of appointing the resident coordinator/humanitarian coordinator of the teams of United Nations agencies, funds and programmes engaged in operations. This practice has been widely used in the past, and has been proven effective in many cases. The Panel recommends that this practice be continued, and that the role of the resident coordinator be defined in the mission’s rules of engagement.

100. Conversely, it is critical that field representatives of United Nations agencies, funds and programmes facilitate the work of the SRSG or RSG in his or her role as the senior UN representative in the field. The role of these representatives is to provide support to the SRSG or RSG in the field, and to work closely with the residents and other field representatives to ensure that the work of the mission is effectively carried out.

101. Summary of key recommendations on mission leadership:

(a) The Secretary-General should continue to provide guidance and support to the mission leadership, ensuring that the mission is well-managed and able to implement its mandates effectively.

(b) The entire leadership of a mission should be selected and assembled at Headquarters as early as possible, in order to enable their participation in key aspects of the mission’s work.

(c) The Secretariat should routinely provide strategic guidance and plans for anticipating and overcoming challenges to mandate implementation, whenever possible.

C. Military personnel

102. The United Nations launched UNSAS in the mid-1990s in order to enhance its rapid deployment capabilities and to enable it to respond to the unpredictable and complex situations that arise in the field. UNSAS provides a pool of military personnel that can be deployed on short notice to meet the needs of peacekeeping operations.

103. The absence of detailed statistics on responses notwithstanding, many Member States are saying "no" to deploying formed military units to United Nations-led peacekeeping operations. For example, of the 50,000 military personnel deployed in United Nations peacekeeping operations, as of end-June 2000, were contributed by developing countries. The five Permanent Members of the Security Council are currently contributing far fewer troops to United Nations-led operations, although four of the five have contributed sizeable forces to the North Atlantic Treaty Organization (NATO)-led operations in Bosnia and Herzegovina and Kosovo.

104. Memories of peacekeepers murdered in Mogadishu and Kigali and taken hostage in Sierra Leone help to explain the difficulties Member States are having in committing their national forces to peacekeeping operations. The Panel recommends that the United Nations should consider the establishment of a new generation of peacekeeping operations that are more self-sufficient and that do not depend on the support of partner countries.

105. This must stop. Troops-contributing countries that cannot meet the requirements of the mission’s rules of engagement, whether in terms of their personnel or equipment, should not be deployed. The Secretary-General must be given the power to disband missions that fail to meet the requirements of the mission’s rules of engagement, and to ensure that the provisions of the mission’s rules of engagement are met before the deployment of troops.

106. The United Nations is facing a very serious dilemma. A mission such as UNAMSIL would probably not have faced the difficulties that it did in spring 2000 had it been provided with forces as strong as those currently keeping the peace in the United States. However, the Secretary-General finds himself in an untenable position. He is given a Security Council resolution specifying troop levels on paper, but without knowing whether the troops will actually deploy to the mission area. The secretariat of the mission’s rules of engagement, and may have differing expectations about mission requirements for the use of force.

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The Panel recommends that the Secretary-General outline this proposal with implementing details to the Member States for immediate implementation within the parameters of the existing Standby Arrangements System.

114. Such an emergency military field planning and liaison staff capacity would not be enough, however, to ensure force coherence. In our view, in order to function as a coherent force, the troop contingents themselves should at least have the opportunity to conduct joint training exercises at the contingents' command level. Ideally, they will have had the opportunity to conduct joint training exercises at the contingents' command level.

115. If United Nations military planners assess that a brigade (approximately 5,000 troops) is what is required to effectively deter or deal with violent challenges to the implementation of an operation's mandate, then the troop contributor might be instructed to prepare to bring two brigades to the United Nations. As of 1 August 2000, 25 per cent of the 8,641 police positions authorized for United Nations operations remained vacant.

116. To that end, the United Nations should establish the minimum training, equipment and other standards required for forces to participate in United Nations peacekeeping operations. Member States with the means to do so could enter into partnerships with other Member States, who have also established a command-level planning element that works together routinely. However, the decision of the Member States to do so will depend on the political and administrative indications to be provided by the United Nations Secretary-General in his or her capacity as the operational authority for United Nations operations.

117. Summary of key recommendations on military personnel:

(a) Member States should be encouraged, where appropriate, to enter into partnerships with one another, within the context of the United Nations Standby Arrangements System (UNSAS), to form several coherent military arrangements, with the necessary field planning and liaison staff capacity provided by the United Nations (see paras. 113 and 114 above). Each new arrangement would include, at a minimum, UN military observers and a force of a size appropriate to the mandate of the operation. Typically, an arrangement would include one UN observer team, one UN military observer team for each 20,000 troops, and one UN observer team of at least 45 officers for each 100,000 troops. The observer teams would work with the UN military observers to ensure the development of a force with the necessary military planning and liaison capacity for the operation.

(b) The Secretary-General should be given the authority to formally canvass Member States participating in UNSAS regarding their willingness to contribute troops to a new operation, a process that would proceed in close consultation with the Member States involved in such an arrangement. The Secretary-General should also be given the authority to deploy one or more UN military observers to contribute to the planning and liaison capacity of an operation.

(c) The Secretary-General should outline the proposal to the Member States for immediate implementation within the parameters of the existing Standby Arrangements System.

(d) The Panel recommends that a ‘revolving on-call list’ of about 100 military officers be established in UNSAS to be available on 30 days’ notice to augment nuclei of DPKO planners with teams trained to create mission headquarters for a new peacekeeping operation, and to participate in the planning and execution of other UN missions.

118. Civilian police are second only to military forces in numbers of international personnel involved in United Nations peacekeeping operations. Demand for police officers in United Nations peacekeeping operations has increased markedly, with the majority of police officers deployed to peacekeeping operations in the past six years. As of 1 August 2000, 25 per cent of the 8,641 police positions authorized for United Nations operations remained vacant.

119. The Panel has accordingly argued (see paras. 39, A/55/305 para. 40 and 47 (b) above) for a doctrinal shift in the use of civilian police in United Nations peace operations, to focus primarily on the reform and restructuring of local police forces and related justice experts for mission service. The goal is to work with local authorities to ensure that the police forces are effective in their task of reducing criminality and protecting the human rights of all members of society. As of 1 August 2000, 25 per cent of the 8,641 police positions authorized for United Nations operations remained vacant.

120. Whereas Member States may face domestic political difficulties in sending military units to United Nations peacekeeping operations, Governments tend to face fewer political difficulties in sending civilian police units. As of 1 August 2000, 25 per cent of the 8,641 police positions authorized for United Nations operations remained vacant.

121. Under the circumstances, the process of identifying, securing the release of and training police officers for mission service is often time-consuming, and prevents the United Nations from deploying a force capable of meeting the requirements of the mission. The Panel therefore calls upon Member States to establish national pools of serving police officers (augmented, if necessary, by recently retired police officers who meet the professional and physical requirements) who are administratively and medically pre-qualified medically and administratively for relief from their duties in their countries for up to 2 years, and who are available on short-notice list of about 100 officers would be at the disposal of the Secretary-General. The proposed arrangement is intended as a mechanism to allow Members States to participate actively in United Nations peacekeeping operations to which they are contributing forces within the parameters of the existing Standby Arrangements System.

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D. Civilian police

123. Funding for a team's initial training would come from the budget of the originating Member State, and once deployed, the team would be funded by the United Nations. The team would be responsible for identifying, securing the release of and training police officers for mission service. The goal is to work with local authorities to ensure that the police forces are effective in their task of reducing criminality and protecting the human rights of all members of society.
A/55/305
S/2000/809

1. The Panel believes that the cohesion of police
components would be further enhanced if police-
contributing States were to develop joint training
exercises, and therefore recommends that Member
States where appropriate shall develop joint training
exercises for police officers serving in the
United Nations peacekeeping missions. Such
exercises should be designed to foster cooperation
and coordination between police officers from
different States and to enhance their collective
ability to respond to the challenges they face.

2. The Panel also recommends that Member States
designate a single point of contact within their
governmental structures for the provision of
civilian police personnel to United Nations peace
operations. This point of contact should

3. The Panel believes that the Secretary-General
should be given a capability for assembling, on
short notice, senior civilian police planners and
technical experts, preferably with prior United
Nations mission experience, to staff

4. E. Civilian specialists

5. To date, the Secretariat has been unable to
develop contingency plans for the deployment
of civilian specialists. Therefore, the Panel
suggests that Member States establish
continuity training programs for civilian
specialists, with the objective of creating a pool
of qualified personnel ready for deployment
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should be given a capability for assembling, on
short notice, senior civilian police planners and
technical experts, preferably with prior United
Nations mission experience, to staff

126. Summary of key recommendations on civilian
peacekeeping operations:

(a) Member States are encouraged to each
establish a national pool of civilian police officers
that would be ready for deployment to United
Nations peace operations on short notice, within the
context of the United Nations standby arrangement
system.

(b) Member States are encouraged to enter
into regional training partnerships for civilian
police in the respective national pools in order to
promote a common level of training and to

(c) Members States are encouraged to
designate a single point of contact within their
governmental structures for the provision of
civilian police to United Nations peace operations;

(d) The Panel recommends that a revolving
on-call list of about 100 police officers and related
experts be created in UNSAS to be available on
seven days' notice for major peacekeeping
operations. This list should include experts
specializing in areas such as criminal justice,
human rights, and conflict resolution.

(e) The Panel recommends that parallel
arrangements to recommendations (a), (b) and (c)
above be established for judicial, penal,
human rights and other relevant specialists, who
will make up collegial "rule of law" teams.

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128. Each peacekeeping operation is unique, and
the availability of qualified personnel is
affected by a variety of factors, including the
capacity of the host country, the level of
terrorism and other threats, and the
availability of resources. The Panel
believes that Member States should be

129. The Secretariat was again taken by surprise in
1999, when it had to staff missions with
responsibilities for governance in East Timor and
Kosovo. Few staff within the Secretariat
had experience in these areas, and the
requests from the field were

130. In order to respond quickly, ensure quality control
and satisfy the volume of even foreseeable demands,
the Secretariat would require the existence and
maintenance of the next, most complete, and
meaningful list of possible civilian police
personnel. This list should include

131. No such roster currently exists. As a result, urgent
phone calls have to be made to Member States, United
Nations departments and agencies, and the
field missions themselves. The Secretariat

132. A central intranet-based roster could be
established, along the lines proposed above, that is
able to access on-line availability and training
information. However, the Panel recommends that
such a roster be established on a voluntary basis,
and that Member States be encouraged to
participate.

1. Lack of standby systems to respond to
unexpected or high-volume surge demands

2. The Panel believes that Member States
should serve (a) and (b) within one year on
the United Nations Peace Operations Standing
Arrangements System. The Secretariat will,
therefore, prepare the necessary guidelines
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2. **Difficulties in attracting and retaining the best external recruits**

As ad hoc as the recruitment system has been, the United Nations has managed to recruit some very qualified and experienced candidates. The UN has historically not prioritized long-term career prospects and has been criticized for not offering the same opportunities as career services in Member States. The lack of a comprehensive staffing strategy for peacekeeping operations has led to difficulties in attracting and retaining the best candidates.

3. **Shortages in administrative and support functions at the mid- to senior-levels**

Critical shortfalls in key administrative areas (procurement, finance, budget, personnel) and in logistics support areas (contracts managers, engineers, information technology) have been identified. The United Nations has struggled to provide adequate support for field operations, which has been exacerbated by the lack of a cohesive staffing strategy. This has led to difficulties in attracting and retaining the best candidates for these positions.

4. ** Penalizing field deployment**

Headquarters staff who are familiar with the rules, regulations, and procedures do not readily deploy to the field. This is due to a lack of clear guidance for field staff, which has led to inconsistent practices and a lack of transparency. The lack of a comprehensive staffing strategy has also contributed to this problem. Staff who are familiar with the rules, regulations, and procedures are better positioned to address the security needs of field operations.

5. **Obsolescence in the Field Service category**

The Field Service is the only category of staff within the United Nations designed specifically for service in peacekeeping. The most experienced and seasoned members of this group are now in limited supply, deployed in current missions, and many are at or near retirement. The Field Service has been criticized for not keeping up with the changing demands of field operations, which has led to a lack of qualified personnel.

6. **Lack of a comprehensive staffing strategy for peacekeeping operations**

There is no comprehensive staffing strategy for peacekeeping operations. The management of the Peacekeeping Department (PAN) has not addressed the staffing needs of peacekeeping operations adequately. The staffing needs of peacekeeping operations are not given due consideration in the formulation of staffing strategies.

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There is no comprehensive staffing strategy for peacekeeping operations. The management of the Peacekeeping Department (PAN) has not addressed the staffing needs of peacekeeping operations adequately. The staffing needs of peacekeeping operations are not given due consideration in the formulation of staffing strategies.

28. **Penalizing field deployment**

Headquarters staff who are familiar with the rules, regulations, and procedures do not readily deploy to the field. This is due to a lack of clear guidance for field staff, which has led to inconsistent practices and a lack of transparency. The lack of a comprehensive staffing strategy has also contributed to this problem. Staff who are familiar with the rules, regulations, and procedures are better positioned to address the security needs of field operations.
149. The Secretariat should also include, in particular, a comprehensive staffing strategy for peace operations, outlining the responsibilities of the relevant departments and agencies. This strategy should be developed in consultation with the appropriate intergovernmental and non-governmental organizations.

150. The Secretariat should formulate a comprehensive staffing strategy for peace operations, outlining, among other issues, the use of United Nations Volunteers, standby arrangements for personnel, and the distribution of responsibilities among the members of the Executive Committee on Peace and Security for implementing that strategy.

151. The logistics support system should be reformed to mirror the recurrent demands faced by all peace operations, especially at the mid- to senior-levels in the administrative and logistics areas.

152. The United Nations launched the "start-up kit" concept during the boom in peacekeeping operations in the mid-1990s to partially address this problem. The start-up kits are used to provide field missions with basic equipment and commercial services required for mission start-up and full deployment. The kits are, however, non-disposable and durable equipment is returned to Brindisi and held in reserve, in addition to the start-up kits.

153. Most governmental organizations and commercial companies follow similar processes, though not all of them take as long as that of the United Nations. For example, the entire process of the United Nations from start to finish, including procurement, production, and delivery of the item, can take 20 weeks or more. If the majority of the processes are commenced after an operation has been established, the timelines suggested if the majority of the processes are commenced before an operation has been established.

154. The United Nations launched the "start-up kit" concept during the boom in peacekeeping operations in the mid-1990s to partially address this problem. The start-up kits are used to provide field missions with basic equipment and commercial services required for mission start-up and full deployment. The kits are, however, non-disposable and durable equipment is returned to Brindisi and held in reserve, in addition to the start-up kits.

155. However, the wear and tear on light vehicles and other items in post-war environments may sometimes render the shipping and servicing costs more expensive than selling off the item or cannibalizing it for parts. As such, the Secretariat should consider the possibility of providing field missions with new equipment and supplies, rather than using the start-up kits as a primary source of supplies. The start-up kits can then be used to support new mission operations, with the surplus supplies being returned to Brindisi for future use.

156. Public information capacity

157. An effective public information and communications capacity is essential for virtually all peace operations. It is essential that such a memorandum be part of a broader comprehensive staffing strategy for peace operations.

158. The Secretariat should establish a central pool of civilian candidates available to deploy to peace operations on short notice. The field missions should be granted access to this pool, subject to guidelines on fair geographic and gender distribution to be promulgated by the Secretariat, and a one percent of a mission's operating budget, should be increased in accordance with the mission's mandate, size, and needs.

159. The Secretariat should also establish a Civilian Staffing System (CSS) that includes standby arrangements for personnel. This system should be developed in consultation with the appropriate intergovernmental and non-governmental organizations.

160. The Secretariat should formulate a comprehensive staffing strategy for peace operations, outlining, among other issues, the use of United Nations Volunteers, standby arrangements for personnel, and the distribution of responsibilities among the members of the Executive Committee on Peace and Security for implementing that strategy.
such equipment to reputable local non-governmental organizations as a means of assisting the development of nascent civil society.

156. Nonetheless, the existence of these start-up kits and reserves of equipment appears to have greatly facilitated the rapid deployment of the smaller operations mounted in the field. The UN has in hand the equipment required to support the start-up and rapid full deployment of a large mission in the near future.

157. There are, of course, limits to how much equipment the United Nations can and should keep in reserve at UNLB or elsewhere. Mechanical equipment in storage needs to be kept in a condition sufficient to facilitate its rapid and effective deployment when required. As a general rule, this means that equipment must be maintained and kept in a condition such that it is ready for use without any extended periods of preparation. Equipment that is three years old, for example, falls outside of this guideline, and should not be considered for reserve.

158. The United Nations has accordingly also moved in that direction over the past few years, and has concluded some 20 standing commercial systems contracts for the provision of mission support services. These contracts, which are covered under systems contracts or standing commercial services contracts, provide a means of reducing the time required to procure and deploy essential equipment. The contracts also require that the United Nations retain a number of specified spare parts and associated documentation, which allows for rapid and effective deployment of the equipment.

159. The General Assembly has taken a number of steps to address this lead-time issue. The establishment of the Peacekeeping Reserve Fund, which when fully capitalized amounts to $150 million, provided a standing pool of money from which to draw quickly. The Secretary-General has been authorized to commit up to $50 million from this fund without the need for prior approval by the General Assembly. For commitments in excess of $50 million, the General Assembly's approval is required.

160. In exceptional cases, the General Assembly, on the advice of ACABQ, has granted the Secretary-General authority to commit up to $200 million in spending to facilitate critical operational needs. These funds are generally available for one mission, and are indicative of the Member States’ support for enhancing the Organization’s rapid deployment capacities.

161. At the same time, all of these developments are only applicable after a Security Council resolution has been adopted authorizing the establishment of a mission or its advance elements. Unless some of these measures are applied in a timely manner, the suggested targets for rapid and effective deployment cannot be met.

162. The Secretariat should thus formulate a global logistics support strategy to enable rapid and effective mission deployment within the timelines proposed. That strategy should be based on a cost-benefit analysis of the various options available, and should take into account the number and types of operations that might need to be established over 12 to 18 months. The Secretary-General should submit a detailed proposal for implementing that strategy, which could entail considerable financial implications.

163. In the interim, the General Assembly should approve a one-time expenditure for the creation of three new start-up kits at Brindisi (for a total of five), which would then automatically be replenished from the budgets of the missions that drew upon the kits. The Secretary-General should be given authority to draw up to $50 million from the Peacekeeping Reserve Fund, prior to the adoption of a Security Council resolution, to procure the necessary equipment, particularly when initial planning assumptions prove to be inaccurate or when it is determined that the reserve fund would be depleted due to the establishment of multiple missions in rapid succession.

164. The General Assembly should consider augmenting the size of the reserve fund, as well as considering the establishment of a Permanent Peacekeeping Reserve Fund, which could be used to support the rapid deployment of missions in the future.

165. Well beyond mission start-up, the field missions often wait for months to receive items that they need, particularly when initial planning assumptions prove to be inaccurate. The Secretary-General should be given authority to draw up to $100 million from the Peacekeeping Reserve Fund to procure the necessary equipment, particularly when initial planning assumptions prove to be inaccurate or when it is determined that the reserve fund would be depleted due to the establishment of multiple missions in rapid succession.

166. The Panel agrees that Headquarters should take a leading role in managing the field missions and provide them with the authority and flexibility required to plan and execute their operations. However, it is not entirely clear what real value Headquarters involvement adds to the procurement process for those goods and services not available locally and not covered under systems contracts or standing commercial services contracts (up to US $1 million, depending on mission size and needs).

167. The United Nations has accordingly also moved towards the establishment of a global logistics support strategy to enable rapid and effective mission deployment within the timelines proposed. That strategy should be based on a cost-benefit analysis of the various options available, and should take into account the number and types of operations that might need to be established over 12 to 18 months. The Secretary-General should submit a detailed proposal for implementing that strategy, which could entail considerable financial implications.
under the new system; however, because the Peacemaking Reserve Fund was established with the Secretary-General's consent, it was able to continue its operations.

6. The Secretary-General should be given authority to draw up to $50 million from the Peacekeeping Reserve Fund once it became clear that an operation was likely to be established, with the approval of the Security Council but prior to the adoption of a Security Council resolution.

7. The Secretariat should undertake a review of the entire procurement policies and procedures (with proposals to the General Assembly for amendments to the ... required), to facilitate in particular the rapid and full deployment of an operation within the proposed timelines.

8. The Secretariat should conduct a review of the policies and procedures governing the management of financial resources in the field missions with a view to providing field missions with much greater flexibility in the management of their budgets.

9. The Secretariat should conduct a review of the policies and procedures governing the field missions in the field, with the aim of ensuring that the policies and procedures are in line with the rapid and full deployment of an operation within the proposed timelines.

10. The Secretariat should increase the level of procurement authority delegated to the field missions (from $200,000 to as high as $1 million, depending on mission size), to enable field missions to procure goods and services that are available locally and are not covered under systems contracts or standing commercial services contracts.

IV. Headquarters resources and structure for planning and supporting peacekeeping operations

170. Creating effective Headquarters support for peacekeeping operations means addressing the three issues of quantity, structure and quality, that is, the number of staff and organizational structure, and quality of personnel and effectiveness of support services.

171. The Panel sees a clear need for increased resources in support of peacekeeping operations. There is particular need for increased resources in DPKO, the primary department responsible for the planning and supporting of the United Nations' most complex and high-profile field operations.

172. Expenditures for Headquarters staffing and related costs to plan and support all peacekeeping operations in the field can be considered the United Nations' direct, ... support costs was underfunding its field people and very likely burning out its support structures in the process.

173. Table 4.1 lists the total budgets for peacekeeping operations from mid-1996 through mid-2001 (peacekeeping budget cycles run from July to June, offset six months from the fiscal year). Table 4.1 shows the level of support for peacekeeping operations in the field, along with the operational requirements of large field missions.

174. The Support Account funds 85 per cent of the DPKO budget, or about $40 million annually. Another $6 million for DPKO comes from the regular biennium budget. This $46 million total provides support for the following activities:

- The DPKO Secretariat, responsible for the overall management of DPKO operations
- The DPKO Division of Peacekeeping Operations, responsible for the planning and conduct of peacekeeping operations
- The DPKO Division of Field Support, responsible for the coordination and provision of support services to peacekeeping operations
- The DPKO Division of Peacekeeping Support, responsible for the coordination and provision of support services to peacekeeping operations

175. Until mid-decade, the Support Account was calculated as 8.5 per cent of the total civilian staff costs of peacekeeping operations, but it did not take into account the costs of supporting the United Nations' Mission in Sudan (UNMIS) or the costs of supporting the United Nations Mission in Liberia (UNMIL). This approach to defining the Support Account was replaced by an approach that defined the Support Account as a percentage of the total United Nations' peacekeeping operations budget, which takes into account the costs of supporting the United Nations' Mission in Sudan (UNMIS) and the United Nations Mission in Liberia (UNMIL).

176. Clearly, DPKO and the other Secretariat offices supporting peacekeeping should expand and contract to some degree in relation to the level of activity in the field, but to do so at a pace that is in line with the rapid and full deployment of an operation within the proposed timelines. The Secretariat should therefore have a clear understanding of the costs involved in supporting the various peacekeeping operations, and should be able to make informed decisions about the level of support required.

177. Because the Support Account funds virtually all of DPKO's peacekeeping operations, it has managed to hold together all of its major field operations.

178. Member States and the Secretariat have long recognized the need to define a baseline staffing level and a separate mechanism to enable growth and retrenchment of peacekeeping operations. In the meantime, the Panel believes that certain current staff shortages are plainly obvious and merit highlighting.

179. The Military and Civilian Police Division in DPKO, headed by the United Nations Military Adviser, has an authorized strength of 32 military officers and nine civilian police officers. The Division is responsible for the planning and conduct of peacekeeping operations, from the initial planning stages through to the deployment of personnel, to the field and mission. The Division is also responsible for the training and development of personnel, and for the coordination and provision of support services to peacekeeping operations.

180. In the meantime, the Panel believes that certain current staff shortages are plainly obvious and merit highlighting.

181. The Panel sees a clear need for increased resources in support of peacekeeping operations. There is particular need for increased resources in DPKO, the primary department responsible for the planning and supporting of the United Nations' most complex and high-profile field operations.

182. The Panel believes that the United Nations' peacekeeping operations budget should be increased to $1 billion, with an additional $100 million for the Support Account.
officers into field operations. It can, at present, do little more than identify personnel, attempt to pre-screen them with visiting selection assistance teams (an effort that occupies roughly half of the staff) and then see that they get to the field. Moreover, there is no unit within DPKO (or any other part of the United Nations system) that is responsible for planning and supporting the rule of law elements of an operation that in turn support effective police work, whether advisory or executive.

180. Eleven officers in the Military Adviser’s office support the identification and rotation of military units for all peacekeeping operations, and provide military advice to the political officers in DPKO. DPKO’s military officers are also supposed to find time to “train the trainers” at the Member State level, to draft guidelines, manuals and other briefing material, and to work with FALD to identify the logistics and other operational requirements of the military and police components of field missions. However, under existing staffing levels, the Training Unit consists of only five military officers in total. Ten officers in the Military Planning Service are the principal operational-level military mission planners within DPKO; six more posts have been authorized but have not yet all been filled. These 16 planning officers combine represent the full complement of military staff available to determine force requirements for mission start-up and expansion, participate in technical surveys and assess the preparedness of potential troop contributors. Of the 10 military planners originally authorized, one was assigned to draft the rules of engagement and directives to force commanders for all operations. Only one officer is available, part-time, to manage the UNSAS database.

181. Table 4.2 contrasts the deployed strength of military and police contingents with the authorized strength of their respective Headquarters support staffs. No national Government would send 27,000 troops into the field with just 32 officers back home to provide them with substantive and operational military guidance. No police organization would deploy 8,000 police officers with only nine headquarters staff to provide them with substantive and operational policing support.

Table 4.2
Ratio of military and civilian police staff at Headquarters to military and civilian police personnel in the field

<table>
<thead>
<tr>
<th></th>
<th>Military personnel</th>
<th>Civilian police</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peacekeeping operations</td>
<td>27.36</td>
<td>8.64</td>
</tr>
<tr>
<td>Headquarters</td>
<td>32</td>
<td>9</td>
</tr>
<tr>
<td>Headquarters: field ratio</td>
<td>0.1%</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

182. The Office of Operations in DPKO, in which the political Desk Officers or substantive focal points for particular peacekeeping operations reside, is another area that seems considerably understaffed. It currently has 15 Professionals serving as the focal points for 14 current and two potential new peace operations, or less than one officer per mission on average. While one officer may be able to handle the needs of one or even two smaller missions, this seems untenable in the case of the larger missions, such as UNTAET in East Timor, UNMIK in Kosovo, UNAMSIL in Sierra Leone and MONUC in the Democratic Republic of the Congo. Similar circumstances apply to the logistics and personnel officers in DPKO’s Field Administration and Logistics Division, and to related support personnel in the Department of Management, the Office of Legal Affairs, the Department of Public Information and other offices which support their work. Table 4.3 depicts the total number of staff in DPKO and elsewhere in the Secretariat dedicated, full-time, to supporting the larger missions, along with their annual mission budgets and authorized staffing levels.

183. The general shortage of staff means that in many instances key personnel have no back-up, no way to cover more than one shift in a day when a crisis occurs six to 12 time zones away except by covering two shifts themselves, and no way to take a vacation, get sick or visit the mission without leaving their backstopping duties largely uncovered. In the current arrangements, compromises among competing demands are inevitable and support for the field may suffer as a result. In New York, Headquarters-related tasks, such as reporting obligations to the legislative bodies, tend to get priority because Member States’ representatives press for action, often in person. The field, by contrast, is represented in New York by an e-mail, a cable or the jotted notes of a phone conversation. Thus, in the war for a desk officer’s time, field operations often lose out and are left to solve problems on their own. Yet they should be accorded first priority. People in the field face difficult circumstances, sometimes life-threatening. They deserve better, as do the staff at Headquarters who wish to support them more effectively.

184. Although there appears to be some duplication in the functions performed by desk officers in DPKO and their counterparts in the regional divisions of DPA, closer examination suggests otherwise. The UNMIK desk officer’s counterpart in DPA, for example, follows developments in all of southeastern Europe and the counterpart in OCHA covers all of the Balkans plus parts of the Commonwealth of Independent States. While it is essential that the officers in DPA and OCHA be given the opportunity to contribute what they can, their efforts combined yield less than one additional full-time-equivalent officer to support UNMIK.

185. The three Regional Directors in the Office of Operations should be visiting the missions regularly and engaging in a constant policy dialogue with the SRSGs and heads of components on the obstacles that Headquarters could help them overcome. Instead, they are drawn into the processes that occupy their desk officers’ time because the latter need the back-up.

186. These competing demands are even more pronounced for the Under-Secretary-General and Assistant Secretary-General for Peacekeeping Operations. The Under-Secretary-General and Assistant Secretary-General provide advice to the Secretary-General, liaise with Member State delegations and capitals, and one or the other vets every report on peacekeeping operations (40 in the first half of 2000) submitted to the Secretary-General for his approval and signature, prior to submission to the legislative bodies. Since January 2000, the two have briefed the Council in person over 50 times, in sessions lasting up to three hours and requiring several hours of staff preparation in the field and at Headquarters. Coordination meetings take further time away from substantive dialogue with the field missions, from field visits, from reflection on ways to improve the United Nations conduct of peacekeeping and from attentive management.
187. The Staff shortages faced by the substantive side of DPKO may be exceeded by those in the administrative and logistics support areas, particularly in FALD. At this juncture, those concerned should have a request in mind for an emergency supplementary increase in the Support Account submission for that purpose.

188. A few examples will illustrate FALD’s pronounced staff shortages: the Staffing Section in FALD’s Personnel Management and Support Service (PMSS), which handles recruitment and travel for all civilian personnel as well as travel for UN civil servants and interns. The 183-strong section employed 14 full-time equivalent staff, four of whom have been assigned to FALD’s mission in Kosovo, one full-time and one half-time at FALD’s Office of External Oversight in New York, three as full-time and one half-time for the mission to St. John’s, Turks and Caicos, and three as full-time and one half-time for the mission to St. Vincent and the Grenadines. There are also a number of full-time and one half-time staff members assigned to the PMSS.

189. The Member States must give the Secretary-General some flexibility and the financial resources to bring in the staff he needs to ensure that the credibility of the Organization is not tarnished by its failure to respond to operational needs. They must be given the resources to increase the capacity of the Secretariat to react immediately to unforeseen demands.

190. The responsibility for providing the people in the field the goods and services they need to do their jobs falls primarily on FALD’s Logistics and Communications Service (LCS). The job description of one of the 14 logistics coordinators in LCS might help to illustrate the workload that the entire service currently faces. The co-ordinator for the field operations support component of LCS was responsible for providing support to the mission in Kosovo, as well as to the missions in Sierra Leone (UNAMSIL), in the Darfur region of Sudan, and in Timor-Leste (UNMIT). The co-ordinator was responsible for coordinating the logistics support for the mission, including the movement of personnel, equipment, and supplies. In addition, the co-ordinator was responsible for ensuring that the mission was adequately staffed and equipped to carry out its mandate.

191. Based on this cursory review alone and bearing in mind that the total support cost for DPKO and related Headquarters peacekeeping support offices does not exceed $50 million, the Panel urges the Secretary-General to submit a proposal to the General Assembly outlining the Organization’s requirements in full.

192. The Panel also believes that peacekeeping should cease to be treated as a temporary requirement and that DPKO should be treated as a permanent organizational structure. It requires a consistent and predictable baseline of funding to do so. To that end, the Panel recommends:

(a) The Panel recommends a substantial increase in resources for Headquarters support of peacekeeping operations, and urges the Secretary-General to submit a proposal to the General Assembly outlining the Organization’s requirements in full;

(b) Headquarters support for peacekeeping should be treated as a core activity of the United Nations, and as such the majority of its resource requirements be funded through the mechanism of the biennial programme budget of the Organization.

193. The Panel therefore recommends that Headquarters support for peacekeeping operations be treated as a core activity of the United Nations, and as such the majority of its resource requirements be funded through the mechanism of the Organization’s biennial programme budget. The Panel also recommends that the Secretary-General approach the General Assembly as soon as possible with a request for an emergency supplementary increase in the Support Account submission for that purpose.

194. The specific allocation of resources should be determined according to a professional and objective review of requirements, but gross levels should reflect historically experienced levels. Any approach for the calculation of the regular budget baseline for peacekeeping activities should be preceded by an analysis of the Organization’s resource capacity over the next five years. The expected level of activity for the current year is estimated at $3.6 million, representing a baseline at five per cent of the total average cost of $70 million. The Panel recommends that the Secretary-General should be provided with the resources to increase the capacity of the Secretariat to react immediately to unforeseen demands.

195. To fund above-average or “surge” activity levels, consideration should be given to a simple percentage charge against missions whose budgets carry peacekeeping operations, as proposed in paragraph 124. The average level of $70 million, roughly $20 million more than the current annual Headquarters support budget for peacekeeping, would yield $24 million.

196. Such a direct method of providing for surge capacity should replace the current, annual, post-by-post justification required for the Support Account submissions. The Panel recommends that the Secretary-General approach the General Assembly with a request for an emergency supplementary increase of $24 million to allow immediate recruitment of additional personnel, particularly in DPKO.

197. Summary of key recommendations on funding Headquarters support for peacekeeping operations:

(a) The Panel recommends a substantial increase in resources for Headquarters support of peacekeeping operations, and urges the Secretary-General to submit a proposal to the General Assembly outlining the Organization’s requirements in full;

(b) Headquarters support for peacekeeping should be treated as a core activity of the United Nations, and as such the majority of its resource requirements be funded through the mechanism of the Organization’s biennial programme budget;

(c) Pending the preparation of the next regular budget submission, the Panel recommends that the Secretary-General approach the General Assembly with a request for an emergency supplementary increase in the Support Account to allow immediate recruitment of additional personnel, particularly in DPKO.

198. There is currently no integrated planning or support cell in DPKO in which those responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian affairs, and public information, among others, are represented on a regular basis. The organization of the peacekeeping operations, such as the mission in Sierra Leone (UNAMSIL), in the Darfur region of Sudan, and in Timor-Leste (UNMIT), is carried out by a number of organizations, including DPKO, the Office of Internal Oversight, and the Peacekeeping Personnel Division (PKP).

199. DPKO’s Office of Operations is responsible for developing and implementing operational policies and procedures, as well as for coordinating the deployment of peacekeeping missions. The Office of Operations also provides support to the missions, including the provision of personnel, equipment, and supplies. The Office of Operations is also responsible for the coordination of the mission’s activities, including the coordination of the mission’s activities, the coordination of the mission’s activities, and the coordination of the mission’s activities.

200. The Office of Operations is also responsible for the coordination of the mission’s activities, including the coordination of the mission’s activities, and the coordination of the mission’s activities. The Office of Operations is also responsible for the coordination of the mission’s activities, including the coordination of the mission’s activities, and the coordination of the mission’s activities.
DPA, UNDP, OCHA, UNHCR, OHCHR, DPI, and several other departments, agencies, funds and programmes have an increasingly important role to play in planning for any future operation, especially complex operations, and need to be formally included in the planning process.

200. Collaboration across divisions, departments and agencies does occur, but relies too heavily on personal networks and ad hoc support. There are task forces convened for planning major peacekeeping operations, pulling together officials from various agencies and organisations. However, many task forces tend to meet infrequently or even disband once an operation has begun to deploy, and well before it has fully deployed.

201. Reversing the perspective, once an operation has been deployed, SRSGs in the field have overall coordinating authority for United Nations activities in their mission area. They are responsible for building relationships with different parts of the Secretariat and relevant agencies.

202. The missions should not feel the need to build their own contact networks. They should know exactly who to turn to for the answers and support that they need, especially if the support does not come directly from their home department or agency. The missions are often trying to reflect the functions of the mission itself. The Panel would call that entity an Integrated Mission Task Force (IMTF).

203. This concept builds upon but considerably extends the cooperative measures contained in the guidelines for implementing the "lead" department concept that DPKO and DPA agreed to in June 2000, in a joint departmental meeting chaired by the Secretary-General. The Panel would recommend, for example, that DPKO and DPA formally second one of their experienced regional directors or deputy regional directors to the field, who would then act as the lead department and coordinate all activities with other agencies.

204. ECPS or a designated subgroup thereof should collectively determine the general composition of an IMTF, which would reflect the needs and resources of each operation. The IMTF would be responsible for ensuring that the resources needed to support the operation are in place, and that they are used effectively.

205. Leadership and the lead department concept have posed some problems in the past when the principal focus of United Nations presence on the ground has changed. For example, if a DPKO regional director or political officer is replaced by a DPA counterpart, the new leadership may have to get to know the operation and its needs.

206. Size and composition would match the nature and phase of the field activity being supported. Crisis-related preventive action would require well-informed political staff. Peacemakers working to end a conflict would need to know more about peacekeeping and peace-building options, so that their potential and their limitations are both reflected in any peace accord that would involve the United Nations. The Panel recommends that the lead department and its supporting agencies should be involved at the outset of any new operation, especially complex operations, and that they should be given the lead role in planning and support.

207. An IMTF, such as the one described above, could be a virtual body, its members operating by modern information technology. To support the IMTF, the Secretariat should establish a dedicated Information and Strategic Analysis Secretariat to provide support.

208. IMTFs created to plan potential peace operations could also begin as virtual bodies. As an operation seems more likely to go forward, the Task Force should assume physical form and meet more formally. The IMTF should be much more than a coordinating committee or task force of the type now set up at headquarters to discuss emerging needs. It should be a comprehensive, self-contained, self-directing body of experts and officials from different parts of the Secretariat and relevant agencies.

209. Task Force members should be formally seconded to the IMTF for such duration by their home division, department, agency, fund or programme. That is, an IMTF should be much like the "lead" office concept but, unlike the "lead" office, can be increased or decreased in size or composition in response to mission needs.

210. Each Task Force member should be authorized to serve not only as a liaison between the Task Force and his or her organization, but also as a member of the group, with the same authority, as a member of the Secretariat. Each Task Force member should be able to operate as an independent entity, with its own set of objectives and priorities, and be able to act on its own initiative.

211. IMTFs offer a flexible approach to dealing with time-critical, resource-intensive but ultimately temporary requirements to support mission planning, start-up and initial sustainment. The concept borrows from the UN's experience with the UNMIS mission in Sudan, where an IMTF was created to plan and support the deployment of peacekeeping forces. The IMTF was able to respond quickly to the changing needs of the mission, and to ensure that the resources needed were in place and used effectively.

212. The Panel is not in a position to suggest "lead" offices for each potential component of a peace operation, but it believes that ECPS should think through this issue in the context of overall needs — to contribute support to coherent, interdepartmental/inter-agency taskforces built to provide that support.
214. The IMTF structure could have significant implications for how DPKO’s Office of Operations is currently structured, and in effect would supplant the Regional Peace-building Support Operations (RPSO) offices in each region. The IMTF concept would allow for a more flexible and adaptive approach to peace support operations with a focus on six broad areas:

- Peacekeeping and peace enforcement
- Stabilization
- Reconstruction and development
- Humanitarian assistance
- Security sector reform
- Political transition

215. While the regional directors of DPKO (and DPA in those cases where they were appointed as IMTF heads) would be in charge of overseeing fewer missions than at present, they would actually be managing a larger number of missions. This is because the IMTF concept would ensure that there is a presence in each region that is capable of coordinating and overseeing the various peace support operations. The IMTF would also provide a focal point for the efficient and effective delivery of peace support operations, ensuring that there is a single point of contact for all such operations.

216. It should also be noted that in order for the IMTF concept to work effectively, its members must be physically co-located during the planning and initial deployment phases. This will not be possible without major adjustments to current office space allocations in the Secretariat.

C. Other structural adjustments required in the Department of Peacekeeping Operations

1. Military and Civilian Police Division

217. All civilian police officials interviewed at Headquarters and in the field expressed frustration with having police officials, who are often seconded from other UN agencies, manage the police component of a peace support operation. The police component is often the most complex and challenging aspect of a peace support operation, and requires specialized knowledge and experience.

218. The Panel recommends that the Military and Civilian Police Division be separated into two separate entities, one for the military and the other for the civilian police. This will allow for a more effective and efficient delivery of peacekeeping and peace enforcement operations.

219. The Panel also recommends that a new, separate police division be established in order to support the military operations. This division should be responsible for managing the police component of a peace support operation, including the planning, deployment, and training of police personnel.

220. In addition, the Panel recommends that a new, separate section be established within the Military and Civilian Police Division to manage the police component of a peace support operation. This section should be responsible for managing the police personnel allocated to a peace support operation, including the planning, deployment, and training of police personnel.

221. The Panel further recommends that a new, separate section be established within the Military and Civilian Police Division to manage the police component of a peace support operation. This section should be responsible for managing the police personnel allocated to a peace support operation, including the planning, deployment, and training of police personnel.

222. The Panel recommends that the Military and Civilian Police Division be separated into two separate entities, one for the military and the other for the civilian police. This will allow for a more effective and efficient delivery of peacekeeping and peace enforcement operations.

223. To ensure a minimum of continuity of capacity, the Panel recommends that the Military and Civilian Police Division be separated into two separate entities, one for the military and the other for the civilian police. This will allow for a more effective and efficient delivery of peacekeeping and peace enforcement operations.

224. The Panel also recommends that a new, separate police division be established in order to support the military operations. This division should be responsible for managing the police component of a peace support operation, including the planning, deployment, and training of police personnel.

225. The Panel further recommends that a new, separate section be established within the Military and Civilian Police Division to manage the police component of a peace support operation. This section should be responsible for managing the police personnel allocated to a peace support operation, including the planning, deployment, and training of police personnel.

226. The Panel recommends that the Military and Civilian Police Division be separated into two separate entities, one for the military and the other for the civilian police. This will allow for a more effective and efficient delivery of peacekeeping and peace enforcement operations.

227. The Panel also recommends that a new, separate police division be established in order to support the military operations. This division should be responsible for managing the police component of a peace support operation, including the planning, deployment, and training of police personnel.

228. The Panel further recommends that a new, separate section be established within the Military and Civilian Police Division to manage the police component of a peace support operation. This section should be responsible for managing the police personnel allocated to a peace support operation, including the planning, deployment, and training of police personnel.
228. Furthermore, to avoid allegations of impropriety that may arise from having those responsible for budgeting and procurement working in the same division as those responsible for the administration of the mission, it is recommended that in the new structure, a new division be created to deal specifically with the human rights components of peacekeeping operations, with the ability of the Office of the United Nations High Commissioner for Human Rights to plan and support the human rights components of peacekeeping operations be reconfirmed.

3. Lessons Learned Unit

229. All agree on the need to exploit cumulating field experience but not enough has been done to improve the system’s ability to tap that experience or to feed it back into it. The Panel recommends that the Lessons Learned Unit be substantially enhanced and moved into the revamped Peace and Security Information Unit, reporting directly to the Under-Secretary-General for Peacekeeping Operations.

4. Senior management

230. The Panel feels that this function is in urgent need of enhancement and recommends that it be located where it can work closely with and contribute effectively to ongoing operations as well as mission planning. The General Secretariat, as presently constituted, is not effective in supporting and coordinating peace-building and peace-strengthening efforts. The General Secretariat must be able to coordinate the formulation of peace-building strategies with the Secretariat and the peacekeeping component of the UN as a whole. The Secretariat could coordinate the formulation of peace-building, especially where most activities are funded by voluntary contributions, to ensure that the peace-building component is properly represented at the negotiations table. The Secretariat should also coordinate the formulation of peace-building strategies with the UN as a whole. The Secretariat should also ensure that the peace-building component is properly represented at the negotiations table. The Secretariat could coordinate the formulation of peace-building strategies with the UN as a whole. The Secretariat should also ensure that the peace-building component is properly represented at the negotiations table.

D. Structural adjustments needed outside the Department of Peacekeeping Operations

231. Unlike military, civilian police, mine action, logistics, telecommunications and other mission components, no unit at the UN or standard operating procedures for public information functions in the field, other than on a sporadic and ad hoc basis. The DPI Peace and Security Section is being expanded somewhat through internal and external deployment of staff. The Secretariat should consider whether the proposed integrated mission task forces could work effectively in the field if they are located where they can work closely with and contribute effectively to ongoing operations.

232. The Panel recommends that a new unit be established for operational planning and support of public information components in peace operations. This unit should be established, either within DPKO or within DPA, with the authority and responsibility for peacekeeping-related budgeting and procurement functions to the Under-Secretary-General for Peacekeeping Operations. The General Secretariat should delegate authority and responsibility for peacekeeping-related budgeting and procurement functions to the Under-Secretary-General for Peacekeeping Operations for a two-year trial period.

233. Summary of key recommendations on other structural adjustments in DPKO:

(a) The current Military and Police Division should be restructured, moving the Civilian Police Unit out of the military reporting chain. Consideration should be given to upgrading the rank and level of the Civilian Police Adviser;

(b) The Military Adviser’s Office in DPKO should be restructured to correspond more closely to the way in which the military field headquarters in United Nations peacekeeping operations are structured;

(c) A new unit should be established for operational planning and support of public information components in peace operations; and the Under-Secretary-General for Peacekeeping Operations should be designated as a “Principal Assistant Secretary-General” and function as the deputy to the Under-Secretary-General.

234. Public information planning and support at Headquarters needs strengthening, as do elements in DPA that support and coordinate peace-building activities and provide guidance and support to the peacekeeping component. A new unit should be established at Headquarters, four trained professionals, one of whom should have expertise in public information and communications.

235. Unlike military, civilian police, mine action, logistics, telecommunications and other mission components, no unit at the UN or standard operating procedures for public information functions in the field, other than on a sporadic and ad hoc basis. The DPI Peace and Security Section is being expanded somewhat through internal and external deployment of staff. The Secretariat should consider whether the proposed integrated mission task forces could work effectively in the field if they are located where they can work closely with and contribute effectively to ongoing operations. Such assessed funding is in fact relatively rare in peace-building, where most activities are funded by voluntary contributions, to ensure that the peace-building component is properly represented at the negotiations table. The Secretariat should also ensure that the peace-building component is properly represented at the negotiations table. The Secretariat could coordinate the formulation of peace-building strategies with the UN as a whole. The Secretariat should also ensure that the peace-building component is properly represented at the negotiations table. The Secretariat could coordinate the formulation of peace-building strategies with the UN as a whole. The Secretariat should also ensure that the peace-building component is properly represented at the negotiations table.
for a three-year pilot project in support of the unit. As the planning for this pilot unit evolves, the Panel urges DPA to consult with all stakeholders in the United Nations system that can contribute to its success, in particular UNDP, which is placing renewed emphasis on democracy/governance and other transition-related areas.

241. DPA’s executive office supports some of the operational efforts for which it is responsible, but it is neither designed nor equipped to be a field support office. FALD also provides support to some of the field missions managed by DPA, but neither those missions’ budgets nor DPA’s budget allocate additional resources to FALD for this purpose. FALD attempts to meet the demands of the smaller peace-building operations but acknowledges that the larger operations make severe, high-priority demands on its current staffing. Thus the needs of smaller missions tend to suffer. DPA has had satisfactory experience with support from the United Nations Office of Project Services (UNOPS), a five-year-old spin-off from UNDP that manages programmes and funds for many clients within the United Nations system, using modern management practices, establishing all of its core funding from a management charge of up to 13 per cent. UNOPS can provide logistics, management and recruitment support for smaller missions fairly quickly.

242. DPA’s Electoral Assistance Division (EAD) also relies on voluntary money to meet growing demand for its technical advice, needs assessment missions and other activities not directly involving electoral observation. As of ... by the General Assembly in its resolution 46/137, EAD staff must first raise the programme funds needed to do their jobs.

243. Summary of key recommendations for peace-building support in the Department of Political Affairs:

(a) The Panel supports the Secretariat’s effort to create a pilot Peace-building Unit within DPA in cooperation with other integral United Nations elements, and suggests that regular budgetary support for the unit be revisited by the membership if the pilot programme works well. The programme should be evaluated in the context of guidance the Panel has provided in paragraph 46 above, and if considered the best available option for strengthening United Nations peace-building capacity it should be presented to the Secretary-General as per the recommendation contained in paragraph 47 (d) above;

(b) The Panel recommends that regular budget resources for Electoral Assistance Division programmatic expenses be substantially increased to meet the rapidly growing demand for its services, in lieu of voluntary contributions;

(c) To relieve demand on FALD and the executive office of DPA, and to improve support services rendered to smaller political and peace-building field offices, the Panel recommends that procurement, logistics, staff recruitment and other support services for all such smaller, non-military field missions be provided by the United Nations Office for Project Services (UNOPS).

3. Peace operations support in the Office of the United Nations High Commissioner for Human Rights

244. OHCHR needs to be more closely involved in planning and executing the elements of peace operations that address human rights, especially complex operations. At present, OHCHR has inadequate resources to be so involved or to provide personnel for service in the field. If United Nations operations are to have effective human rights components, OHCHR should be able to coordinate and institutionalize human rights field work in peace operations; second personnel to Integrated Mission Task Forces in New York; recruit human rights field personnel; organize human rights training for all personnel in peace operations, including the law and order components; and create model databases for human rights field work.

245. Summary of key recommendation on information technology strategy and policy:

Headquarters peace and security departments need a responsibility centre to devise and oversee implementation of common IT strategy, residing in EISAS. Mission counterparts to that responsibility centre should also be appointed.

V. Peace operations and the information age

246. Threaded through many parts of the present report are references to the need to better link the peace and security system together; to facilitate communications and data sharing; to give staff the tools that they need to do their work; and ultimately to allow the United Nations to be more effective at preventing conflict and helping societies find their way back from war. Modern, well utilized information technology (IT) is a key enabler of many of these objectives. The present section notes the gaps in strategy, policy and practice that impede the United Nations’ effective use of IT, and offers recommendations to bridge them.

A. Information technology in peace operations: strategy and policy issues

247. The problem of IT strategy and policy is bigger than peace operations and extends to the entire United Nations system. That larger IT context is generally beyond the Panel’s mandate, but the larger issues should not preclude the adoption of common IT user standards for peace operations and for the Headquarters units that give support to them. FALD’s Communications Service can provide the satellite links and the local connectivity upon which missions can build effective IT networks and databases, but a better strategy and policy needs to be developed for the user community to help it take advantage of the technology foundations that are now being laid.

248. When the United Nations deploys a mission into the field, it is critical that its elements be able to exchange data easily. All complex peace operations bring together many different actors: agencies, funds, and programmes from throughout the United Nations system, as well as the Departments of the Secretariat, mission recruits who are new to the United Nations system; on occasion, regional organizations; frequently, bilateral aid agencies; and always, dozens to hundreds of humanitarian and development NGOs. All of them need a mechanism that makes it easier to share information and ideas efficiently, the more so because each is but the small tip of a very large bureaucratic iceberg with its own culture, working methods and objectives.

249. Poorly planned and poorly integrated IT can pose obstacles to such cooperation. When there are no agreed standards for data structure and interchange at the application level, the “interface” between the two is laborious manual recoding, which tends to defeat the purposes of investing in a networked and computer-heavy working environment. The consequences can also be more serious than wasted labour, ranging from miscommunication of policy to a failure to “get the word” on security threats or other major changes in the operational environment.

250. The irony of distributed and decentralized data systems is that they need such common standards to function. Common solutions to common IT problems are difficult to produce at higher levels — between substantive components of an operation, between substantive offices at Headquarters, or between Headquarters and the rest of the United Nations system — in part because existing operational information systems policy formulation is scattered. Headquarters lacks a sufficiently strong responsibility centre for user-level IT strategy and policy in peace operations, in particular. In government or industry, such responsibility would rest with a “Chief Information Officer”. The Panel believes the United Nations needs someone at Headquarters, most usefully in the EISAS, to play such a role, supervising development and implementation of IT strategy and user standards. He or she should also develop and oversee IT training programmes, both field manuals and hands-on training — the need for which is substantial and not to be underestimated. Counterparts in the SRSG’s office in each field mission should oversee implementation of the common IT strategy and supervise field training, both complementing and building on the work of FALD and the Information Technology Services Division (ITSD) in the Department of Management in providing basic IT structures and services.

251. Summary of key recommendation on information technology strategy and policy:

Headquarters peace and security departments need a responsibility centre to devise and oversee the implementation of common information technology strategy and training for peace operations, residing in EISAS. Mission counterparts to that responsibility centre should also be appointed to regular budget and partly from peace operations mission budgets.
B. Tools for knowledge management

252. Technology can help to capture as well as disseminate information and experience. It could be much better utilized to support strategic, tactical, and operational planning and implementation. If properly developed and implemented, information technology can help to strengthen and improve the effectiveness of the mission by providing a means of capturing and disseminating information, experience, and knowledge. For example, work in most of the fields where the United Nations has deployed peacekeeping forces, has been in the region long enough to provide a wealth of experience that could be helpful to the mission. Peace Operations, for instance, have been in the region long enough to have learned about the importance of planning and implementation. An electronic data management system, for example, could be used to share data, such as the country and regional data on the operation, which could contain information such as the number of personnel deployed, the number of casualties, and the number of overruns. This information could be used to support decision-making by providing up-to-date and relevant information to the mission. Such a system could also be used to disseminate information and experience to other missions.

253. Current examples of GIS applications can be seen in the humanitarian and reconstruction work done in Kosovo since 1998. The Humanitarian Management Information Centre has posted GIS data produced by the Kosovo Information Centre on its website, on CD-ROMs for those with slow or non-existent Internet access, and in hard copy. The Humanitarian Community Information Site is available publicly on their website, on CD-ROMs for those with slow or non-existent Internet access, and in hard copy. The Humanitarian Community Information Site is available to the public for free.

254. Computer simulations can be powerful learning tools for mission personnel and for the local parties. Simulations can, in principle, be created for any component of an operation. They can facilitate group problem-solving and reveal to local parties the sometimes unintended consequences of their policy choices. With appropriate simulations, any group of their policy choices can be tested to ensure that they will not cause problems for the local parties.

255. An enhanced peace and security area on the United Nations Intranet (the Organization’s information network that is open to a specified set of users) would be a valuable addition to peace operations planning, and could be used to link Headquarters databases in EISAS and the substantive offices. Varying levels of security access could facilitate the sharing of sensitive information among restricted groups.

256. The data in the Intranet should be linked to a Peace Operations Extranet (POE) that would use existing and planned wide area network communications to link Headquarters databases in EISAS to the substantive offices and to the Field Missions. This would give planners the ability to produce comprehensive reports more quickly and improve response time to emergency situations.

257. Some mission components, such as civilian police and related criminal justice units and human rights investigators, require added network security, as well as the hardware to support it. This would help to ensure that information posted is consistent and compatible with the standards for all of the United Nations missions.

C. Improving the timeliness of Internet-based public information

259. As the Panel noted in section III above, effectively communicating the work of United Nations peace operations requires innovation and the development of new tools and techniques. The use of the Internet and new technologies provides a unique opportunity to reach wider audiences and to capture the attention of the public. The human rights and environment communities, for example, have been at the forefront of this effort. The Internet has been used to create a new platform for communication that is open to a specified set of users. The Internet has been used to create a new platform for communication that is open to a specified set of users. This has been complemented by the creation of a new platform for communication that is open to a specified set of users.

260. The body now officially responsible for communicating the work of United Nations peace operations is the Peace and Security Section of the Department of Public Information (DPI) in Headquarters. As DPI is responsible for the actual posting of data on the web, as well as for the administration and maintenance of the web site, it is important that these functions be carried out by a dedicated team of experts. The key recommendations of the Panel are as follows.

VI. Challenges to implementation

265. The present report targets two groups in presenting its recommendations for reform: the Member States and the Secretariat. We recognize that the recommendations are not without their challenges, and we recommend that the Secretary-General and his senior staff take the lead in implementing them. The Secretary-General must ensure that the recommendations are implemented in a timely and effective manner.

266. Member States must recognize that the United Nations is the sum of its parts and that the primary responsibility for reform lies with them. The failure of the Member States to implement the recommendations of this report will result in a failure of the United Nations to fulfill its mandate.

267. The Panel encourages the development of web site co-management by Headquarters and the field missions, in which Headquarters would have staff authorized to produce and post web content that conforms to basic presentational standards and policy. The field missions would then be responsible for the content and accuracy of the information posted on their web sites. This would help to ensure that information posted is consistent and compatible with Headquarters standards.

288. Summary of key recommendations on information technology tools in peace operations

(a) EISAS, in cooperation with ITSD, should implement an enhanced peace operations element on the current United Nations Intranet and link it to the missions through a Peace Operations Extranet (POE);

(b) Peace operations could benefit greatly from the use of geographic information systems (GIS) technology, which quickly integrates operational data from various sources, gives planners the ability to produce comprehensive reports more quickly and improve response time to emergency situations.

(c) The IT needs of mission components with unique information technology needs, such as civilian police, should be anticipated and met more consistently in mission planning and implementation.

269. The Panel recommends that the Secretary-General and his senior staff take the lead in implementing the recommendations of this report. The Secretary-General must ensure that the recommendations are implemented in a timely and effective manner.

270. The Panel endorses the application of standards but standardized need not mean centralized. The current process of news production and posting of data to the United Nations web site is too slow and too limited in its ability to capture the attention of the public. It also limits the amount of information that can be presented on each mission.

271. The Panel encourages the development of web site co-management by Headquarters and the field missions, in which Headquarters would have staff authorized to produce and post web content that conforms to basic presentational standards and policy. The field missions would then be responsible for the content and accuracy of the information posted on their web sites. This would help to ensure that information posted is consistent and compatible with Headquarters standards.

272. DPI and field staff have expressed interest in a “web site co-management” model. This seems to be the only way to ensure that information is posted regularly and that the attention of the public is captured.

273. Computer simulations can be powerful learning tools for mission personnel and for the local parties. Simulations can, in principle, be created for any component of an operation. They can facilitate group problem-solving and reveal to local parties the sometimes unintended consequences of their policy choices. With appropriate simulations, any group of their policy choices can be tested to ensure that they will not cause problems for the local parties.
the credibility of the United Nations underwent its severest tests.

The problems of command and control that recently arose in Sierra Leone are the most recent illustration of what cannot be tolerated any longer. Troop contributors... from all interested parties, including those officials who are responsible for inappropriate command and control. These problems should be addressed and should not be allowed to occur again. We are aware that the Secretary-General is implementing a comprehensive reform programme and realize that our recommendations may need to be adjusted to fit within this bigger picture. Furthermore, the reforms we... to support the Secretary-General in the implementation of the recommendations contained in the present report.

The Secretary-General has consistently emphasized the need for the United Nations to engage in meaningful partnerships with other parties, including and beyond the United Nations, to promote peace and security. This is particularly important in situations where there are conflicts and instability, as these situations often arise from issues that are beyond the control of the United Nations. The Secretary-General has also stressed the importance of engaging the private sector and civil society in the promotion of peace and security. These partnerships should be... in the promotion of peace and security.

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do before: to build and hold onto peace, to find reconciliation, to strengthen democracy, to secure human rights. We see, above all, a United Nations that has not only the will but also the ability to fulfil its great promise and to justify the confidence and trust placed in it by the overwhelming majority of humankind.

Annex I

Members of the Panel on United Nations Peace Operations

Mr. J. Brian Atwood (United States), President, Citizens International; former President, National Democratic Institute; former Administrator, United States Agency for International Development.

Mr. Lakhdar Brahimi (Algeria), former Foreign Minister; Chairman of the Panel.


Mr. Richard Monk (United Kingdom), former member of Her Majesty’s Inspectorate of Constabulary and Government adviser on international policing matters; Commissioner of the United Nations International Police Task Force in Bosnia and Herzegovina, 1998-1999.

General (ret.) Klaus Naumann (Germany), Chief of Defence, 1991-1996; Chairman of the Military Committee of the North Atlantic Treaty Organization (NATO), 1996-1999, with oversight responsibility for NATO Implementation Force/Stabilization Force operations in Bosnia and Herzegovina and the NATO Kosovo air campaign.

Ms. Hisako Shimura (Japan), President of Tsuda College, Tokyo; served for 24 years in the United Nations Secretariat, retiring from United Nations service in 1995 as Director, Europe and Latin America Division of the Department of Peacekeeping Operations.

Ambassador Vladimir Shustov (Russian Federation), Ambassador at large, with 30 years association with the United Nations; former Deputy Permanent Representative to the United Nations in New York; former representative of the Russian Federation to the Organization for Security and Cooperation in Europe.


Dr. Cornelio Sommaruga (Switzerland), President of the Foundation of Moral Rearmament, Caux, and of the Geneva International Centre for Humanitarian Demining; former President of the International Committee of the Red Cross, 1987-1999.
Annex II

References

United Nations documents


________ Facing the humanitarian challenge: towards a culture of prevention. (ST/DPI/2070)


Economic and Social Council: Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services entitled “In-depth evaluation of peacekeeping operations: start-up phase”. (E/AC.51/1995/2 and Corr.1)

________ Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services entitled “In-depth evaluation of peacekeeping operations: termination phase”. (E/AC.51/1996/3 and Corr.1)

________ Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services entitled “Triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its thirty-fifth session on the evaluation of peacekeeping operations: start-up phase”. (E/AC.51/1998/4 and Corr.1)

________ Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services entitled “Triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its thirty-sixth session on the evaluation of peacekeeping operations: termination phase”. (E/AC.51/1999/5)

General Assembly. Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the review of the Field Administration and Logistics Division, Department of Peacekeeping Operations. (A/54/393)

________ Note by the Secretary-General transmitting the annual report of the Office of Internal Oversight Services for the period 1 July 1998 to 30 June 1999. (A/54/393)

________ Note by the Secretary-General transmitting the report of the Special Representative of the Secretary-General on Children and Armed Conflict entitled “Protection of children affected by armed conflict”. (A/54/430)

________ Report of the Secretary-General pursuant to General Assembly resolution 53/55, entitled “The fall of Srebrenica”. (A/54/549)

________ Report of the Special Committee on Peacekeeping Operations. (A/54/839)

________ Report of the Secretary-General on the implementation of the recommendations of the Special Committee on Peacekeeping Operations. (A/54/670)

Annex III
Summary of recommendations

1. Preventive action:
   (a) The Panel endorses the recommendations of the Secretary-General with respect to conflict prevention contained in the Millennium Report and in his remarks before the Security Council’s second open meeting on conflict prevention in July 2000, in particular his appeal to “all who are engaged in conflict prevention and development — the United Nations, the Bretton Woods institutions, Governments and civil society organizations — [to] address these challenges in a more integrated fashion”;
   (b) The Panel supports the Secretary-General’s more frequent use of fact-finding missions to areas of tension, and stresses Member States’ obligations, under Article 2(5) of the Charter, to give “every assistance” to such activities of the United Nations.

2. Peace-building strategy:
   (a) A small percentage of a mission’s first-year budget should be made available to the representative or special representative of the Secretary-General leading the mission to fund quick impact projects in its area of operations, with the advice of the United Nations country team’s resident coordinator;
   (b) The Panel recommends a doctrinal shift in the use of civilian police, other rule of law elements and human rights experts in complex peace operations to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments;
   (c) The Panel recommends that the legislative bodies consider bringing demobilization and reintegration programmes into the assessed budgets of complex peace operations for the first phase of an operation in order to facilitate the rapid disassembly of fighting factions and reduce the likelihood of resumed conflict;
   (d) The Panel recommends that the Executive Committee on Peace and Security (ECPS) discuss and recommend to the Secretary-General a plan to strengthen the permanent capacity of the United Nations to develop peace-building strategies and to implement programmes in support of those strategies.

3. Peacekeeping doctrine and strategy: once deployed, United Nations peacekeepers must be able to carry out their mandates professionally and successfully and be capable of defending themselves, other mission components and the mission’s mandate, with robust rules of engagement, against those who renge on their commitments to a peace accord or otherwise seek to undermine it by violence.

4. Clear, credible and achievable mandates:
   (a) The Panel recommends that, before the Security Council agrees to implement a ceasefire or peace agreement with a United Nations-led peacekeeping operation, the Council assure itself that the agreement meets threshold conditions, such as consistency with international human rights standards and practicability of specified tasks and timelines;
   (b) The Security Council should leave in draft form resolutions authorizing missions with sizeable troop levels until such time as the Secretary-General has firm commitments of troops and other critical mission support elements, including peace-building elements, from Member States;
   (c) Security Council resolutions should meet the requirements of peacekeeping operations when they deploy into potentially dangerous situations, especially the need for a clear chain of command and unity of effort;
   (d) The Secretariat must tell the Security Council what it needs to know, not what it wants to hear, when formulating or changing mission mandates, and countries that have committed military units to an operation should have access to Secretariat briefings to the Council on matters affecting the safety and security of their personnel, especially those meetings with implications for a mission’s use of force.

5. Information and strategic analysis: the Secretary-General should establish an entity, referred to here as the ECPS Information and Strategic Analysis Secretariat (EISAS), which would support the information and analysis needs of all members of ECPS, for management purposes, it should be administered by and report jointly to the heads of the Department of Political Affairs (DPA) and the Department of Peacekeeping Operations (DPKO).
6. Traditional civil administration: the Panel recommends that parallel civilian administration be maintained in the field, with the establishment of a national pool of civilian police officers that Member States are encouraged to create. §
7. Determining deployment timelines: the time from a Security Council resolution establishing a peacekeeping operation to the deployment of the first troops is at least 30 days (90 days in the case of complex operations). §
8. Mission capabilities: the Panel recommends a list of mission capabilities as the basis for selecting mission leaders. §
9. Military personnel: Member States should be encouraged to establish parallel military structures that can deploy in 30 days after the Security Council resolution. §
10. Civilian police: the Panel recommends the establishment of a national pool of civilian police officers that Member States are encouraged to create. §
11. Logistics operations: the Panel recommends a comprehensive logistics support plan that includes the establishment of a national logistics support center. §
12. Funding Headquarters support: the Panel recommends the establishment of a revolving fund to finance the United Nations Peacekeeping Fund. §
13. Civilian capacity: the Panel recommends the establishment of a national pool of civilian capacity to support peacekeeping missions. §
14. Mission leadership: the Panel recommends the establishment of a national pool of mission leadership to support peacekeeping missions. §
Secretary-General approaches the General Assembly with a request for an emergency supplemental increase to the Support Account to allow immediate recruitment of additional personnel, particularly in DPKO.

15. Integrated mission planning and support: Integrated Mission Task Forces (IMTFs), with members seconded from throughout the United Nations system, should be the standard vehicle ... in accordance with agreements between DPKO, DPA, and other contributing departments.

16. Other structural adjustments in DPKO:
(a) The current Military and Civilian Police Division should be restructured, moving the Civilian Police Unit out of the military reporting chain. Consideration should be given to upgrading the rank and level of the Civilian Police Adviser;
(b) The Military Adviser's Office in DPKO should be restructured to correspond more closely to the way in which the military field headquarters in United Nations peacekeeping operations are structured;
(c) A new unit should be established in DPKO and staffed with the relevant expertise for the provision of advice on criminal law issues that are critical to the effective use of civilian police in the United Nations peace operations;
(d) The Under-Secretary-General for Management should delegate authority and responsibility for peacekeeping-related budgeting and procurement functions to the Under-Secretary-General for Peacekeeping Operations for a two-year trial period;
(e) The Lessons Learned Unit should be substantially enhanced and moved into a revamped DPKO Office of Operations; and
(f) Consideration should be given to increasing the number of Assistant Secretaries-General in DPKO from two to three, with one of the three designated as the Principal Assistant Secretary-General and functioning as the Deputy to the Under-Secretary-General.

17. Operational support for public information: a unit for operational planning and support of public information in peace operations should be established. In accordance with the recommendations contained in paragraphs 46 above, the field communications offices of DPA and other contributing departments should be given the responsibility for providing communications services to the missions.

18. Peace-building support in the Department of Political Affairs:
(a) The Panel supports the Secretariat's effort to create a pilot Peace-building Unit within DPA, in cooperation with other integral United Nations elements, and suggests that the Secretariat consider the need for such a unit, which would have staff from different United Nations organizations.
(b) The Panel recommends that regular budget resources for Electoral Assistance Division programmatic expenses be substantially increased to meet the rapidly growing demand for its services, in lieu of voluntary contributions.
(c) To relieve demand on the Field Administration and Logistics Division and the executive office of DPA, and to improve support services rendered to smaller, non-military field missions, the Panel recommends that the Field Administration and Logistics Division be restructured to correspond more closely to the way in which the field headquarters in United Nations peacekeeping operations are structured.


20. Peace operations and the information age: Headquarters peace and security departments need a responsibility centre to devise and implement a common information technology strategy and training for peace operations, residing in EISAS. Mission counterparts to the responsibility centre should include representatives of the Secretary-General in complex peace operations to oversee the implementation of that strategy.
Secretary-General’s Bulletin:
Observance by United Nations forces of international humanitarian law, 1999 (ST/SGB/1999/13)
5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In the area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6 Treatment of civilians and persons hors de combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

Section 5 Protection of the civilian population

5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

5.2 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In the area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6 Treatment of civilians and persons hors de combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.
Section 8
Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them mutatis mutandis. In particular:

(a) Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;

(b) They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;

(c) They shall be entitled to receive food and clothing, hygiene and medical attention;

(d) They shall under no circumstances be subjected to any form of torture or ill-treatment;

(e) Women whose liberty has been restricted shall be held in quarters separated from men’s quarters, and shall be under the immediate supervision of women;

(f) In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;

(g) ICRC’s right to visit prisoners and detained persons shall be respected and guaranteed.

Section 9
Protection of the wounded, the sick, and medical and relief personnel

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units. These shall at all times be respected and protected, unless they are used, outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or mobile equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

Section 10
Entry into force

The present bulletin shall enter into force on 12 August 1999.

(Signed) Kofi A. Annan
Secretary-General
Peace Palace – The Hague, the Netherlands
10 to 11 August 2011

DIPLOMATIC AND CONSULAR LAW
PROF. EILEEN DENZA

Codification Division of the United Nations Office of Legal Affairs

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**Diplomatic and Consular Law**

**Legal Instruments**

   For text, see *Study Materials, Part VIII, International Organizations*, page 250
2. Vienna Convention on Diplomatic Relations, 1961  
   For text, see “The Work of the International Law Commission”, 7th ed., vol. II (United Nations publication, Sales No. E.07.V.9), page 43
   For text, see “The Work of the International Law Commission”, 7th ed., vol. II (United Nations publication, Sales No. E.07.V.9), page 63
   For text, see “The Work of the International Law Commission”, 7th ed., vol. II (United Nations publication, Sales No. E.07.V.9), page 96
   For text, see “The Work of the International Law Commission”, 7th ed., vol. II (United Nations publication, Sales No. E.07.V.9), page 284

**Jurisprudence**

   For text, see *Study Materials, Part III, Rules of International Law Governing the Use of Force*, page 156

**Recommended Readings (not reproduced)**

United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980
INTERNATIONAL COURT OF JUSTICE

YEAR 1980

24 May 1980

CASE CONCERNING UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN

(UNITED STATES OF AMERICA v. IRAN)

Article 53 of the Statute — Proof of Facts — Admissibility of Proceedings — Existence of wider political dispute no bar to legal proceedings — Security Council proceedings no restriction on functioning of the Court — Fact-finding commission established by Secretary-General.


State responsibility for violations of Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations — Action by persons not acting on behalf of State — Non-imputability thereof to State — Breach by State of obligation of protection — Subsequent decision to maintain situation so created on behalf of State — Use of situation as means of coercion.

Question of special circumstances as possible justification of conduct of State — Remedies provided for by diplomatic law for abuses.

Cumulative effect of successive breaches of international obligations — Fundamental character of international diplomatic and consular law.

JUDGMENT

Present: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Tarazi, Ooa, Ago, El-Erian, Seiie-Camara, Baxter; Registrar Aquarone.

In the case concerning United States Diplomatic and Consular Staff in Tehran,

between

the United States of America,

represented by

The Honorable Roberts B. Owen, Legal Adviser, Department of State, as Agent,

H.E. Mrs. Geri Joseph, Ambassador of the United States of America to the Netherlands, as Deputy Agent,

Mr. Stephen M. Schwebel, Deputy Legal Adviser, Department of State, as Deputy Agent and Counsel,

Mr. Thomas J. Dunnigan, Counsellor, Embassy of the United States of America, as Deputy Agent,

assisted by

Mr. David H. Small, Assistant Legal Adviser, Department of State,

Mr. Ted L. Stein, Attorney-Adviser, Department of State,

Mr. Hugh V. Simon, Jr., Second Secretary, Embassy of the United States of America, as Advisers,

and

the Islamic Republic of Iran,

THE COURT,

composed as above,

delivers the following Judgment:

1. On 29 November 1979, the Legal Adviser of the Department of State of the United States of America handed to the Registrar an Application instituting proceedings against the Islamic Republic of Iran in respect of a dispute concerning the seizure and holding as hostages of members of the United States diplomatic and consular staff and certain other United States nationals.

2. Pursuant to Article 40, paragraph 2, of the Statute and Article 38, paragraph 4, of the Rules of Court, the Application was at once communicated to the Government of Iran. In accordance with Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, the Secretary-General of the United Nations, the Members of the United Nations, and other States entitled to appear before the Court were notified of the Application.

3. On 29 November 1979, the same day as the Application was filed, the
Government of the United States filed in the Registry of the Court a request for the indication of provisional measures under Article 41 of the Statute and Article 73 of the Rules of Court. By an Order dated 15 December 1979, and adopted unanimously, the Court indicated provisional measures in the case.

4. By an Order made by the President of the Court dated 24 December 1979, 15 January 1980 was fixed as the time-limit for the filing of the Memorial of the United States, and 18 February 1980 as the time-limit for the Counter-Memorial of Iran, with liberty for Iran, if it appointed an Agent for the purpose of appearing before the Court and presenting its observations on the case, to apply for reconsideration of such time-limit. The Memorial of the United States was filed on 15 January 1980, within the time-limit prescribed, and was communicated to the Government of Iran; no Counter-Memorial was filed by the Government of Iran, nor was any agent appointed or any application made for reconsideration of the time-limit.

5. The case thus became ready for hearing on 19 February 1980, the day following the expiration of the time-limit fixed for the Counter-Memorial of Iran. In circumstances explained in paragraphs 41 and 42 below, and after due notice to the Parties, 18 March 1980 was fixed as the date for the opening of the oral proceedings; on 18, 19 and 20 March 1980, public hearings were held, in the course of which the Court heard the oral argument of the Agent and Counsel of the United States; the Government of Iran was not represented at the hearings. Questions were addressed to the Agent of the United States by Members of the Court both during the course of the hearings and subsequently, and replies were given either orally at the hearings or in writing, in accordance with Article 61, paragraph 4, of the Rules of Court.

6. On 6 December 1979, the Registrar addressed the notifications provided for in Article 63 of the Statute of the Court to the States which according to information supplied by the Secretary-General of the United Nations as deposits were parties to one or more of the following Conventions and Protocols:

(a) the Vienna Convention on Diplomatic Relations of 1961;
(b) the Optional Protocol to that Convention concerning the Compulsory Settlement of Disputes;
(c) the Vienna Convention on Consular Relations of 1963;
(d) the Optional Protocol to that Convention concerning the Compulsory Settlement of Disputes;
(e) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973.

7. The Court, after ascertaining the views of the Government of the United States on the matter, and affording the Government of Iran the opportunity of making its views known, decided pursuant to Article 55, paragraph 2, of the Rules of Court that copies of the pleadings and documents annexed should be made accessible to the public with effect from 25 March 1980.

8. In the course of the written proceedings the following submissions were presented on behalf of the Government of the United States of America:

in the Application:

"The United States requests the Court to adjudge and declare as follows:

(a) That the Government of Iran, in tolerating, encouraging, and failing to prevent and punish the conduct described in the preceding Statement of Facts, violated its international legal obligations to the United States as provided by
   - Articles 22, 24, 25, 27, 29, 31, 37 and 47 of the Vienna Convention on Diplomatic Relations,
   - Articles 28, 31, 33, 34, 36 and 40 of the Vienna Convention on Consular Relations,
   - Articles 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and
   - Articles II (4), XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, and
   - Articles 2 (3), 2 (4) and 33 of the Charter of the United Nations;

(b) That pursuant to the foregoing international legal obligations, the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained within the premises of the United States Embassy in Tehran and to assure that all such persons and all other United States nationals in Tehran are allowed to leave Iran safely;

(c) That the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violations of Iran's international legal obligations to the United States, in a sum to be determined by the Court; and

(d) That the Government of Iran submit to its competent authorities for the purpose of prosecution those persons responsible for the crimes committed against the premises and staff of the United States Embassy and against the premises of its Consulates";

in the Memorial:

"The Government of the United States respectfully requests that the Court adjudge and declare as follows:

(a) that the Government of the Islamic Republic of Iran, in permitting, tolerating, encouraging, adopting, and endeavouring to exploit, as well as in failing to prevent and punish, the conduct described in the Statement of the Facts, violated its international legal obligations to the United States as provided by:
   - Articles 22, 24, 25, 26, 27, 29, 31, 37, 44 and 47 of the Vienna Convention on Diplomatic Relations;
   - Articles 5, 27, 28, 31, 33, 34, 35, 36, 40 and 72 of the Vienna Convention on Consular Relations;
DIPLOMATIC AND CONSULAR STAFF (JUDGMENT)

- Article II (4), XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran; and
- Articles 2, 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;

(b) that, pursuant to the foregoing international legal obligations:

(i) the Government of the Islamic Republic of Iran shall immediately ensure that the premises at the United States Embassy, Chancery and Consulates are restored to the possession of the United States authorities under their exclusive control, and shall ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;

(ii) the Government of the Islamic Republic of Iran shall ensure the immediate release, without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or who are or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;

(iii) the Government of the Islamic Republic of Iran shall, as from that moment, afford to all the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and under general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran;

(iv) the Government of the Islamic Republic of Iran shall, in affording the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled, including immunity from any form of criminal jurisdiction, ensure that no such personnel shall be obliged to appear on trial or as a witness, deponent, source of information, or in any other role, at any proceedings, whether formal or informal, initiated by or with the acquiescence of the Iranian Government, whether such proceedings be denominated a "trial", "grand jury", "international commission" or otherwise;

(v) the Government of the Islamic Republic of Iran shall submit to its competent authorities for the purpose of prosecution, or extradite to the United States, those persons responsible for the crimes committed against the personnel and premises of the United States Embassy and Consulates in Iran;

(c) that the United States of America is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals held hostage, of reparation by the Islamic Republic of Iran for

the violations of the above international legal obligations which it owes to the United States, in a sum to be determined by the Court at a subsequent stage of the proceedings.

9. At the close of the oral proceedings, written submissions were filed in the Registry of the Court on behalf of the Government of the United States of America in accordance with Article 60, paragraph 2, of the Rules of Court; a copy thereof was transmitted to the Government of Iran. Those submissions were identical with the submissions presented in the Memorial of the United States.

10. No pleadings were filed by the Government of Iran, which also was not represented at the oral proceedings, and no submissions were therefore presented on its behalf. The position of that Government was, however, defined in two communications addressed to the Court by the Minister for Foreign Affairs of Iran: the first of these was a letter dated 9 December 1979 and transmitted by telegram the same day (the text of which was set out in full in the Court's Order of 15 December 1979, I.C.J. Reports 1979, pp. 10-11): the second was a letter transmitted by telex dated 16 March 1980 and received on 17 March 1980, the text of which followed closely that of the letter of 9 December 1979 and reads as follows:

[Translation from French]

"I have the honour to acknowledge receipt of the telegram concerning the meeting of the International Court of Justice to be held on 17 March 1980 at the request of the Government of the United States of America, and to set forth for you below, once again, the position of the Government of the Islamic Republic of Iran in that respect:

The Government of the Islamic Republic of Iran wishes to express its respect for the International Court of Justice, and for its distinguished Members, for what they have achieved in the quest for a just and equitable solution to legal conflicts between States, and respectfully draws the attention of the Court to the deep-rootedness and the essential character of the Islamic Revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters, the examination of whose numerous repercussions is essentially and directly a matter within the national sovereignty of Iran.

The Government of the Islamic Republic of Iran considers that the Court cannot and should not take cognizance of the case which the Government of the United States of America has submitted to it, and in the most significant fashion, a case confined to what is called the question of the 'hostages of the American Embassy in Tehran'.

For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.

The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon
which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years.

With regard to the request for provisional measures, as formulated by the United States, it in fact implies that the Court should have passed judgment on the actual substance of the case submitted to it, which the Court cannot do without breach of the norms governing its jurisdiction. Furthermore, since provisional measures are by definition intended to protect the interest of the parties, they cannot be unilateral, as they are in the request submitted by the American Government."

The matters raised in those two communications are considered later in this Judgment (paragraphs 33-38 and 81-82).

* * * * * * *

11. The position taken up by the Iranian Government in regard to the present proceedings brings into operation Article 53 of the Statute, under which the Court is required inter alia to satisfy itself that the claims of the Applicant are well founded in fact. As to this article the Court pointed out in the Corfu Channel case that this requirement is to be understood as applying within certain limits:

"While Article 53 thus obliges the Court to consider the submissions of the Party which appears, it does not compel the Court to examine their accuracy in all their details; for this might in certain unopposed cases prove impossible in practice. It is sufficient for the Court to convince itself by such methods as it considers suitable that the submissions are well founded." (I.C.J. Reports 1949, p. 248.)

In the present case, the United States has explained that, owing to the events in Iran of which it complains, it has been unable since then to have access to its diplomatic and consular representatives, premises and archives in Iran; and that in consequence it has been unable to furnish detailed factual evidence on some matters occurring after 4 November 1979. It mentioned in particular the lack of any factual evidence concerning the treatment and conditions of the persons held hostage in Tehran. On this point, however, without giving the names of the persons concerned, it has submitted copies of declarations sworn by six of the 13 hostages who had been released after two weeks of detention and returned to the United States in November 1979.

12. The essential facts of the present case are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other countries.

They have been presented to the Court by the United States in its Memorial, in statements of its Agent and Counsel during the oral proceedings, and in written replies to questions put by Members of the Court. Annexed or appended to the Memorial are numerous extracts of statements made by Iranian and United States officials, either at press conferences or on radio or television, and submitted to the Court in support of the request for provisional measures and as a means of demonstrating the truth of the account of the facts stated in the Memorial. Included also in the Memorial is a "Statement of Verification" made by a high official of the United States Department of State having "overall responsibility within the Department for matters relating to the crisis in Iran". While emphasizing that in the circumstances of the case the United States has had to rely on newspaper, radio and television reports for a number of the facts stated in the Memorial, the high official concerned certifies that to the best of his knowledge and belief the facts there stated are true. In addition, after the filing of the Memorial, and by leave of the Court, a large quantity of further documents of a similar kind to those already presented were submitted by the United States for the purpose of bringing up to date the Court's information concerning the continuing situation in regard to the occupation of the Embassy and detention of the hostages.

13. The result is that the Court has available to it a massive body of information from various sources concerning the facts and circumstances of the present case, including numerous official statements of both Iranian and United States authorities. So far as newspaper, radio and television reports emanating from Iran are concerned, the Court has necessarily in some cases relied on translations into English supplied by the Applicant. The information available, however, is wholly consistent and concordant as to the main facts and circumstances of the case. This information, as well as the United States Memorial and the records of the oral proceedings, has all been communicated by the Court to the Iranian Government without having evoked from that Government any denial or questioning of the facts alleged before the Court by the United States. Accordingly, the Court is satisfied that, within the meaning of Article 53 of the Statute, the allegations of fact on which the United States bases its claims in the present case are well founded.

* * * * * * *

14. Before examining the events of 4 November 1979, directly complained of by the Government of the United States, it is appropriate to mention certain other incidents which occurred before that date. At about 10.45 a.m. on 14 February 1979, during the unrest in Iran following the fall of the Government of Dr. Bakhtiar, the last Prime Minister appointed by the Shah, an armed group attacked and seized the United States Embassy in Tehran, taking prisoner the 70 persons they found there, including the Ambassador. Two persons associated with the Embassy staff were killed; serious damage was caused to the Embassy and there were some acts of
17. Approximately 10:30 a.m. on 4 November 1979, during the course of a demonstration of approximately 3,000 persons, a strong armed group of demonstrators from the Ministry of the Interior and other government agencies seized the USLIC building,arris. All the demonstrators were killed, and the USLIC building was destroyed.

18. During the three hours or more of the assault, repeated calls for help were made from the USLIC to the Iranian authorities. The call for help was not answered by the police or the military. The USLIC was surrounded by armed demonstrators, and the USLIC personnel were foxed.

19. The USLIC building was then set on fire. The USLIC personnel were forced to evacuate the building. The building was completely destroyed.
rity forces were sent in time to provide relief and protection to the Embassy. In fact when Revolutionary Guards ultimately arrived on the scene, despatched by the Government "to prevent clashes", they considered that their task was merely "to protect the safety of both the hostages and the students", according to statements subsequently made by the Iranian Government's spokesman, and by the operations commander of the Guards. No attempt was made by the Iranian Government to clear the Embassy premises, to rescue the persons held hostage, or to persuade the militants to terminate their action against the Embassy.

19. During the morning of 5 November, only hours after the seizure of the Embassy, the United States Consulates in Tabriz and Shiraz were also seized; again the Iranian Government took no protective action. The operation of these Consulates had been suspended since the attack in February 1979 (paragraph 14 above), and therefore no United States personnel were seized on these premises.

20. The United States diplomatic mission and consular posts in Iran were not the only ones whose premises were subjected to demonstrations during the revolutionary period in Iran. On 5 November 1979, a group invaded the British Embassy in Tehran but was ejected after a brief occupation. On 6 November 1979 a brief occupation of the Consulate of Iraq at Kermanshah occurred but was brought to an end on instructions of the Ayatollah Khomeini; no damage was done to the Consulate or its contents. On 1 January 1980 an attack was made on the Embassy in Tehran of the USSR by a large mob, but as a result of the protection given by the Iranian authorities to the Embassy, no serious damage was done.

21. The premises of the United States Embassy in Tehran have remained in the hands of militants; and the same appears to be the case with the Consulates at Tabriz and Shiraz. Of the total number of United States citizens seized and held as hostages, 13 were released on 18-20 November 1979, but the remainder have continued to be held up to the present time. The release of the 13 hostages was effected pursuant to a decree by the Ayatollah Khomeini addressed to the militants, dated 17 November 1979, in which he called upon the militants to "hand over the blacks and the women, if it is proven they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran".

22. The persons still held hostage in Iran include, according to the information furnished to the Court by the United States, at least 28 persons having the status, duly recognized by the Government of Iran, of "member of the diplomatic staff" within the meaning of the Vienna Convention on Diplomatic Relations of 1961; at least 20 persons having the status, similarly recognized, of "member of the administrative and technical staff" within the meaning of that Convention; and two other persons of United States nationality not possessing either diplomatic or consular status. Of the persons with the status of member of the diplomatic staff, four are members of the Consular Section of the Mission.

23. Allegations have been made by the Government of the United States of inhumane treatment of hostages; the militants and Iranian authorities have asserted that the hostages have been well treated, and have allowed special visits to the hostages by religious personalities and by representatives of the International Committee of the Red Cross. The specific allegations of ill-treatment have not however been refuted. Examples of such allegations, which are mentioned in some of the sworn declarations of hostages released in November 1979, are as follows: at the outset of the occupation of the Embassy some were paraded bound and blindfolded before hostile and chanting crowds; at least during the initial period of their captivity, hostages were kept bound, and frequently blindfolded, denied mail or any communication with their government or with each other, subjected to interrogation, threatened with weapons.

24. Those archives and documents of the United States Embassy which were not destroyed by the staff during the attack on 4 November have been ransacked by the militants. Documents purporting to come from this source have been disseminated by the militants and by the Government-controlled media.

25. The United States Chargé d'affaires in Tehran and the two other members of the diplomatic staff of the Embassy who were in the premises of the Iranian Ministry of Foreign Affairs at the time of the attack have not left the Ministry since; their exact situation there has been the subject of conflicting statements. On 7 November 1979, it was stated in an announcement by the Iranian Foreign Ministry that "as the protection of foreign nationals is the duty of the Iranian Government", the Chargé d'affaires was "staying in" the Ministry. On 1 December 1979, Mr. Sadegh Ghoizadeh, who had become Foreign Minister, stated that

"it has been announced that, if the U.S. Embassy's chargé d'affaires and his two companions, who have sought asylum in the Iranian Ministry of Foreign Affairs, should leave this ministry, the ministry would not accept any responsibility for them".

According to a press report of 4 December, the Foreign Minister amplified this statement by saying that as long as they remained in the ministry he was personally responsible for ensuring that nothing happened to them, but that "as soon as they leave the ministry precincts, they will fall back into the hands of justice, and then I will be the first to demand that they be arrested and tried". The militants made it clear that they regarded the Chargé and his two colleagues as hostages also. When in March 1980 the Public Prosecutor of the Islamic Revolution of Iran called for one of the three diplomats to be handed over to him, it was announced by the Foreign Minister that

"Regarding the fate of the three Americans in the Ministry of Foreign Affairs, the decision rests first with the inam of the nation [i.e., the Ayatollah Khomeini]; in case there is no clear decision by the
imam of the nation, the Revolution Council will make a decision on this matter."

26. From the outset of the attack upon its Embassy in Tehran, the United States protested to the Government of Iran both at the attack and at the seizure and detention of the hostages. On 7 November a former Attorney-General of the United States, Mr. Ramsey Clark, was instructed to go with an assistant to Iran to deliver a message from the President of the United States to the Ayatollah Khomeini. The text of that message has not been made available to the Court by the Applicant, but the United States Government has informed the Court that it thereby protested at the conduct of the Government of Iran and called for release of the hostages, and that Mr. Clark was also authorized to discuss all avenues for resolution of the crisis. While he was en route, Tehran radio broadcast a message from the Ayatollah Khomeini dated 7 November, solemnly forbidding members of the Revolutionary Council and all the responsible officials to meet the United States representatives. In that message it was asserted that “the U.S. Embassy in Iran is our enemies’ centre of espionage against our sacred Islamic movement”, and the message continued:

"Should the United States hand over to Iran the deposed shah . . . and give up espionage against our movement, the way to talks would be opened on the issue of certain relations which are in the interest of the nation."

Subsequently, despite the efforts of the United States Government to open negotiations, it became clear that the Iranian authorities would have no direct contact with representatives of the United States Government concerning the holding of the hostages.

27. During the period which has elapsed since the seizure of the Embassy a number of statements have been made by various governmental authorities in Iran which are relevant to the Court’s examination of the responsibility attributed to the Government of Iran in the submissions of the United States. These statements will be examined by the Court in considering these submissions (paragraphs 59 and 70-74 below).

* * * 

28. On 9 November 1979, the Permanent Representative of the United States to the United Nations addressed a letter to the President of the Security Council, requesting urgent consideration of what might be done to secure the release of the hostages and to restore the “sanctity of diplomatic personnel and establishments”. The same day, the President of the Security Council made a public statement urging the release of the hostages, and the President of the General Assembly announced that he was sending a personal message to the Ayatollah Khomeini appealing for their release. On 25 November 1979, the Secretary-General of the United Nations addressed a letter to the President of the Security Council referring to the seizure of the United States Embassy in Tehran and the detention of its diplomatic personnel, and requesting an urgent meeting of the Security Council "in an effort to seek a peaceful solution to the problem”. The Security Council met on 27 November and 4 December 1979; on the latter occasion, no representative of Iran was present, but the Council took note of a letter of 13 November 1979 from the Supervisor of the Iranian Foreign Ministry to the Secretary-General. The Security Council then adopted resolution 457 (1979), calling on Iran to release the personnel of the Embassy immediately, to provide them with protection and to allow them to leave the country. The resolution also called on the two Governments to take steps to resolve peacefully the remaining issues between them, and requested the Secretary-General to lend his good offices for the immediate implementation of the resolution, and to take all appropriate measures to that end. It further stated that the Council would "remain actively seized of the matter” and requested the Secretary-General to report to it urgently on any developments with regard to his efforts.

29. On 31 December 1979, the Security Council met again and adopted resolution 461 (1979), in which it reiterated both its calls to the Iranian Government and its request to the Secretary-General to lend his good offices for achieving the object of the Council’s resolution. The Secretary-General visited Tehran on 1-3 January 1980, and reported to the Security Council on 6 January. On 20 February 1980, the Secretary-General announced the setting up of a commission to undertake a “fact-finding mission” to Iran. The Court will revert to the terms of reference of this commission and the progress of its work in connection with a question of admissibility of the proceedings (paragraphs 39-40 below).

* * * 

30. Prior to the institution of the present proceedings, in addition to the approach made by the Government of the United States to the United Nations Security Council, that Government also took certain unilateral action in response to the actions for which it holds the Government of Iran responsible. On 10 November 1979, steps were taken to identify all Iranian students in the United States who were not in compliance with the terms of their entry visas, and to commence deportation proceedings against those who were in violation of applicable immigration laws and regulations. On 12 November 1979, the President of the United States ordered the discontinuation of all oil purchases from Iran for delivery to the United States. Believing that the Government of Iran was about to withdraw all Iranian funds from United States banks and to refuse to accept payment in dollars for oil, and to repudiate obligations owed to the United States and to United States nationals, the President on 14 November 1979 acted to block the very large official Iranian assets in the United States or in United
States control, including deposits both in banks in the United States and in foreign branches and subsidiaries of United States banks. On 12 December 1979, after the institution of the present proceedings, the United States informed the Iranian Chargé d'affaires in Washington that the number of personnel assigned to the Iranian Embassy and consular posts in the United States was to be restricted.

31. Subsequently to the indication by the Court of provisional measures, and during the present proceedings, the United States Government took other action. A draft resolution was introduced into the United Nations Security Council calling for economic sanctions against Iran. When it was put to the vote on 13 January 1980, the result was 10 votes in favour, 2 against, and 2 abstentions (one member not having participated in the voting); as a permanent member of the Council cast a negative vote, the draft resolution was not adopted. On 7 April 1980 the United States Government broke off diplomatic relations with the Government of Iran. At the same time, the United States Government prohibited exports from the United States to Iran — one of the sanctions previously proposed by it to the Security Council. Steps were taken to prepare an inventory of the assets of the Government of Iran frozen on 14 November 1979, and to make a census of outstanding claims of American nationals against the Government of Iran, with a view to “designing a program against Iran for the hostages, the hostage families and other U.S. claimants” involving the preparation of legislation “to facilitate processing and paying of these claims” and all visas issued to Iranian citizens for future entry into the United States were cancelled. On 17 April 1980, the United States Government announced further economic measures directed against Iran, prohibited travel there by United States citizens, and made further plans for reparations to be paid to the hostages and their families out of frozen Iranian assets.

32. During the night of 24-25 April 1980 the President of the United States set in motion, and subsequently terminated for technical reasons, an operation within Iranian territory designed to effect the rescue of the hostages by United States military units. In an announcement made on 25 April, President Carter explained that the operation had been planned over a long period as a humanitarian mission to rescue the hostages, and had finally been set in motion by him in the belief that the situation in Iran posed mounting dangers to the safety of the hostages and that their early release was highly unlikely. He stated that the operation had been under way in Iran when equipment failure compelled its termination; and that in the course of the withdrawal of the rescue forces two United States aircraft had collided in a remote desert location in Iran. He further stated that preparations for the rescue operations had been ordered for humanitarian reasons, to protect the national interests of the United States, and to alleviate international tensions. At the same time, he emphasized that the operation had not been motivated by hostility towards Iran or the Iranian people. The texts of President Carter’s announcement and of certain other official documents relating to the operation have been transmitted to the Court by the United States Agent in response to a request made by the President of the Court on 25 April. Amongst these documents is the text of a report made by the United States to the Security Council on 25 April, “pursuant to Article 51 of the Charter of the United Nations”. In that report, the United States maintained that the mission had been carried out by it “in exercise of its inherent right of self-defence with the aim of extricating American nationals who have been and remain the victims of the Iranian armed attack on our Embassy”. The Court will refer further to this operation later in the present Judgment (paragraphs 93 and 94 below).

* * *

33. It is to be regretted that the Iranian Government has not appeared before the Court in order to put forward its arguments on the questions of law and of fact which arise in the present case; and that, in consequence, the Court has not had the assistance it might have derived from such arguments or from any evidence adduced in support of them. Nevertheless, in accordance with its settled jurisprudence, the Court in applying Article 53 of its Statute, must first take up, proprio motu, any preliminary question, whether of admissibility or of jurisdiction, that appears from the information before it to arise in the case and the decision of which might constitute a bar to any further examination of the merits of the Applicant’s case. The Court will, therefore, first address itself to the considerations put forward by the Iranian Government in its letters of 9 December 1979 and 16 March 1980, on the basis of which it maintains that the Court ought not to take cognizance of the present case.

34. The Iranian Government in its letter of 9 December 1979 drew attention to what it referred to as the “deep rootedness and the essential character of the Islamic Revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters”. The examination of the “numerous repercussions” of the revolution, it added, is “a matter essentially and directly within the national sovereignty of Iran”. However, as the Court pointed out in its Order of 15 December 1979, "a dispute which concerns diplomatic and consular premises and the detention of internationally protected persons, and involves the interpretation or application of multilateral conventions codifying the international law governing diplomatic and consular relations, is one which by its very nature falls within international jurisdiction" (I.C.J. Reports 1979, p. 16, para. 25).

In its later letter of 16 March 1980 the Government of Iran confined itself to repeating the observations on this point which it had made in its letter of 9 December 1979, without putting forward any additional arguments or explanations. In these circumstances, the Court finds it sufficient here to recall and confirm its previous statement on the matter in its Order of 15 December 1979.
35. In its letter of 9 December 1979 the Government of Iran maintained that the Court could not and should not take cognizance of the present case for another reason, namely that the case submitted to the Court by the United States, "is confined to what is called the question of the 'hostages of the American Embassy in Tehran'". It then went on to explain why it considered this to preclude the Court from taking cognizance of the case:

"For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.

The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years. This dossier includes, inter alia, all the crimes perpetrated in Iran by the American Government, in particular the coup d'état of 1953 stirred up and carried out by the CIA, the overthrow of the lawful national government of Dr. Mossadegh, the restoration of the Shah and of his régime which was under the control of American interests, and all the social, economic, cultural and political consequences of the direct interventions in our internal affairs, as well as grave, flagrant and continuous violations of all international norms, committed by the United States in Iran."

36. The Court, however, in its Order of 15 December 1979, made it clear that the seizure of the United States Embassy and Consulates and the detention of internationally protected persons as hostages cannot be considered as something "secondary" or "marginal", having regard to the importance of the legal principles involved. It also referred to a statement of the Secretary-General of the United Nations, and to Security Council resolution 457 (1979), as evidencing the importance attached by the international community as a whole to the observance of those principles in the present case as well as its concern at the dangerous level of tension between Iran and the United States. The Court, at the same time, pointed out that no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important. It further underlined that, if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the United States' Application, it was open to that Government to present its own arguments regarding those activities to the Court either by way of defence in a Counter-Memorial or by way of a counter-claim.

37. The Iranian Government, notwithstanding the terms of the Court's Order, did not file any pleadings and did not appear before the Court. By its own choice, therefore, it has foregone the opportunities offered to it under the Statute and Rules of Court to submit evidence and arguments in support of its contention in regard to the "overall problem". Even in its later letter of 16 March 1980, the Government of Iran confined itself to repeating what it had said in its letter of 9 December 1979, without offering any explanations in regard to the points to which the Court had drawn attention in its Order of 15 December 1979. It has provided no explanation of the reasons why it considers that the violations of diplomatic and consular law alleged in the United States' Application cannot be examined by the Court separately from what it describes as the "overall problem" involving "more than 25 years of continual interference by the United States in the internal affairs of Iran". Nor has it made any attempt to explain, still less define, what connection, legal or factual, there may be between the "overall problem" of its general grievances against the United States and the particular events that gave rise to the United States' claims in the present case which, in its view, precludes the separate examination of those claims by the Court. This was the more necessary because legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and longstanding political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.

38. It follows that the considerations and arguments put forward in the Iranian Government's letters of 9 December 1979 and 16 March 1980 do not, in the opinion of the Court, disclose any ground on which it should conclude that it cannot or ought not to take cognizance of the present case.

* * *

39. The Court, however, has also thought it right to examine, ex officio, whether its competence to decide the present case, or the admissibility of the present proceedings, might possibly have been affected by the setting up of the Commission announced by the Secretary-General of the United
Nations on 20 February 1980. As already indicated, the occupation of the Embassy and detention of its diplomatic and consular staff as hostages was referred to the United Nations Security Council by the United States on 9 November 1979 and by the Secretary-General on 25 November. Four days later, while the matter was still before the Security Council, the United States submitted the present Application to the Court together with a request for the indication of provisional measures. On 4 December, the Security Council adopted resolution 457 (1979) (the terms of which have already been indicated in paragraph 28 above), whereby the Council would "remain actively seized of the matter" and the Secretary-General was requested to report to it urgently on developments regarding the efforts it was to make pursuant to the resolution. In announcing the setting up of the Commission on 20 February 1980, the Secretary-General stated its terms of reference to be "to undertake a fact-finding mission to Iran to hear Iran's grievances and to allow for an early solution of the crisis between Iran and the United States"; and he further stated that it was to complete its work as soon as possible and submit its report to him. Subsequently, in a message cabled to the President of the Court on 15 March 1980, the Secretary-General confirmed the mandate of the Commission to be as stated in his announcement of 20 February, adding that the Governments of Iran and the United States had "agreed to the establishment of the Commission on that basis". In this message, the Secretary-General also informed the Court of the decision of the Commission to suspend its activities in Tehran and to return to New York on 11 March 1980 "to confer with the Secretary-General with a view to pursuing its tasks which it regards as indivisible". The message stated that while, in the circumstances, the Commission was not in a position to submit its report, it was prepared to return to Tehran, in accordance with its mandate and the instructions of the Secretary-General, when the situation required. The message further stated that the Secretary-General would continue his efforts, as requested by the Security Council, to search for a peaceful solution of the crisis, and would remain in contact with the parties and the Commission regarding the resumption of its work.

40. Consequently, there can be no doubt at all that the Security Council was "actively seized of the matter" and that the Secretary-General was under an express mandate from the Council to use his good offices in the matter when, on 15 December, the Court decided unanimously that it was competent to entertain the United States' request for an indication of provisional measures, and proceeded to indicate such measures. As already mentioned the Council met again on 31 December 1979 and adopted resolution 461 (1979). In the preamble to this second resolution the Security Council expressly took into account the Court's Order of 15 December 1979 indicating provisional measures; and it does not seem to have occurred to any member of the Council that there was or could be anything irregular in the simultaneous exercise of their respective functions by the Court and the Security Council. Nor is there in this any cause for surprise.

Whereas Article 12 of the Charter expressly forbids the General Assembly to make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in respect of that dispute or situation, no such restriction is placed on the functioning of the Court by any provision of either the Charter or the Statute of the Court. The reasons are clear. It is for the Court, the principal judicial organ of the United Nations, to resolve any legal questions that may be in issue between parties to a dispute; and the resolution of such legal questions by the Court may be an important, and sometimes decisive, factor in promoting the peaceful settlement of the dispute. This is indeed recognized by Article 36 of the Charter, paragraph 3 of which specifically provides that:

"In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."

41. In the present instance the proceedings before the Court continued in accordance with the Statute and Rules of Court and, on 15 January 1980, the United States filed its Memorial. The time-limit fixed for delivery of Iran's Counter-Memorial then expired on 18 February 1980 without Iran's having filed a Counter-Memorial or having made a request for the extension of the time-limit. Consequently, on the following day the case became ready for hearing and, pursuant to Article 31 of the Rules, the views of the Applicant State were requested regarding the date for the opening of the oral proceedings. On 19 February 1980 the Court was informed by the United States Agent that, owing to the delicate stage of negotiations bearing upon the release of the hostages in the United States Embassy, he would be grateful if the Court for the time being would defer setting a date for the opening of the oral proceedings. On the very next day, 20 February, the Secretary-General announced the establishment of the above-mentioned Commission, which commenced its work in Tehran on 23 February. Asked on 27 February to clarify the position of the United States in regard to the future procedure, the Agent stated that the Commission would not address itself to the claims submitted by the United States to the Court. The United States, he said, continued to be anxious to secure an early judgment on the merits, and he suggested 17 March as a convenient date for the opening of the oral proceedings. At the same time, however, he added that consideration of the well-being of the hostages might lead the United States to suggest a later date. The Iranian Government was then asked, in a telex message of 28 February, for any views it might wish to express as to the date for the opening of the hearings, mention being made of 17 March as one possible date. No reply had been received from the Iranian Government when, on 10 March, the Commission, unable to complete its mission, decided to suspend its activities in Tehran and to return to New York.

42. On 11 March, that is immediately upon the departure of the Com-
mission from Tehran, the United States notified the Court of its readiness to proceed with the hearings, suggesting that they should begin on 17 March. A further telex was accordingly sent to the Iranian Government on 12 March informing it of the United States’ request and stating that the Court would meet on 17 March to determine the subsequent procedure. The Iranian Government’s reply was contained in the letter of 16 March to which the Court has already referred (paragraph 10 above). In that letter, while making no mention of the proposed oral proceedings, the Iranian Government reiterated the reasons advanced in its previous letter of 9 December 1979 for considering that the Court ought not to take cognizance of the case. The letter contained no reference to the Commission, and still less any suggestion that the continuance of the proceedings before the Court might be affected by the existence of the Commission or the mandate given to the Secretary-General by the Security Council. Having regard to the circumstances which the Court has described, it can find no trace of any understanding on the part of either the United States or Iran that the establishment of the Commission might involve a postponement of all proceedings before the Court until the conclusion of the work of the Commission and of the Security Council’s consideration of the matter.

43. The Commission, as previously observed, was established to undertake a “fact-finding mission to Iran to hear Iran’s grievances and to allow for an early solution of the crisis between Iran and the United States” (emphasis added). It was not set up by the Secretary-General as a tribunal empowered to decide the matters of fact or of law in dispute between Iran and the United States; nor was its setting up accepted by them on any such basis. On the contrary, he created the Commission rather as an organ or instrument for mediation, conciliation or negotiation to provide a means of easing the situation of crisis existing between the two countries; and this, clearly, was the basis on which Iran and the United States agreed to its being set up. The establishment of the Commission by the Secretary-General with the agreement of the two States cannot, therefore, be considered in itself as in any way incompatible with the continuance of parallel proceedings before the Court. Negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement are enumerated together in Article 33 of the Charter as means for the peaceful settlement of disputes. As was pointed out in the Aegean Sea Continental Shelf case, the jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement by the Court have been pursued pari passu. In that case, in which also the dispute had been referred to the Security Council, the Court held expressly that “the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function” (I.C.J. Reports 1978, p. 12, para. 29).

44. It follows that neither the mandate given by the Security Council to the Secretary-General in resolutions 457 and 461 of 1979, nor the setting up of the Commission by the Secretary-General, can be considered as constituting any obstacle to the exercise of the Court’s jurisdiction in the present case. It further follows that the Court must now proceed, in accordance with Article 53, paragraph 2, of the Statute, to determine whether it has jurisdiction to decide the present case and whether the United States’ claims are well founded in fact and in law.

* * *

45. Article 53 of the Statute requires the Court, before deciding in favour of an Applicant’s claim, to satisfy itself that it has jurisdiction, in accordance with Articles 36 and 37, empowering it to do so. In the present case the principal claims of the United States relate essentially to alleged violations by Iran of its obligations to the United States under the Vienna Conventions of 1961 on Diplomatic Relations and of 1963 on Consular Relations. With regard to these claims the United States has invoked as the basis for the Court’s jurisdiction Article I of the Optional Protocols concerning the Compulsory Settlement of Disputes which accompany these Conventions. The United Nations publication Multilateral Treaties in respect of which the Secretary-General Performs Depository Functions lists both Iran and the United States as parties to the Vienna Conventions of 1961 and 1963, as also to their accompanying Protocols concerning the Compulsory Settlement of Disputes, and in each case without any reservation to the instrument in question. The Vienna Conventions, which codify the law of diplomatic and consular relations, state principles and rules essential for the maintenance of peaceful relations between States and accepted throughout the world by nations of all creeds, cultures and political complexions. Moreover, the Iranian Government has not maintained in its communications to the Court that the two Vienna Conventions and Protocols are not in force as between Iran and the United States. Accordingly, as indicated in the Court’s Order of 15 December 1979, the Optional Protocols manifestly provide a possible basis for the Court’s jurisdiction, with respect to the United States’ claims under the Vienna Conventions of 1961 and 1963. It only remains, therefore, to consider whether the present dispute in fact falls within the scope of their provisions.

46. The terms of Article I, which are the same in the two Protocols, provide:

“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.”

The United States’ claims here in question concern alleged violations by Iran of its obligations under several articles of the Vienna Conventions of 1961 and 1963 with respect to the privileges and immunities of the per-
sonnel, the inviolability of the premises and archives, and the provision of facilities for the performance of the functions of the United States Embassy and Consulates in Iran. In so far as its claims relate to two private individuals held hostage in the Embassy, the situation of these individuals falls under the provisions of the Vienna Convention of 1961 guaranteeing the inviolability of the premises of embassies, and of Article 5 of the 1963 Convention concerning the consular functions of assisting nationals and protecting and safeguarding their interests. By their very nature all these claims concern the interpretation or application of one or other of the two Vienna Conventions.

47. The occupation of the United States Embassy by militants on 4 November 1979 and the detention of its personnel as hostages was an event of a kind to provoke an immediate protest from any government, as it did from the United States Government, which despatched a special emissary to Iran to deliver a formal protest. Although the special emissary, denied all contact with Iranian officials, never entered Iran, the Iranian Government was left in no doubt as to the reaction of the United States to the taking over of its Embassy and detention of its diplomatic and consular staff as hostages. Indeed, the Court was informed that the United States was meanwhile making its views known to the Iranian Government through its Chargé d’affaires, who has been kept since 4 November 1979 in the Iranian Foreign Ministry itself, where he happened to be with two other members of his mission during the attack on the Embassy. In any event, by a letter of 9 November 1979, the United States brought the situation in regard to its Embassy before the Security Council. The Iranian Government did not take any part in the debates on the matter in the Council, and it was still refusing to enter into any discussions on the subject when, on 29 November 1979, the United States filed the present Application submitting its claims to the Court. It is clear that on that date there existed a dispute arising out of the interpretation or application of the Vienna Conventions and thus one falling within the scope of Article I of the Protocols.

48. Articles II and III of the Protocols, it is true, provide that within a period of two months after one party has notified its opinion to the other that a dispute exists, the parties may agree either: (a) "to resort not to the International Court of Justice but to an arbitral tribunal", or (b) "to adopt a conciliation procedure before resorting to the International Court of Justice". The terms of Articles II and III however, when read in conjunction with those of Article I and with the Preamble to the Protocols, make it crystal clear that they are not to be understood as laying down a precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputes arising out of the interpretation or application of the Vienna Convention in question. Articles II and III provide only that, as a substitute for recourse to the Court, the parties may agree upon resort either to arbitration or to conciliation. It follows, first, that Articles II and III have no application unless recourse to arbitration or conciliation has been proposed by one of the parties to the dispute and the other has expressed its readiness to consider the proposal. Secondly, it follows that only then may the provisions in those articles regarding a two months' period come into play, and function as a time-limit upon the conclusion of the agreement as to the organization of the alternative procedure.

49. In the present instance, neither of the parties to the dispute proposed recourse to either of the two alternatives, before the filing of the Application or at any time afterwards. On the contrary, the Iranian authorities refused to enter into any discussion of the matter with the United States, and this could only be understood by the United States as ruling out, in limine, any question of arriving at an agreement to resort to arbitration or conciliation under Article II or Article III of the Protocols, instead of recourse to the Court. Accordingly, when the United States filed its Application on 29 November 1979, it was unquestionably free to have recourse to Article I of the Protocols, and to invoke it as a basis for establishing the Court's jurisdiction with respect to its claims under the Vienna Conventions of 1961 and 1963.

* * *

50. However, the United States also presents claims in respect of alleged violations by Iran of Articles II, paragraph 4, XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States and Iran, which entered into force on 16 June 1957. With regard to these claims the United States has invoked paragraph 2 of Article XXI of the Treaty as the basis for the Court's jurisdiction. The claims of the United States under this Treaty overlap in considerable measure with its claims under the two Vienna Conventions and more especially the Convention of 1963. In this respect, therefore, the dispute between the United States and Iran regarding those claims is at the same time a dispute arising out of the interpretation or application of the Vienna Conventions which falls within Article I of their Protocols. It was for this reason that in its Order of 15 December 1979 indicating provisional measures the Court did not find it necessary to enter into the question whether Article XXI, paragraph 2, of the 1955 Treaty might also have provided a basis for the exercise of its jurisdiction in the present case. But taking into account that Article II, paragraph 4, of the 1955 Treaty provides that "nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party . . . .", the Court considers that at the present stage of the proceedings that Treaty has importance in regard to the claims of the United States in respect of the two private individuals said to be held
hostage in Iran. Accordingly, the Court will now consider whether a basis for the exercise of its jurisdiction with respect to the alleged violations of the 1955 Treaty may be found in Article XXI, paragraph 2, of the Treaty.

51. Paragraph 2 of that Article reads:

"Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

As previously pointed out, when the United States filed its Application on 29 November 1979, its attempts to negotiate with Iran in regard to the overrunning of its Embassy and detention of its nationals as hostages had reached a deadlock, owing to the refusal of the Iranian Government to enter into any discussion of the matter. In consequence, there existed at that date not only a dispute but, beyond any doubt, a "dispute... not satisfactorily adjusted by diplomacy" within the meaning of Article XXI, paragraph 2, of the 1955 Treaty; and this dispute comprised, inter alia, the matters that are the subject of the United States' claims under that Treaty.

52. The provision made in the 1955 Treaty for disputes as to its interpretation or application to be referred to the Court is similar to the system adopted in the Optional Protocols to the Vienna Conventions which the Court has already explained. Article XXI, paragraph 2, of the Treaty establishes the jurisdiction of the Court as compulsory for such disputes, unless the parties agree to settlement by some other means. In the present instance, as in the case of the Optional Protocols, the immediate and total refusal of the Iranian authorities to enter into any negotiations with the United States excluded in limine any question of an agreement to have recourse to "some other pacific means" for the settlement of the dispute. Consequently, under the terms of Article XXI, paragraph 2, the United States was free on 29 November 1979 to invoke its provisions for the purpose of referring its claims against Iran under the 1955 Treaty to the Court. While that Article does not provide in express terms that either party may bring a case to the Court by unilateral application, it is evident, as the United States contended in its Memorial, that this is what the parties intended. Provisions drawn in similar terms are very common in bilateral treaties of amity or of establishment, and the intention of the parties in accepting such clauses is clearly to provide for such a right of unilateral recourse to the Court, in the absence of agreement to employ some other pacific means of settlement.

53. The point has also been raised whether, having regard to certain counter-measures taken by the United States vis-à-vis Iran, it is open to the United States to rely on the Treaty of Amity, Economic Relations, and Consular Rights in the present proceedings. However, all the measures in question were taken by the United States after the seizure of its Embassy by an armed group and subsequent detention of its diplomatic and consular staff as hostages. They were measures taken in response to what the United States believed to be grave and manifest violations of international law by Iran, including violations of the 1955 Treaty itself. In any event, any alleged violation of the Treaty by either party could not have the effect of precluding that party from invoking the provisions of the Treaty concerning pacific settlement of disputes.

54. No suggestion has been made by Iran that the 1955 Treaty was not in force on 4 November 1979 when the United States Embassy was overran and its nationals taken hostage, or on 29 November when the United States submitted the dispute to the Court. The very purpose of a treaty of amity, and indeed of a treaty of establishment, is to promote friendly relations between the two countries concerned, and between their two peoples, more especially by mutual undertakings to ensure the protection and security of their nationals in each other's territory. It is precisely when difficulties arise that the treaty assumes its greatest importance, and the whole object of Article XXI, paragraph 2, of the 1955 Treaty was to establish the means for arriving at a friendly settlement of such difficulties by the Court or by other peaceful means. It would, therefore, be incompatible with the whole purpose of the 1955 Treaty if recourse to the Court under Article XXI, paragraph 2, were now to be found not to be open to the parties precisely at the moment when such recourse was most needed. Furthermore, although the machinery for the effective operation of the 1955 Treaty has, no doubt, been impaired by reason of diplomatic relations between the two countries having been broken off by the United States, its provisions remain part of the corpus of law applicable between the United States and Iran.

* * *

55. The United States has further invoked Article 13 of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, as a basis for the exercise of the Court's jurisdiction with respect to its claims under that Convention. The Court does not, however, find it necessary in the present Judgment to enter into the question whether, in the particular circumstances of the case, Article 13 of that Convention provides a basis for the exercise of the Court's jurisdiction with respect to those claims.

* * *

56. The principal facts material for the Court's decision on the merits of the present case have been set out earlier in this Judgment. Those facts have
to be looked at by the Court from two points of view. First, it must
determine how far, legally, the acts in question may be regarded as im-
putable to the Iranian State. Secondly, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable. The events which are the subject of the United States' claims fall into two phases which it will be convenient to examine separately.

37. The first of these phases covers the armed attack on the United States Embassy by militants on 4 November 1979, the overrunning of its premises, the seizure of its inmates as hostages, the appropriation of its property and archives and the conduct of the Iranian authorities in the face of those occurrences. The attack and the subsequent overrunning, bit by bit, of the whole Embassy premises, was an operation which continued over a period of some three hours without any body of police, any military unit or any Iranian official intervening to try to stop or impede it from being carried through to its completion. The result of the attack was considerable damage to the Embassy premises and property, the forcible opening and seizure of its archives, the confiscation of the archives and other documents found in the Embassy and, most grave of all, the seizure by force of its diplomatic and consular personnel as hostages, together with two United States nationals.

38. No suggestion has been made that the militants, when they executed their attack on the Embassy, had any form of official status as recognized "agents" or organs of the Iranian State. Their conduct in mounting the attack, overrunning the Embassy and seizing its inmates as hostages cannot, therefore, be regarded as imputable to that State on that basis. Their conduct might be considered as itself directly imputable to the Iranian State only if it were established that, in fact, on the occasion in question the militants acted on behalf of the State, having been charged by some competent organ of the Iranian State to carry out a specific operation. The information before the Court does not, however, suffice to establish with the requisite certainty the existence at that time of such a link between the militants and any competent organ of the State.

39. Previously, it is true, the religious leader of the country, the Ayatollah Khomeini, had made several public declarations inveighing against the United States as responsible for all his country's problems. In so doing, it would appear, the Ayatollah Khomeini was giving utterance to the general resentment felt by supporters of the revolution at the admission of the former Shah to the United States. The information before the Court also indicates that a spokesman for the militants, in explaining their action afterwards, did expressly refer to a message issued by the Ayatollah Khomeini, on 1 November 1979. In that message the Ayatollah Khomeini had declared that it was "up to the dear pupils, students and theological students to expand with all their might their attacks against the United States and Israel, so they may force the United States to return the deposed and criminal shah, and to condemn this great plot" (that is, a plot to stir up
dissension between the main streams of Islamic thought). In the view of the Court, however, it would be going too far to interpret such general declarations of the Ayatollah Khomeini to the people or students of Iran as amounting to an authorization from the State to undertake the specific operation of invading and seizing the United States Embassy. To do so would, indeed, conflict with the assertions of the militants themselves who are reported to have claimed credit for having devised and carried out the plan to occupy the Embassy. Again, congratulations after the event, such as those reportedly telephoned to the militants by the Ayatollah Khomeini on the actual evening of the attack, and other subsequent statements of official approval, though highly significant in another context shortly to be considered, do not alter the initially independent and unofficial character of the militants' attack on the Embassy.

60. The first phase, here under examination, of the events complained of also includes the attacks on the United States Consulates at Tabriz and Shiraz. Like the attack on the Embassy, they appear to have been executed by militants not having an official character, and successful because of lack of sufficient protection.

61. The conclusion just reached by the Court, that the initiation of the attack on the United States Embassy on 4 November 1979, and of the attacks on the Consulates at Tabriz and Shiraz the following day, cannot be considered as in itself imputable to the Iranian State does not mean that Iran is, in consequence, free of any responsibility in regard to those attacks; for its own conduct was in conflict with its international obligations. By a number of provisions of the Vienna Conventions of 1961 and 1963, Iran was placed under the most categorical obligations, as a receiving State, to take appropriate steps to ensure the protection of the United States Embassy and Consulates, their staffs, their archives, their means of communication and the freedom of movement of the members of their staffs.

62. Thus, after solemnly proclaiming the inviolability of the premises of a diplomatic mission, Article 22 of the 1961 Convention continues in paragraph 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." (Emphasis added.)

So, too, after proclaiming that the person of a diplomatic agent shall be inviolable, and that he shall not be liable to any form of arrest or detention, Article 29 provides:

"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." (Emphasis added.)

The obligation of a receiving State to protect the inviolability of the
archives and documents of a diplomatic mission is laid down in Article 24, which specifically provides that they are to be "inviolable at any time and wherever they may be". Under Article 25 it is required to "accord full facilities for the performance of the functions of the mission", under Article 26 to "ensure to all members of the mission freedom of movement and travel in its territory", and under Article 27 to "permit and protect free communication on the part of the mission for all official purposes". Analogous provisions are to be found in the 1963 Convention regarding the privileges and immunities of consular missions and their staffs (Art. 31, para. 3, Arts. 40, 33, 28, 34 and 35). In the view of the Court, the obligations of the Iranian Government here in question are not merely contractual obligations established by the Vienna Conventions of 1961 and 1963, but also obligations under general international law.

63. The facts set out in paragraphs 14 to 27 above establish to the satisfaction of the Court that on 4 November 1979 the Iranian Government failed altogether to take any "appropriate steps" to protect the premises, staff and archives of the United States' mission against attack by the militants, and to take any steps either to prevent this attack or to stop it before it reached its completion. They also show that on 5 November 1979 the Iranian Government similarly failed to take appropriate steps for the protection of the United States Consulates at Tabriz and Shiraz. In addition they show, in the opinion of the Court, that the failure of the Iranian Government to take such steps was due to more than mere negligence or lack of appropriate means.

64. The total inaction of the Iranian authorities on that date in face of urgent and repeated requests for help contrasts very sharply with its conduct on several other occasions of a similar kind. Some eight months earlier, on 14 February 1979, the United States Embassy in Tehran had itself been subjected to the armed attack mentioned above (paragraph 14), in the course of which the attackers had taken the Ambassador and his staff prisoner. On that occasion, however, a detachment of Revolutionary Guards, sent by the Government, had arrived promptly, together with a Deputy Prime Minister, and had quickly succeeded in freeing the Ambassador and his staff and restoring the Embassy to him. On 1 March 1979, moreover, the Prime Minister of Iran had sent a letter expressing deep regret at the incident, giving an assurance that appropriate arrangements had been made to prevent any repetition of such incidents, and indicating the willingness of his Government to indemnify the United States for the damage. On 1 November 1979, only three days before the events which gave rise to the present case, the Iranian police intervened quickly and effectively to protect the United States Embassy when a large crowd of demonstrators spent several hours marching up and down outside it. Furthermore, on other occasions in November 1979 and January 1980, invasions or attempted invasions of other foreign embassies in Tehran were frustrated or speedily terminated.

65. A similar pattern of facts appears in relation to consulates. In February 1979, at about the same time as the first attack on the United States Embassy, attacks were made by demonstrators or its Consulates in Tabriz and Shiraz; but the Iranian authorities then took the necessary steps to clear them of the demonstrators. On the other hand, the Iranian authorities took no action to prevent the attack of 5 November 1979, or to restore the Consulates to the possession of the United States. In contrast, when on the next day the Iranians invaded the Iraqi Consulate in Kermanshah, prompt steps were taken by the Iranian authorities to secure their withdrawal from the Consulate. Thus in this case, the Iranian authorities and police took the necessary steps to prevent and check the attempted invasion or return the premises to their rightful owners.

66. As to the actual conduct of the Iranian authorities when faced with the events of 4 November 1979, the information before the Court establishes that, despite assurances previously given by them to the United States Government and despite repeated and urgent calls for help, they took no apparent steps either to prevent the militants from invading the Embassy or to persuade or to compel them to withdraw. Furthermore, after the militants had forced an entry into the premises of the Embassy, the Iranian authorities made no effort to compel or even to persuade them to withdraw from the Embassy and to free the diplomatic and consular staff whom they had made prisoner.

67. This inaction of the Iranian Government by itself constituted clear and serious violation of Iran's obligations to the United States under the provisions of Article 22, paragraph 2, and Articles 24, 25, 26, 27 and 29 of the 1961 Vienna Convention on Diplomatic Relations, and Articles 5 and 36 of the 1963 Vienna Convention on Consular Relations. Similarly, with respect to the attacks on the Consulates at Tabriz and Shiraz, the inaction of the Iranian authorities entailed clear and serious breaches of its obligations under the provisions of several further articles of the 1963 Convention on Consular Relations. So far as concerns the two private United States nationals seized as hostages by the invading militiants, that inaction entailed, albeit incidentally, a breach of its obligations under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights which, in addition to the obligations of Iran existing under general international law, requires the parties to ensure "the most constant protection and security" to each other's nationals in their respective territories.

68. The Court is therefore led inevitably to conclude, in regard to the first phase of the events which has so far been considered, that on 4 November 1979 the Iranian authorities:

(a) were fully aware of their obligations under the conventions in force to take appropriate steps to protect the premises of the United States Embassy and its diplomatic and consular staff from any attack and from any infringement of their inviolability, and to ensure the
security of such other persons as might be present on the said premises;

(b) were fully aware, as a result of the appeals for help made by the United States Embassy, of the urgent need for action on their part;

(c) had the means at their disposal to perform their obligations;

(d) completely failed to comply with these obligations.

Similarly, the Court is led to conclude that the Iranian authorities were equally aware of their obligations to protect the United States Consulates at Tabriz and Shiraz, and of the need for action on their part, and similarly failed to use the means which were at their disposal to comply with their obligations.

* * *

69. The second phase of the events which are the subject of the United States' claims comprises the whole series of facts which occurred following the completion of the occupation of the United States Embassy by the militants, and the seizure of the Consulates at Tabriz and Shiraz. The occupation having taken place and the diplomatic and consular personnel of the United States' mission having been taken hostage, the action required of the Iranian Government by the Vienna Conventions and by general international law was manifest. Its plain duty was at once to make every effort, and to take every appropriate step, to bring these flagrant infringements of the inviolability of the premises, archives and diplomatic and consular staff of the United States Embassy to a speedy end, to restore the Consulates at Tabriz and Shiraz to United States control, and in general to re-establish the status quo and to offer reparation for the damage.

70. No such step was, however, taken by the Iranian authorities. At a press conference on 5 November the Foreign Minister, Mr. Yazdi, conceded that "according to international regulations the Iranian Government is dutybound to safeguard the life and property of foreign nationals". But he made no mention of Iran's obligation to safeguard the inviolability of foreign embassies and diplomats, and he ended by announcing that the action of the students "enjoys the endorsement and support of the government, because America herself is responsible for this incident". As to the Prime Minister, Mr. Bazargan, he does not appear to have made any statement on the matter before resigning his office on 5 November.

71. In any event, expressions of approval of the take-over of the Embassy, and indeed also of the Consulates at Tabriz and Shiraz, by militants came immediately from numerous Iranian authorities, including religious, judicial, executive, police and broadcasting authorities. Above all, the Ayatollah Khomeini himself made crystal clear the endorsement by the State both of the take-over of the Embassy and Consulates and of the detention of the Embassy staff as hostages. At a reception in Qom on 5 November, the Ayatollah Khomeini left his audience in no doubt as to his approval of the action of the militants in occupying the Embassy, to which he said they had resorted "because they saw that the shah was allowed in America". Saying that he had been informed that the "centre occupied by our young men... has been a lair of espionage and plotting", he asked how the young people could be expected "simply to remain idle and witness all these things". Furthermore he expressly stigmatized as "rotten roots" those in Iran who were "hoping we would mediate and tell the young people to leave this place". The Ayatollah's refusal to order "the young people" to put an end to their occupation of the Embassy, or the militants in Tabriz and Shiraz to evacuate the United States Consulates there, must have appeared the more significant when, on 6 November, he instructed "the young people" who had occupied the Iraqi Consulate in Kermanshah that they should leave it as soon as possible. The true significance of this was only reinforced when, next day, he expressly forbade members of the Revolutionary Council and all responsible officials to meet the special representatives sent by President Carter to try and obtain the release of the hostages and evacuation of the Embassy.

72. At any rate, thus fortified in their action, the militants at the Embassy at once went one step farther. On 6 November they proclaimed that the Embassy, which they too referred to as "the U.S. centre of plots and espionage", would remain under their occupation, and that they were watching "most closely" the members of the diplomatic staff taken hostage whom they called "U.S. mercenaries and spies".

73. The seal of official government approval was finally set on this situation by a decree issued on 17 November 1979 by the Ayatollah Khomeini. His decree began with the assertion that the American Embassy was "a centre of espionage and conspiracy" and that "those people who hatched plots against our Islamic movement in that place do not enjoy international diplomatic respect". He went on expressly to declare that the premises of the Embassy and the hostages would remain as they were until the United States had handed over the former Shah for trial and returned his property to Iran. This statement of policy the Ayatollah qualified only to the extent of requesting the militants holding the hostages to "hand over the blacks and the women, if it is proven that they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran". As to the rest of the hostages, he made the Iranian Government's intentions all too clear:

"The noble Iranian nation will not give permission for the release of the rest of them. Therefore, the rest of them will be under arrest until the American Government acts according to the wish of the nation."
74. The policy thus announced by the Ayatollah Khomeini, of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States Government was complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. The result of that policy was fundamentally to transform the legal nature of the situation created by the occupation of the Embassy and the detention of its diplomatic and consular staff as hostages. The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State. The militants, authors of the invasion and jailers of the hostages, had now become agents of the Iranian State for whose acts the State itself was internationally responsible. On 6 May 1980, the Minister for Foreign Affairs, Mr. Ghozadeh, is reported to have said in a television interview that the occupation of the United States Embassy had been "done by our nation". Moreover, in the prevailing circumstances the situation of the hostages was aggravated by the fact that their detention by the militants did not even offer the normal guarantees which might have been afforded by police and security forces subject to the discipline and the control of official superiors.

75. During the six months which have elapsed since the situation just described was created by the decree of the Ayatollah Khomeini, it has undergone no material change. The Court's Order of 15 December 1979 indicating provisional measures, which called for the immediate restoration of the Embassy to the United States and the release of the hostages, was publicly rejected by the Minister for Foreign Affairs on the following day and has been ignored by all Iranian authorities. On two occasions, namely on 23 February and on 7 April 1980, the Ayatollah Khomeini laid it down that the hostages should remain at the United States Embassy under the control of the militants until the new Iranian parliament should have assembled and taken a decision as to their fate. His adherence to that policy also made it impossible to obtain his consent to the transfer of the hostages from the control of the militants to that of the Government or of the Council of the Revolution. In any event, while highly desirable from the humanitarian and safety points of view, such a transfer would not have resulted in any material change in the legal situation, for its sponsors themselves emphasized that it must not be understood as signifying the release of the hostages.

76. The Iranian authorities' decision to continue the subjection of the premises of the United States Embassy to occupation by militants and of the Embassy staff to detention as hostages, clearly gave rise to repeated and multiple breaches of the applicable provisions of the Vienna Conven-

tions even more serious than those which arose from their failure to take any steps to prevent the attacks on the inviolability of these premises and staff.

77. In the first place, these facts constituted breaches additional to those already committed of paragraph 2 of Article 22 of the 1961 Vienna Convention on Diplomatic Relations which requires Iran to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of its peace or impairment of its dignity. Paragraphs 1 and 3 of that Article have also been infringed, and continue to be infringed, since they forbid agents of a receiving State to enter the premises of a mission without consent or to undertake any search, requisition, attachment or like measure on the premises. Secondly, they constitute continuing breaches of Article 29 of the same Convention which forbids any arrest or detention of a diplomatic agent and any attack on his person, freedom or dignity. Thirdly, the Iranian authorities are without doubt in continuing breach of the provisions of Articles 25, 26 and 27 of the 1961 Vienna Convention and of pertinent provisions of the 1963 Vienna Convention concerning facilities for the performance of functions, freedom of movement and communications for diplomatic and consular staff, as well as of Article 24 of the former Convention and Article 33 of the latter, which provide for the absolute inviolability of the archives and documents of diplomatic missions and consulates. This particular violation has been made manifest to the world by repeated statements by the militants occupying the Embassy, who claim to be in possession of documents from the archives, and by various government authorities, purporting to specify the contents thereof. Finally, the continued detention as hostages of the two private individuals of United States nationality entails a renewed breach of the obligations of Iran under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights.

78. Inevitably, in considering the compatibility or otherwise of the conduct of the Iranian authorities with the requirements of the Vienna Conventions, the Court has focussed its attention primarily on the occupation of the Embassy and the treatment of the United States diplomatic and consular personnel within the Embassy. It is however evident that the question of the compatibility of their conduct with the Vienna Conventions also arises in connection with the treatment of the United States Chargé d'affaires and two members of his staff in the Ministry of Foreign Affairs on 4 November 1979 and since that date. The facts of this case establish to the satisfaction of the Court that on 4 November 1979 and thereafter the Iranian authorities have withheld from the Chargé d'affaires and the two members of his staff the necessary protection and facilities to permit them to leave the Ministry in safety. Accordingly it appears to the Court that with respect to these three members of the United States' mission the Iranian authorities have committed a continuing breach of their obligations under Articles 26 and 29 of the 1961 Vienna Convention on Diplomatic Relations. It further appears to the Court that the con-
Invoking these alleged crimes of the United States, the Iranian Foreign Minister took the position that the United States' Application could not be examined by the Court divorced from its proper context, which he insisted was "the whole political dossier of the relations between Iran and the United States over the last 25 years".

82. The Court must however observe, first of all, that the matters alleged in the Iranian Foreign Minister's letters of 9 December 1979 and 16 March 1980 are of a kind which, if invoked in legal proceedings, must clearly be established to the satisfaction of the tribunal with all the requisite proof. The Court, in its Order of 15 December 1979, pointed out that if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the Application it was open to Iran to present its own case regarding those activities to the Court by way of defence to the United States' claims. The Iranian Government, however, did not appear before the Court. Moreover, even in his letter of 16 March 1980, transmitted to the Court some three months after the issue of that Order, the Iranian Foreign Minister did not furnish the Court with any further information regarding the alleged criminal activities of the United States in Iran, or explain on what legal basis he considered these allegations to constitute a relevant answer to the United States' claims. The large body of information submitted by the United States itself to the Court includes, it is true, some statements emanating from Iranian authorities or from the militants in which reference is made to alleged espionage and interference in Iran by the United States centred upon its Embassy in Tehran. These statements are, however, of the same general character as the assertions of alleged criminal activities of the United States contained in the Foreign Minister's letters, and are unsupported by evidence furnished by Iran before the Court. Hence they do not provide a basis on which the Court could form a judicial opinion on the truth or otherwise of the matters there alleged.

83. In any case, even if the alleged criminal activities of the United States in Iran could be considered as having been established, the question would remain whether they could be regarded by the Court as constituting a justification of Iran's conduct and thus a defence to the United States' claims in the present case. The Court, however, is unable to accept that they can be so regarded. This is because diplomatic law itself provides the necessary means of defence against, and sanction for, illicit activities by members of diplomatic or consular missions.

84. The Vienna Conventions of 1961 and 1963 contain express provisions to meet the case when members of an embassy staff, under the cover of diplomatic privileges and immunities, engage in such abuses of their functions as espionage or interference in the internal affairs of the receiving State. It is precisely with the possibility of such abuses in contemplation that Article 41, paragraph 1, of the Vienna Convention on Diplomatic...
Relations, and Article 55, paragraph 1, of the Vienna Convention on Consular Relations, provide:

"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."

Paragraph 3 of Article 41 of the 1961 Convention further states: "The premises of the mission must not be used in any manner incompatible with the functions of the missions..."; an analogous provision, with respect to consular premises is to be found in Article 55, paragraph 2, of the 1963 Convention.

85. Thus, it is for the very purpose of providing a remedy for such possible abuses of diplomatic functions that Article 9 of the 1961 Convention on Diplomatic Relations stipulates:

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."

The 1963 Convention contains, in Article 23, paragraphs 1 and 4, analogous provisions in respect of consular officers and consular staff. Paragraph 1 of Article 9 of the 1961 Convention, and paragraph 4 of Article 23 of the 1963 Convention, take account of the difficulty that may be experienced in practice of proving such abuses in every case or, indeed, of determining exactly when exercise of the diplomatic function, expressly recognized in Article 3 (1) (d) of the 1961 Convention, of "ascertaining by all lawful means conditions and developments in the receiving State" may be considered as involving such acts as "espionage" or "interference in internal affairs". The way in which Article 9, paragraph 1, takes account of any such difficulty is by providing expressly in its opening sentence that the receiving State may "at any time and without having to explain its decision" notify the sending State that any particular member of its diplomatic mission is "persona non grata" or "not acceptable" (and similarly Article 23, paragraph 4, of the 1963 Convention provides that "the receiving State is not obliged to give to the sending State reasons for its decision"). Beyond that remedy for dealing with abuses of the diplomatic function by individual members of a mission, a receiving State has in its hands a more radical remedy if abuses of their functions by members of a mission reach serious proportions. This is the power which every receiving State has, at its own discretion, to break off diplomatic relations with a sending State and to call for the immediate closure of the offending mission.

86. The rules of diplomatic law, in short, constitute a self-contained régime 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 State to counter any such abuse. These means are, by their nature, entirely efficacious, for unless the sending State recalls the member of the mission objected to forthwith, the prospect of the almost immediate loss of his privileges and immunities, because of the withdrawal by the receiving State of his recognition as a member of the mission, will in practice compel that person, in his own interest, to depart at once. But the principle of the inviolability of the persons of diplomatic agents and the premises of diplomatic missions is one of the very foundations of this long-established régime, to the evolution of which the traditions of Islam made a substantial contribution. The fundamental character of the principle of inviolability is, moreover, strongly underlined by the provisions of Articles 44 and 45 of the Convention of 1961 (cf. also Articles 26 and 27 of the Convention of 1963). Even in the case of armed conflict or in the case of a breach in diplomatic relations those provisions require that both the inviolability of the members of a diplomatic mission and of the premises, property and archives of the mission must be respected by the receiving State. Naturally, the observance of this principle does not mean — and this the Applicant Government expressly acknowledges — that a diplomatic agent caught in the act of committing an assault or other offence may not, on occasion, be briefly arrested by the police of the receiving State in order to prevent the commission of the particular crime. But such eventualities bear no relation at all to what occurred in the present case.

87. In the present case, the Iranian Government did not break off diplomatic relations with the United States; and in response to a question put to him by a Member of the Court, the United States Agent informed the Court that at no time before the events of 4 November 1979 had the Iranian Government declared, or indicated any intention to declare, any member of the United States diplomatic or consular staff in Tehran persona non grata. The Iranian Government did not, therefore, employ the remedies placed at its disposal by diplomatic law specifically for dealing with activities of the kind of which it now complains. Instead, it allowed a group of militants to attack and occupy the United States Embassy by force, and to seize the diplomatic and consular staff as hostages; instead, it has endorsed that action of those militants and has deliberately maintained their occupation of the Embassy and detention of its staff as a
means of coercing the sending State. It has, at the same time, refused altogether to discuss this situation with representatives of the United States. The Court, therefore, can only conclude that Iran did not have recourse to the normal and efficacious means at its disposal, but resorted to coercive action against the United States Embassy and its staff.

88. In an address given on 5 November 1979, the Ayatollah Khomeini traced the origin of the operation carried out by the Islamic militants on the previous day to the news of the arrival of the former Shah of Iran in the United States. That fact may no doubt have been the ultimate catalyst of the resentment felt in certain circles in Iran and among the Iranian population against the former Shah for his alleged misdeeds, and also against the United States Government which was being publicly accused of having restored him to the throne, of having supported him for many years and of planning to go on doing so. But whatever be the truth in regard to those matters, they could hardly be considered as having provided a justification for the attack on the United States Embassy and its diplomatic mission. Whatever extenuation of the responsibility to be attached to the conduct of the Iranian authorities may be found in the offence felt by them because of the admission of the Shah to the United States, that feeling of offence could not affect the imperative character of the legal obligations incumbent upon the Iranian Government which is not altered by a state of diplomatic tension between the two countries. Still less could a mere refusal or failure on the part of the United States to extradite the Shah to Iran be considered to modify the obligations of the Iranian authorities, quite apart from any legal difficulties, in internal or international law, there might be in according to such a request for extradition.

89. Accordingly, the Court finds that no circumstances exist in the present case which are capable of negating the fundamentally unlawful character of the conduct pursued by the Iranian State on 4 November 1979 and thereafter. This finding does not however exclude the possibility that some of the circumstances alleged, if duly established, may later be found to have some relevance in determining the consequences of the responsibility incurred by the Iranian State with respect to that conduct, although they could not be considered to alter its unlawful character.

* * *

90. On the basis of the foregoing detailed examination of the merits of the case, the Court finds that Iran, by committing successive and continuing breaches of the obligations laid upon it by the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations, the Treaty of Amity, Economic Relations, and Consular Rights of 1955, and the applicable rules of general international law, has incurred responsibility towards the United States. As to the consequences of this finding, it clearly entails an obligation on the part of the Iranian State to make reparation for the injury thereby caused to the United States. Since however Iran's breaches of its obligations are still continuing, the form and amount of such reparation cannot be determined at the present date.

91. At the same time the Court finds itself obliged to stress the cumulative effect of Iran's breaches of its obligations when taken together. A marked escalation of these breaches can be seen to have occurred in the transition from the failure on the part of the Iranian authorities to oppose the armed attack by the militants on 4 November 1979 and their seizure of the Embassy premises and staff, to the almost immediate endorsement by those authorities of the situation thus created, and then to their maintaining deliberately for many months the occupation of the Embassy and detention of its staff by a group of armed militants acting on behalf of the State for the purpose of forcing the United States to bow to certain demands. Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights. But what has above all to be emphasized is the extent and seriousness of the conflict between the conduct of the Iranian State and its obligations under the whole corpus of the international rules of which diplomatic and consular law is comprised, rules the fundamental character of which the Court must here again strongly affirm. In its Order of 15 December 1979, the Court made a point of stressing that the obligations laid on States by the two Vienna Conventions are of cardinal importance for the maintenance of good relations between States in the interdependent world of today. "There is no more fundamental prerequisite for the conduct of relations between States," the Court there said, "than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose." The institution of diplomacy, the Court continued, has proved to be an instrument essential for effective co-operation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means" (I.C.J. Reports 1979, p. 19).

92. It is a matter of deep regret that the situation which occasioned those observations has not been rectified since they were made. Having regard to their importance the Court considers it essential to reiterate them in the present Judgment. The frequency with which at the present time the principles of international law governing diplomatic and consular relations are set at naught by individuals or groups of individuals is already deplorable. But this case is unique and of very particular gravity because here it is not only private individuals or groups of individuals that have disregarded and set at naught the inviolability of a foreign embassy, but the government of the receiving State itself. Therefore in recalling yet again the extreme importance of the principles of law which it is called upon to apply
in the present case, the Court considers it to be its duty to draw the attention of the entire international community, of which Iran itself has been a member since time immemorial, to the irreparable harm that may be caused by events of the kind now before the Court. Such events cannot fail to undermine the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected.

* * *

93. Before drawing the appropriate conclusions from its findings on the merits in this case, the Court considers that it cannot let pass without comment the incursion into the territory of Iran made by United States military units on 24-25 April 1980, an account of which has been given earlier in this Judgment (paragraph 32). No doubt the United States Government may have had understandable preoccupations with respect to the well-being of its nationals held hostage in its Embassy for over five months. No doubt also the United States Government may have had understandable feelings of frustration at Iran’s long-continued detention of the hostages, notwithstanding two resolutions of the Security Council as well as the Court’s own Order of 15 December 1979 calling expressly for their immediate release. Nevertheless, in the circumstances of the present proceedings, the Court cannot fail to express its concern in regard to the United States’ incursion into Iran. When, as previously recalled, this case had become ready for hearing on 19 February 1980, the United States Agent requested the Court, owing to the delicate stage of certain negotiations, to defer setting a date for the hearings. Subsequently, on 11 March, the Agent informed the Court of the United States Government’s anxiety to obtain an early judgment on the merits of the case. The hearings were accordingly held on 18, 19 and 20 March, and the Court was in course of preparing the present judgment adjudicating upon the claims of the United States against Iran when the operation of 24 April 1980 took place. The Court therefore feels bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations; and to recall that in paragraph 47, 1 B, of its Order of 15 December 1979 the Court had indicated that no action was to be taken by either party which might aggravate the tension between the two countries.

94. At the same time, however, the Court must point out that neither the question of the legality of the operation of 24 April 1980, under the Charter of the United Nations and under general international law, nor any possible question of responsibility flowing from it, is before the Court. It must also point out that this question can have no bearing on the evaluation of the conduct of the Iranian Government over six months earlier, on 4 November 1979, which is the subject-matter of the United States’ Application. It follows that the findings reached by the Court in this Judgment are not affected by that operation.

* * *

95. For these reasons,

THE COURT,

1. By thirteen votes to two,

Decides that the Islamic Republic of Iran, by the conduct which the Court has set out in this Judgment, has violated in several respects, and is still violating, obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law;

IN FAVOUR: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.
AGAINST: Judges Morozov and Tarazi.

2. By thirteen votes to two,

Decides that the violations of these obligations engage the responsibility of the Islamic Republic of Iran towards the United States of America under international law;

IN FAVOUR: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.
AGAINST: Judges Morozov and Tarazi.

3. Unanimously,

Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end:

(a) must immediately terminate the unlawful detention of the United States Chargé d’affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (Article 45 of the 1961 Vienna Convention on Diplomatic Relations);
(b) must ensure that all the said persons have the necessary means of leaving Iranian territory, including means of transport;

(c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran;

4. Unanimously,

Decides that no member of the United States diplomatic or consular staff may be kept in Iran to be subjected to any form of judicial proceedings or to participate in them as a witness;

5. By twelve votes to three,

Decides that the Government of the Islamic Republic of Iran is under an obligation to make reparation to the Government of the United States of America for the injury caused to the latter by the events of 4 November 1979 and what followed from these events;

IN FAVOUR: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.

AGAINST: Judges Lachs, Morozov and Tarazi.

6. By fourteen votes to one,

Decides that the form and amount of such reparation, failing agreement between the Parties, shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

IN FAVOUR: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Tarazi, Oda, Ago, El-Erian, Sette-Camara and Baxter.

AGAINST: Judge Morozov.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fourth day of May, one thousand nine hundred and eighty, in three copies, one of which will be placed in the archives of the Court, and the others transmitted to the Government of the United States of America and the Government of the Islamic Republic of Iran, respectively.

(Signed) Humphrey WALDOCK.

President.

(Signed) S. AQUARONE,

Registrar.

Judge LACHS appends a separate opinion to the Judgment of the Court.

Judges MOROZOV and TARAZI append dissenting opinions to the Judgment of the Court.

(Initialled) H.W.

(Initialled) S.A.
M. LACHS, juge, joint à l'arrêt l'exposé de son opinion individuelle.

MM. MOROZOV et TARAZI, juges, joignent à l'arrêt les exposés de leur opinion dissidente.

(Paraphé) H.W.
(Paraphé) S.A.
LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001
INTERNATIONAL COURT OF JUSTICE

YEAR 2001

27 June

LAGRAND CASE

(GERMANY v. UNITED STATES OF AMERICA)

Facts of the case.

* * *


Jurisdiction of Court in respect of Germany's first submission — Recognition by United States of existence of dispute arising out of breach of subparagraph (b) of Article 36, paragraph 1, of Vienna Convention on Consular Relations — Recognition by United States of Court's jurisdiction to hear this dispute in so far as concerns Germany's own rights — Objection by United States to Court's jurisdiction over Germany's claim founded on diplomatic protection — Objection by United States to Court's jurisdiction over alleged breach of subparagraphs (a) and (c) of Article 36, paragraph 1, of Convention.

Jurisdiction of Court in respect of Germany's third submission concerning implementation of Order of 3 March 1999 indicating provisional measures.

Jurisdiction of Court in respect of Germany's fourth submission — Objection by United States — United States argument that submission seeking guarantees of non-repetition falls outside terms of Optional Protocol.

* * *

Admissibility of Germany's submissions.
United States objection to admissibility of Germany's second, third and fourth submissions — United States argument that Court cannot be turned into ultimate court of appeal in criminal proceedings before its own domestic courts.

United States objection to admissibility of Germany's third submission —

United States challenging manner of Germany's institution of present proceedings before the Court.

United States objection to admissibility of Germany's first submission — Allegation of failure to exhaust local remedies.

United States objection to Germany's submissions — Allegation that Germany seeking to apply standard to United States different from own practice.

* * *

Germany's first submission — Question of disregard by United States of its legal obligations to Germany under Articles 5 and 36, paragraph 1, of Convention.

Submission advanced by Germany in own right — Recognition by United States of breach of Article 36, paragraph 1 (b), of Convention — Article 36, paragraph 1, establishing interrelated regime designed to facilitate implementation of system of consular protection.

Submission by Germany based on diplomatic protection — Article 36, paragraph 1 (b), of Convention and obligations of receiving State to detained person and to sending State.

* * *

Germany's second submission — Question of disregard by United States of its legal obligation under Article 36, paragraph 2, of Convention.

Argument of United States that Article 36, paragraph 2, applicable only to rights of sending State.

"Procedural default" rule — Distinction to be drawn between rule as such and application in present case.

* * *

Germany's third submission — Question of disregard by United States of its legal obligation to comply with Order indicating provisional measures of 3 March 1999.

Court called upon to rule expressly on question of legal effects of order under Article 41 of Statute — Interpretation of that provision — Comparison of French and English texts — French and English versions of Statute “equally authentic” by virtue of Article 111 of United Nations Charter — Article 33, paragraph 4, of Vienna Convention on Law of Treaties — Object and purpose of Statute — Context — Principle that party to legal proceedings must abstain from any measure which might aggravate or extend the dispute — Preparatory work of Article 41 — Article 94 of United Nations Charter.

Question of binding nature of Order of 3 March 1999 — Measures taken by United States to give effect to Order — No request for reparation in Germany's third submission — Time pressure due to circumstances in which proceedings were instituted.

* * *

Germany's fourth submission — Question of obligation to provide certain assurances of non-repetition.
General request for assurance of non-repetition — Measures taken by United States to prevent recurrence of violation of Article 36, paragraph 1 (b) — Commitment undertaken by United States to ensure implementation of specific measures adopted in performance of obligations under that provision.

Consideration of other assurances requested by Germany — Germany's characterization of individual right provided for in Article 36, paragraph 1, as human right — Court's power to determine existence of violation of international obligation and, if necessary, to hold that domestic law has caused violation — United States having apologized to Germany for breach of Article 36, paragraph 1, of Convention — Germany not having requested material reparation for injury to itself and to LaGrand brothers — Question of review and reconsideration of certain sentences.

**JUDGMENT**

Present: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Hériczegh, Fleischerauer, Koroma, Vereshchitina, Higgins, Parras-Aranguren, Kooiman, Rezek, Al-Khasawneh, Buergenthal; Registrar Couvreur.

In the LaGrand case,

between

the Federal Republic of Germany,

represented by

Mr. Gerhard Westdickenberg, Director General for Legal Affairs and Legal Adviser, Federal Foreign Office of the Federal Republic of Germany,

H.E. Mr. Eberhard U. B. von Puttkamer, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands,

as Agents;

Mr. Bruno Simma, Professor of Public International Law at the University of Munich,

as Co-Agent and Counsel;

Mr. Pierre-Marie Dupuy, Professor of Public International Law at the University of Paris (Panthéon-Assas) and at the European University Institute in Florence,

Mr. Donald Francis Donovan, Debevoise & Plimpton, New York,

Mr. Hans-Peter Kaul, Head of the Public International Law Division, Federal Foreign Office of the Federal Republic of Germany,

Mr. Daniel Khan, University of Munich,

Mr. Andreas Paulus, University of Munich,

as Counsel;

the United States of America,

represented by

Mr. James H. Thessin, Acting Legal Adviser, United States Department of State,

as Agent;

Ms Catherine W. Brown, Assistant Legal Adviser for Consular Affairs, United States Department of State,

Mr. D. Stephen Mathias, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

as Deputy Agents;

The Honourable Janet Napolitano, Attorney General, State of Arizona,

Mr. Michael J. Matheson, Professor of International Law, School of Advanced International Studies, Johns Hopkins University; former Acting Legal Adviser, United States Department of State,

Mr. Theodor Meron, Counsellor on International Law, United States Department of State; Charles L. Denison Professor of International Law, New York University; Associate Member of the Institute of International Law,

Mr. Stefan Trechsel, Professor of Criminal Law and Procedure, University of Zurich Faculty of Law,

as Counsel and Advocates;

Mr. Shabtai Rosenne, Member of the Israel Bar; Honorary Member of the American Society of International Law; Member of the Institute of International Law,

Ms Norma B. Martens, Assistant Attorney General, State of Arizona,

Mr. Paul J. McMurdie, Assistant Attorney General, State of Arizona,

Mr. Robert J. Erickson, Principal Deputy Chief, Appellate Section, Criminal Division, United States Department of Justice,

Mr. Allen S. Weiner, Counsellor for Legal Affairs, Embassy of the United States of America in the Netherlands,

Ms Jessica R. Holmes, Attaché, Office of the Counsellor for Legal Affairs, Embassy of the United States of America in the Netherlands,

as Counsel,
The Court, composed as above, after deliberation,
delivers the following Judgment:

1. On 2 March 1999 the Federal Republic of Germany (hereinafter referred to as “Germany”) filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter referred to as the “United States”) for “violations of the Vienna Convention on Consular Relations [of 24 April 1963]” (hereinafter referred to as the “Vienna Convention”).

In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article 1 of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention (hereinafter referred to as the “Optional Protocol”).

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Government of the United States; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. On 2 March 1999, the day on which the Application was filed, the German Government also filed in the Registry of the Court a request for the indication of provisional measures based on Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court.

By a letter dated 2 March 1999, the Vice-President of the Court, acting President in the case, addressed the Government of the United States in the following terms:

“Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of [the] Government of the United States to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects.”

By an Order of 3 March 1999, the Court indicated certain provisional measures (see paragraph 32 below).

4. In accordance with Article 43 of the Rules of Court, the Registrar sent the notification referred to in Article 63, paragraph 1, of the Statute to all States parties to the Vienna Convention or to that Convention and the Optional Protocol.

5. By an Order of 5 March 1999, the Court, taking account of the views of the Parties, fixed 16 September 1999 and 27 March 2000, respectively, as the time-limits for the filing of a Memorial by Germany and of a Counter-Memorial by the United States.

The Memorial and Counter-Memorial were duly filed within the time-limits so prescribed.

6. By letter of 26 October 2000, the Agent of Germany expressed his Government’s desire to produce five new documents in accordance with Article 56 of the Rules.

By letter of 6 November 2000, the Agent of the United States informed the Court that his Government consented to the production of the first and second documents, but not to that of the third, fourth and fifth documents.

7. Pursuant to Article 53, paragraph 2, of the Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings.

8. Public hearings were held from 13 to 17 November 2000, at which the Court heard the oral arguments and replies of:

For Germany:
Mr. Gerhard Westdickenberg,
Mr. Bruno Simma,
Mr. Daniel Khan,
Mr. Hans-Peter Kaul,
Mr. Andreas Paulus,
Mr. Donald Francis Donovan,
Mr. Pierre-Marie Dupuy.

For the United States:
Mr. James H. Thessin,
The Honourable Janet Napolitano,
Mr. Theodor Meron,
Ms Catherine W. Brown,
Mr. D. Stephen Mathias,
Mr. Stefan Trechsel,
Mr. Michael J. Matheson.

9. At the hearings, Members of the Court put questions to Germany, to which replies were given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court.

In addition, the United States, acting within the time-limit accorded it for this purpose, commented on the new documents filed by Germany on 26 October 2000 (see paragraph 6 above) and produced documents in support of those comments.

* *

10. In its Application, Germany formulated the decision requested in the following terms:

“Accordingly the Federal Republic of Germany asks the Court to adjudge and declare

(1) that the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by Articles 5 and 36 of the Vienna Convention,

(2) that Germany is therefore entitled to reparation,

(3) that the United States is under an international legal obligation not to
apply the doctrine of 'procedural default' or any other doctrine of national law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4) that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;
(2) the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999;
(3) the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and
(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts.

11. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Germany,
in the Memorial:

"Having regard to the facts and points of law set forth in the present Memorial, and without prejudice to such elements of fact and law and to such evidence as may be submitted at a later time, and likewise without prejudice to the right to supplement and amend the present Submissions, the Federal Republic of Germany respectfully requests the Court to adjudge and declare

(1) that the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36 subparagraph 1 (b) of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36 paragraph 1 of the said Convention;

(2) that the United States, by applying rules of its domestic law, in par-
sular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36, paragraph 1, of the said Convention:

(2) that the United States, by applying rules of its domestic law, in particular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular Relations, and by ultimately executing them, violated its international legal obligation to Germany under Article 36, paragraph 2, of the Vienna Convention to give full effect to the purposes for which the rights accorded under Article 36 of the said Convention are intended:

(3) that the United States, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, violated its international legal obligation to comply with the Order on provisional measures issued by the Court on 3 March 1999, and to refrain from any action which might interfere with the subject-matter of a dispute while judicial proceedings are pending:

and, pursuant to the foregoing international legal obligations,

(4) that the United States shall provide Germany an assurance that it will not repeat its unlawful acts and that, in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations. In particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36."

On behalf of the Government of the United States,

"The United States of America respectfully requests the Court to adjudge and declare that:

(1) There was a breach of the United States obligation to Germany under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, in that the competent authorities of the United States did not promptly give to Karl and Walter LaGrand the notification required by that Article, and that the United States has apologized to Germany for this breach, and is taking substantial measures aimed at preventing any recurrence; and

(2) All other claims and submissions of the Federal Republic of Germany are dismissed."

* * *

13. Walter LaGrand and Karl LaGrand were born in Germany in 1962 and 1963 respectively, and were German nationals. In 1967, when they were still young children, they moved with their mother to take up permanent residence in the United States. They returned to Germany only once, for a period of about six months in 1974. Although they lived in the United States for most of their lives, and became the adoptive children of a United States national, they remained at all times German nationals, and never acquired the nationality of the United States. However, the United States has emphasized that both had the demeanour and speech of Americans rather than Germans, that neither was known to have spoken German, and that they appeared in all respects to be native citizens of the United States.

14. On 7 January 1982, Karl LaGrand and Walter LaGrand were arrested in the United States by law enforcement officers on suspicion of having been involved earlier the same day in an attempted armed bank robbery in Marana, Arizona, in the course of which the bank manager was murdered and another bank employee seriously injured. They were subsequently tried before the Superior Court of Pima County, Arizona, which, on 17 February 1984, convicted them both of murder in the first degree, attempted murder in the first degree, attempted armed robbery and two counts of kidnapping. On 14 December 1984, each was sentenced to death for first degree murder and to concurrent sentences of imprisonment for the other charges.

15. At all material times, Germany as well as the United States were parties to both the Vienna Convention on Consular Relations and the Optional Protocol to that Convention. Article 36, paragraph 1 (b), of the Vienna Convention provides that:

"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."

It is not disputed that at the time the LaGrands were convicted and sentenced, the competent United States authorities had failed to provide the LaGrands with the information required by this provision of the Vienna Convention, and had not informed the relevant German consular post of the LaGrands’ arrest. The United States concedes that the competent authorities failed to do so, even after becoming aware that the LaGrands were German nationals and not United States nationals, and admits that
the United States has therefore violated its obligations under this provision of the Vienna Convention.

16. However, there is some dispute between the Parties as to the time at which the competent authorities in the United States became aware of the fact that the LaGrands were German nationals. Germany argues that the authorities of Arizona were aware of this from the very beginning, and in particular that probation officers knew by April 1982. The United States argues that at the time of their arrest, neither of the LaGrands identified himself to the arresting authorities as a German national, and that Walter LaGrand affirmatively stated that he was a United States citizen. The United States position is that its “competent authorities” for the purposes of Article 36, paragraph 1 (b), of the Vienna Convention were the arresting and detaining authorities, and that these became aware of the German nationality of the LaGrands by late 1984, and possibly by mid-1983 or earlier, but in any event not at the time of their arrest in 1982. Although other authorities, such as immigration authorities or probation officers, may have known this even earlier, the United States argues that these were not “competent authorities” for the purposes of this provision of the Vienna Convention. The United States has also suggested that at the time of their arrest, the LaGrands may themselves have been unaware that they were not nationals of the United States.

17. At their trial, the LaGrands were represented by counsel assigned by the court, as they were unable to afford legal counsel of their own choice. Their counsel at trial did not raise the issue of non-compliance with the Vienna Convention, and did not themselves contact the German consular authorities.

18. The convictions and sentences pronounced by the Superior Court of Pima County, Arizona, were subsequently challenged by the LaGrands in three principal sets of legal proceedings.

19. The first set of proceedings consisted of appeals against the convictions and sentences to the Supreme Court of Arizona, which were rejected by that court on 30 January 1987. The United States Supreme Court, in the exercise of its discretion, denied applications by the LaGrands for further review of these judgments on 5 October 1987.

20. The second set of proceedings involved petitions by the LaGrands for post-conviction relief, which were denied by an Arizona state court in 1989. Review of this decision was denied by the Supreme Court of Arizona in 1990, and by the United States Supreme Court in 1991.

21. At the time of these two sets of proceedings, the LaGrands had still not been informed by the competent United States authorities of their rights under Article 36, paragraph 1 (b), of the Vienna Convention, and the German consular post had still not been informed of their arrest. The issue of the lack of consular notification, which had not been raised at trial, was also not raised in these two sets of proceedings.

22. The relevant German consular post was only made aware of the case in June 1992 by the LaGrands themselves, who had learnt of their rights from other sources, and not from the Arizona authorities. In December 1992, and on a number of subsequent occasions between then and February 1999, an official of the Consulate-General of Germany in Los Angeles visited the LaGrands in prison. Germany claims that it subsequently helped the LaGrands’ attorneys to investigate the LaGrands' childhood in Germany, and to raise the issue of the omission of consular advice in further proceedings before the federal courts.

23. The LaGrands commenced a third set of legal proceedings by filing applications for writs of habeas corpus in the United States District Court for the District of Arizona, seeking to have their convictions — or at least their death sentences — set aside. In these proceedings they raised a number of different claims, which were rejected by that court in orders dated 24 January 1993 and 16 February 1995. One of these claims was that the United States authorities had failed to notify the German consulate of their arrest, as required by the Vienna Convention. This claim was rejected on the basis of the “procedural default” rule. According to the United States, this rule:

"is a federal rule that, before a state criminal defendant can obtain relief in federal court, the claim must be presented to a state court. If a state defendant attempts to raise a new issue in a federal habeas corpus proceeding, the defendant can only do so by showing cause and prejudice. Cause is an external impediment that prevents a defendant from raising a claim and prejudice must be obvious on its face. One important purpose of this rule is to ensure that the state courts have an opportunity to address issues going to the validity of state convictions before the federal courts intervene."

The United States District Court held that the LaGrands had not shown an objective external factor that prevented them from raising the issue of the lack of consular notification earlier. On 16 January 1998, this judgment was affirmed on appeal by the United States Court of Appeals,
Ninth Circuit, which also held that the LaGrands’ claim relating to the Vienna Convention was “procedurally defaulted”, as it had not been raised in any of the earlier proceedings in state courts. On 2 November 1998, the United States Supreme Court denied further review of this judgment.

24. On 21 December 1998, the LaGrands were formally notified by the United States authorities of their right to consular access.

25. On 15 January 1999, the Supreme Court of Arizona decided that Karl LaGrand was to be executed on 24 February 1999, and that Walter LaGrand was to be executed on 3 March 1999. Germany claims that the German Consulate learned of these dates on 19 January 1999.

26. In January and early February 1999, various interventions were made by Germany seeking to prevent the execution of the LaGrands. In particular, the German Foreign Minister and German Minister of Justice wrote to their respective United States counterparts on 27 January 1999; the German Foreign Minister wrote to the Governor of Arizona on the same day; the German Chancellor wrote to the President of the United States and to the Governor of Arizona on 2 February 1999; and the President of the Federal Republic of Germany wrote to the President of the United States on 5 February 1999. These letters referred to German opposition to capital punishment generally, but did not raise the issue of the absence of consular notification in the case of the LaGrands. The latter issue was, however, raised in a further letter, dated 22 February 1999, two days before the scheduled date of execution of Karl LaGrand, from the German Foreign Minister to the United States Secretary of State.

27. On 23 February 1999, the Arizona Board of Executive Clemency rejected an appeal for clemency by Karl LaGrand. Under the law of Arizona, this meant that the Governor of Arizona was prevented from granting clemency.

28. On the same day, the Arizona Superior Court in Pima County rejected a further petition by Walter LaGrand, based inter alia on the absence of consular notification, on the ground that these claims were “procedurally precluded”.

29. On 24 February 1999, certain last-minute federal court proceedings brought by Karl LaGrand ultimately proved to be unsuccessful. In the course of these proceedings the United States Court of Appeals, Ninth Circuit, again held the issue of failure of consular notification to be procedurally defaulted. Karl LaGrand was executed later that same day.

30. On 2 March 1999, the day before the scheduled date of execution of Walter LaGrand, at 7.30 p.m. (The Hague time), Germany filed in the Registry of this Court the Application instituting the present proceedings against the United States (see paragraph 1 above), accompanied by a request for the following provisional measures:

“The United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of that Order.”

By a letter of the same date, the German Foreign Minister requested the Secretary of State of the United States “to urge [the] Governor [of Arizona] for a suspension of Walter LaGrand’s execution pending a ruling by the International Court of Justice”.

31. On the same day, the Arizona Board of Executive Clemency met to consider the case of Walter LaGrand. It recommended against a commutation of his death sentence, but recommended that the Governor of Arizona grant a 60-day reprieve having regard to the Application filed by Germany in the International Court of Justice. Nevertheless, the Governor of Arizona decided, “in the interest of justice and with the victims in mind”, to allow the execution of Walter LaGrand to go forward as scheduled.

32. In an Order of 3 March 1999, this Court found that the circumstances required it to indicate, as a matter of the greatest urgency and without any other proceedings, provisional measures in accordance with Article 41 of its Statute and with Article 75, paragraph 1, of its Rules (I.C.J. Reports 1999 (I), p. 15, para. 26); it indicated provisional measures in the following terms:

“(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

(b) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.”

33. On the same day, proceedings were brought by Germany in the United States Supreme Court against the United States and the Governor of Arizona, seeking inter alia to enforce compliance with this Court’s Order indicating provisional measures. In the course of these proceedings, the United States Solicitor General as counsel of record took the position, inter alia, that “an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief”. On the same date, the United States Supreme Court dismissed the motion by Germany, on the ground of the tardiness of Germany’s application and of jurisdictional barriers under United States domestic law.

34. On that same day, proceedings were also instituted in the United
States Supreme Court by Walter LaGrand. These proceedings were decided against him. Later that day, Walter LaGrand was executed.

* * *

35. The Court must as a preliminary matter deal with certain issues, which were raised by the Parties in these proceedings, concerning the jurisdiction of the Court in relation to Germany’s Application, and the admissibility of its submissions.

* * *

36. In relation to the jurisdiction of the Court, the United States, without having raised preliminary objections under Article 79 of the Rules of Court, nevertheless presented certain objections thereto. Germany bases the jurisdiction of the Court on Article I of the Optional Protocol, which reads as follows:

“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.”

Germany contends that the

“proceedings instituted by [it] in the present case raise questions of the interpretation and application of the Vienna Convention on Consular Relations and of the legal consequences arising from the non-observance on the part of the United States of certain of its provisions vis-à-vis Germany and two of its nationals”.

Accordingly, Germany states that all four of its submissions

“are covered by one and the same jurisdictional basis, namely Art. I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes of 24 April 1963”.

* * *

37. The Court will first examine the question of its jurisdiction with respect to the first submission of Germany. Germany relies on paragraph 1 of Article 36 of the Vienna Convention, which provides:

“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.”

38. Germany alleges that the failure of the United States to inform the LaGrand brothers of their right to contact the German authorities “prevented Germany from exercising its rights under Art. 36 (1) (a) and (c) of the Convention” and violated “the various rights conferred upon the sending State vis-à-vis its nationals in prison, custody or detention as provided for in Art. 36 (1) (b) of the Convention”. Germany further alleges that by breaching its obligations to inform, the United States also violated individual rights conferred on the detainees by Article 36, paragraph 1 (a), second sentence, and by Article 36, paragraph 1 (b). Germany accordingly claims that it was “injured in the person of its two nationals”, a claim which Germany raises “as a matter of diplomatic protection on behalf of Walter and Karl LaGrand”.

39. The United States acknowledges that “there was a breach of the U.S. obligation . . . to inform the LaGrand brothers that they could ask that a German consular post be notified of their arrest and detention”. It does not deny that this violation of Article 36, paragraph 1 (b), has given rise to a dispute between the two States and recognizes that the Court has
jurisdiction under the Optional Protocol to hear this dispute in so far as it concerns Germany’s own rights.

40. Concerning Germany’s claims of violation of Article 36, paragraph 1 (a) and (c), the United States however calls these claims “particularly misplaced” on the grounds that the “underlying conduct complained of is the same” as the claim of the violation of Article 36, paragraph 1 (b). It contends, moreover, that “to the extent that this claim by Germany is based on the general law of diplomatic protection, it is not within the Court’s jurisdiction” under the Optional Protocol because it “does not concern the interpretation or application of the Vienna Convention”. The United States points to the distinction between jurisdiction over treaties and jurisdiction over customary law and observes that “[e]ven if a treaty norm and a customary norm were to have exactly the same content”, each would have its “separate applicability”. It contests the German assertion that diplomatic protection “enters through the intermediary of the Vienna Convention” and submits:

“the Vienna Convention deals with consular assistance . . . it does not deal with diplomatic protection. Legally, a world of difference exists between the right of the consul to assist an incarcerated national of his country, and the wholly different question whether the State can espouse the claims of its national through diplomatic protection. The former is within the jurisdiction of the Court under the Optional Protocol; the latter is not . . . Germany based its right of diplomatic protection on customary law . . . [T]his case comes before this Court not under Article 36, paragraph 2, of its Statute, but under Article 36, paragraph 1. Is it not obvious . . . that whatever rights Germany has under customary law, they do not fall within the jurisdiction of this Court under the Optional Protocol?”

41. Germany responds that the breach of paragraph 1 (a) and (c) of Article 36 must be distinguished from that of paragraph 1 (b), and that as a result, the Court should not only rule on the latter breach, but also on the violation of paragraph 1 (a) and (c). Germany further asserts “that ‘application of the Convention’ in the sense of the Optional Protocol very well encompasses the consequences of a violation of individual rights under the Convention, including the espousal of respective claims by the State of nationality”.

42. The Court cannot accept the United States objections. The dispute between the Parties as to whether Article 36, paragraph 1 (a) and (c), of the Vienna Convention have been violated in this case in consequence of the breach of paragraph 1 (b) does relate to the interpretation and application of the Convention. This is also true of the dispute as to whether paragraph 1 (b) creates individual rights and whether Germany has standing to assert those rights on behalf of its nationals. These are consequently disputes within the meaning of Article I of the Optional Protocol. Moreover, the Court cannot accept the contention of the United States that Germany’s claim based on the individual rights of the LaGrand brothers is beyond the Court’s jurisdiction because diplomatic protection is a concept of customary international law. This fact does not prevent a State party to a treaty, which creates individual rights, from taking up the case of one of its nationals and instituting international judicial proceedings on behalf of that national, on the basis of a general jurisdictional clause in such a treaty. Therefore the Court concludes that it has jurisdiction with respect to the whole of Germany’s first submission.

43. The United States does not challenge the Court’s jurisdiction in regard to Germany’s second submission. Nor does it as such address the issue of the jurisdiction of the Court over the third submission concerning the binding nature of the Order of the Court of 3 March 1999 indicating provisional measures. It argues, however, that this submission is inadmissible (see paragraphs 50 and 53-55 below), and that the Court can fully and adequately dispose of the merits of this case without having to rule on the submission.

44. Germany asserts that the Court’s Order of 3 March 1999 was intended to “enforce” the rights enjoyed by Germany under the Vienna Convention and “preserve those rights pending its decision on the merits”. Germany claims that a dispute as to “whether the United States were obliged to comply and did comply with the Order” necessarily arises out of the interpretation or application of the Convention and thus falls within the jurisdiction of the Court. Germany argues further that questions “relating to the non-compliance with a decision of the Court under Article 41, para. 1, of the Statute, e.g. Provisional Measures, are an integral component of the entire original dispute between the parties”. Moreover, Germany contends that its third submission also implicates “in an auxiliary and subsidiary manner . . . the inherent jurisdiction of the Court for claims as closely interconnected with each other as the ones before the Court in the present case”.

45. The third submission of Germany concerns issues that arise directly out of the dispute between the Parties before the Court over which the Court has already held that it has jurisdiction (see paragraph 42 above), and which are thus covered by Article I of the Optional Protocol. The Court reaffirms, in this connection, what it said in its Judgment in the
Fisheries Jurisdiction case, where it declared that in order to consider the dispute in all its aspects it may also deal with a submission that "is one based on facts subsequent to the filing of the Application, but arising directly out of the question which is the subject-matter of that Application. As such it falls within the scope of the Court's jurisdiction..." (Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 203, para. 72). Where the Court has jurisdiction to decide a case, it also has jurisdiction to deal with submissions requesting it to determine that an order indicating measures which seeks to preserve the rights of the Parties to this dispute has not been complied with.

46. The United States objects to the jurisdiction of the Court over the fourth submission in so far as it concerns a request for assurances and guarantees of non-repetition. The United States submits that its "jurisdictional argument [does] not apply to jurisdiction to order cessation of a breach or to order reparation, but is limited to the question of assurances and guarantees... [which] are conceptually distinct from reparation". It contends that Germany's fourth submission "goes beyond any remedy that the Court can or should grant, and should be rejected. The Court's power to decide cases... does not extend to the power to order a State to provide any 'guarantee' intended to confer additional legal rights on the Applicant State... The United States does not believe that it can be the role of the Court... to impose any obligations that are additional to or that differ in character from those to which the United States consented when it ratified the Vienna Convention."

47. Germany counters this argument by asserting that "a dispute whether or not the violation of a provision of the Vienna Convention gives rise to a certain remedy is a dispute concerning 'the application and interpretation' of the aforesaid Convention, and thus falls within the scope of Art. 1 of the Optional Protocol."

Germany notes in this regard that the Court, in its Order of 9 April 1998 in the case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), held that "there exists a dispute as to whether the relief sought by Paraguay is a remedy available under the Vienna Convention, in particular in relation to Articles 5 and 36 thereof; and... this is a dispute arising out of the application of the Convention within the meaning of Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of 24 April 1963" (I.C.J. Reports 1998, p. 256, para. 31).

48. The Court considers that a dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court's jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation (Factory at Chorzów, P.C.I.L., Series A, No. 9, p. 22). Consequently, the Court has jurisdiction in the present case with respect to the fourth submission of Germany.

49. The United States has argued that the submissions of Germany are inadmissible on various grounds. The Court will consider these objections in the order presented by the United States.

50. The United States objects first to Germany's second, third and fourth submissions. According to the United States, these submissions are inadmissible because Germany seeks to have this Court "play the role of ultimate court of appeal in national criminal proceedings", a role which it is not empowered to perform. The United States maintains that many of Germany's arguments, in particular those regarding the rule of "procedural default", ask the Court "to address and correct... asserted violations of US law and errors of judgment by US judges" in criminal proceedings in national courts.

51. Germany denies that it requests the Court to act as an appellate criminal court, or that Germany's requests are in any way aimed at interfering with the administration of justice within the United States judicial system. It maintains that it is merely asking the Court to adjudge and declare that the conduct of the United States was inconsistent with its international legal obligations towards Germany under the Vienna Convention, and to draw from this failure certain legal consequences provided for in the international law of State responsibility.

52. The Court does not agree with these arguments of the United
States concerning the admissibility of the second, third and fourth German submissions. In the second submission, Germany asks the Court to interpret the scope of Article 36, paragraph 2, of the Vienna Convention; the third submission seeks a finding that the United States violated an Order issued by this Court pursuant to Article 41 of its Statute; and in Germany’s fourth submission, the Court is asked to determine the applicable remedies for the alleged violations of the Convention. Although Germany deals extensively with the practice of American courts as it bears on the application of the Convention, all three submissions seek to require the Court to do no more than apply the relevant rules of international law to the issues in dispute between the Parties to this case. The exercise of this function, expressly mandated by Article 38 of its Statute, does not convert this Court into a court of appeal of national criminal proceedings.

* *

53. The United States also argues that Germany’s third submission is inadmissible because of the manner in which these proceedings were brought before the Court by Germany. It notes that German consular officials became aware of the LaGrands’ cases in 1992, but that the German Government did not express concern or protest to the United States authorities for some six and a half years. It maintains that the issue of the absence of consular notification was not raised by Germany until 22 February 1999, two days before the date scheduled for Karl LaGrand’s execution, in a letter from the German Foreign Minister to the Secretary of State of the United States (see paragraph 26 above). Germany then filed the Application instituting these proceedings, together with a request for provisional measures, after normal business hours in the Registry in the evening of 2 March 1999, some 27 hours before the execution of Walter LaGrand (see paragraph 30 above).

54. The United States rejects the contention that Germany found out only seven days before the filing of its Application that the authorities of Arizona knew as early as 1982 that the LaGrands were German nationals; according to the United States, their German nationality was referred to in pre-sentence reports prepared in 1984, which should have been familiar to German consular officers much earlier than 1999, given Germany’s claims regarding the vigour and effectiveness of its consular assistance.

55. According to the United States, Germany’s late filing compelled the Court to respond to its request for provisional measures by acting ex parte, without full information. The United States claims that the procedure followed was inconsistent with the principles of “equality of the Parties” and of giving each Party a sufficient opportunity to be heard, and that this would justify the Court in not addressing Germany’s third submission which is predicated wholly upon the Order of 3 March 1999.

56. Germany acknowledges that delay on the part of a claimant State may render an application inadmissible, but maintains that international law does not lay down any specific time-limit in that regard. It contends that it was only seven days before it filed its Application that it became aware of all the relevant facts underlying its claim, in particular, the fact that the authorities of Arizona knew of the German nationality of the LaGrands since 1982. According to Germany, it cannot be accused of negligence in failing to obtain the 1984 pre-sentence reports earlier. It also maintains that in the period between 1992, when it learned of the LaGrands’ cases, and the filing of its Application, it engaged in a variety of activities at the diplomatic and consular level. It adds that it had been confident for much of this period that the United States would ultimately rectify the violations of international law involved.

57. The Court recognizes that Germany may be criticized for the manner in which these proceedings were filed and for their timing. The Court recalls, however, that notwithstanding its awareness of the consequences of Germany’s filing at such a late date it nevertheless considered it appropriate to enter the Order of 3 March 1999, given that an irreparable prejudice appeared to be imminent. In view of these considerations, the Court considers that Germany is now entitled to challenge the alleged failure of the United States to comply with the Order. Accordingly, the Court finds that Germany’s third submission is admissible.

* *

58. The United States argues further that Germany’s first submission, as far as it concerns its right to exercise diplomatic protection with respect to its nationals, is inadmissible on the ground that the LaGrands did not exhaust local remedies. The United States maintains that the alleged breach concerned the duty to inform the LaGrands of their right to consular access, and that such a breach could have been remedied at the trial stage, provided it was raised in a timely fashion. The United States contends that when a person fails, for example, to sue in a national court before a statute of limitations has expired, the claim is both procedurally barred in national courts and inadmissible in international tribunals for failure to exhaust local remedies. It adds that the failure of counsel for the LaGrands to raise the breach of the Vienna Convention at the appropriate stage and time of the proceedings does not excuse the non-exhaustion of local remedies. According to the United States, this
failure of counsel is imputable to their clients because the law treats defendants and their lawyers as a single entity in terms of their legal positions. Moreover, the State is not accountable for the errors or mistaken strategy by lawyers.

59. Germany responds that international law requires the exhaustion of only those remedies which are legally and practically available. Germany claims that in this case there was no remedy which the LaGrands failed to invoke that would have been available in the specific context of their case. This is so because, prior to 1992, the LaGrands could not resort to the available remedies, since they were unaware of their rights due to failure of the United States authorities to comply with the requirements of the Vienna Convention; thereafter, the “procedural default” rule prevented them from seeking any remedy.

60. The Court notes that it is not disputed that the LaGrands sought to plead the Vienna Convention in United States courts after they learned in 1992 of their rights under the Convention; it is also not disputed that by that date the procedural default rule barred the LaGrands from obtaining any remedy in respect of the violation of those rights. Counsel assigned to the LaGrands failed to raise this point earlier in a timely fashion. However, the United States may not now rely before this Court on this fact in order to preclude the admissibility of Germany’s first submission, as it was the United States itself which had failed to carry out its obligation under the Convention to inform the LaGrand brothers.

61. The United States also contends that Germany’s submissions are inadmissible on the ground that Germany seeks to have a standard applied to the United States that is different from its own practice. According to the United States, Germany has not shown that its system of criminal justice requires the annulment of criminal convictions where there has been a breach of the duty of consular notification; and that the practice of Germany in similar cases has been to do no more than offer an apology. The United States maintains that it would be contrary to basic principles of administration of justice and equality of the Parties to apply against the United States alleged rules that Germany appears not to accept for itself.

62. Germany denies that it is asking the United States to adhere to standards which Germany itself does not abide by; it maintains that its law and practice is fully in compliance with the standards which it invokes. In this regard, it explains that the German Code of Criminal Procedure provides a ground of appeal where a legal norm, including a norm of international law, is not applied or incorrectly applied and where there is a possibility that the decision was impaired by this fact.

63. The Court need not decide whether this argument of the United States, if true, would result in the inadmissibility of Germany’s submissions. Here the evidence adduced by the United States does not justify the conclusion that Germany’s own practice fails to conform to the standards it demands from the United States in this litigation. The United States relies on certain German cases to demonstrate that Germany has itself proffered only an apology for violating Article 36 of the Vienna Convention, and that State practice shows that this is the appropriate remedy for such a violation. But the cases concerned entailed relatively light criminal penalties and are not evidence as to German practice where an arrested person, who has not been informed without delay of his or her rights, is facing a severe penalty as in the present case. It is no doubt the case, as the United States points out, that Article 36 of the Vienna Convention imposes identical obligations on States, irrespective of the gravity of the offence a person may be charged with and of the penalties that may be imposed. However, it does not follow therefrom that the remedies for a violation of this Article must be identical in all situations. While an apology may be an appropriate remedy in some cases, it may in others be insufficient. The Court accordingly finds that this claim of inadmissibility must be rejected.

* * *

64. Having determined that the Court has jurisdiction, and that the submissions of Germany are admissible, the Court now turns to the merits of each of these four submissions.

* * *

65. Germany’s first submission requests the Court to adjudge and declare:

“that the United States, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36 subparagraph 1 (b) of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, which ultimately resulted in the execution of Karl and Walter LaGrand, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36 paragraph 1 of the said Convention”.

66. Germany claims that the United States violated its obligation under Article 36, paragraph 1 (b), to “inform a national of the sending State without delay of his or her right to inform the consular post of his home State of his arrest or detention”. Specifically, Germany maintains that the United States violated its international legal obligation to Germany under Article 36, paragraph 1 (b), by failing to inform the German nationals Karl and Walter LaGrand “without delay” of their rights under that subparagraph.

67. The United States acknowledges, and does not contest Germany’s basic claim, that there was a breach of its obligation under Article 36, paragraph 1 (b), of the Convention “promptly to inform the LaGrand brothers that they could ask that a German consular post be notified of their arrest and detention”.

68. Germany also claims that the violation by the United States of Article 36, paragraph 1 (b), led to consequential violations of Article 36, paragraphs 1 (a) and (c). It points out that, when the obligation to inform the arrested person without delay of his or her right to contact the consulate is disregarded, “the other rights contained in Article 36, paragraph 1, become in practice irrelevant, indeed meaningless”. Germany maintains that, “[b]y informing the LaGrand brothers of their right to inform the consulate more than 16 years after their arrest, the United States . . . clearly failed to meet the standard of Article 36 [(1) (c)]”. It concludes that, by not preventing the execution of Karl and Walter LaGrand, and by “making irreversible its earlier breaches of Art. 5 and 36 (1) and (2) and causing irreparable harm, the United States violated its obligations under international law”.

69. The United States argues that the underlying conduct complained of by Germany is one and the same, namely, the failure to inform the LaGrand brothers as required by Article 36, paragraph 1 (b). Therefore, it disputes any other basis for Germany’s claims that other provisions, such as subparagraphs (a) and (c) of Article 36, paragraph 1, of the Convention, were also violated. The United States asserts that Germany’s claims regarding Article 36, paragraph 1 (a) and (c), are “particularly misplaced” in that the LaGrands were able to and did communicate freely with consular officials after 1992. There was, in the view of the United States, “no deprivation of Germany’s right to provide consular assistance, under Article 5 or Article 36, to Karl or Walter LaGrand” and “Germany’s attempt to transform a breach of one obligation into an additional breach of a wholly separate and distinct obligation should be rejected by the Court.”

70. In response, Germany asserts that it is “commonplace that one and the same conduct may result in several violations of distinct obligations”. Hence, when a detainee’s right to notification without delay is violated, he or she cannot establish contact with the consulate, receive visits from consular officers, nor be supported by adequate counsel. “Therefore, violation of this right is bound to imply violation of the other rights . . . [and] later observance of the rights of Article 36, paragraph 1 (a) and (c), could not remedy the previous violation of those provisions.”

71. Germany further contends that there is a causal relationship between the breach of Article 36 and the ultimate execution of the LaGrand brothers. Germany’s inability to render prompt assistance was, in its view, a “direct result of the United States’ breach of its Vienna Convention obligations”. It is claimed that, had Germany been properly afforded its rights under the Vienna Convention, it would have been able to intervene in time and present a “persuasive mitigation case” which “likely would have saved” the lives of the brothers. Germany believes that, “[h]ad proper notification been given under the Vienna Convention, competent trial counsel certainly would have looked to Germany for assistance in developing this line of mitigating evidence”. Moreover, Germany argues that, due to the doctrine of procedural default and the high post-conviction threshold for proving ineffective counsel under United States law, Germany’s intervention at a stage later than the trial phase could not “remedy the extreme prejudice created by the counsel appointed to represent the LaGrands”.

72. The United States terms these arguments as “suppositions about what might have occurred had the LaGrand brothers been properly informed of the possibility of consular notification”. It calls into question Germany’s assumption that German consular officials from Los Angeles would rapidly have given extensive assistance to the LaGrands’ defence counsel before the 1984 sentencing, and contests that such consular assistance would have affected the outcome of the sentencing proceedings. According to the United States, these arguments “rest on speculation” and do not withstand analysis. Finally, the United States finds it extremely doubtful that the early childhood “mitigating evidence” mentioned by Germany, if introduced at the trial, would have persuaded the sentencing judge to be lenient, as the brothers’ subsequent 17 years of experiences in the United States would have been given at least equal weight. The United States points out, moreover, that such evidence was in fact presented at trial.

73. The Court will first examine the submission Germany advances in its own right. The Court observes, in this connection, that the United States does not deny that it violated paragraph 1 (b) in relation to Ger-
many. The Court also notes that as a result of this breach, Germany did not learn until 1992 of the detention, trial and sentencing of the LaGrand brothers. The Court concludes therefrom that on the facts of this case, the breach of the United States had the consequence of depriving Germany of the exercise of the rights accorded it under Article 36, paragraph 1 (a) and paragraph 1 (c), and thus violated these provisions of the Convention. Although the violation of paragraph 1 (b) of Article 36 will not necessarily always result in the breach of the other provisions of this Article, the Court finds that the circumstances of this case compel the opposite conclusion, for the reasons indicated below. In view of this finding, it is not necessary for the Court to deal with Germany’s further claim under Article 5 of the Convention.

74. Article 36, paragraph 1, establishes an interrelated régime designed to facilitate the implementation of the system of consular protection. It begins with the basic principle governing consular protection: the right of communication and access (Art. 36, para. 1 (a)). This clause is followed by the provision which spells out the modalities of consular notification (Art. 36, para. 1 (b)). Finally Article 36, paragraph 1 (c), sets out the measures consular officers may take in rendering consular assistance to their nationals in the custody of the receiving State. It follows that when the sending State is unaware of the detention of its nationals due to the failure of the receiving State to provide the requisite consular notification without delay, which was true in the present case during the period between 1982 and 1992, the sending State has been prevented for all practical purposes from exercising its rights under Article 36, paragraph 1. It is immaterial for the purposes of the present case whether the LaGrands would have sought consular assistance from Germany, whether Germany would have rendered such assistance, or whether a different verdict would have been rendered. It is sufficient that the Convention conferred these rights, and that Germany and the LaGrands were in effect prevented by the breach of the United States from exercising them, had they so chosen.

75. Germany further contends that “the breach of Article 36 by the United States did not only infringe upon the rights of Germany as a State party to the [Vienna] Convention but also entailed a violation of the individual rights of the LaGrand brothers.” Invoking its right of diplomatic protection, Germany also seeks relief against the United States on this ground.

Germany maintains that the right to be informed of the rights under Article 36, paragraph 1 (b), of the Vienna Convention, is an individual right of every national of a State party to the Convention who enters the territory of another State party. It submits that this view is supported by the ordinary meaning of the terms of Article 36, paragraph 1 (b), of the Vienna Convention, since the last sentence of that provision speaks of the “rights” under this subparagraph of “the person concerned”, i.e., of the foreign national arrested or detained. Germany adds that the provision in Article 36, paragraph 1 (b), according to which it is for the arrested person to decide whether consular notification is to be provided, has the effect of conferring an individual right upon the foreign national concerned. In its view, the context of Article 36 supports this conclusion since it relates to both the concerns of the sending and receiving States and to those of individuals. According to Germany, the travaux préparatoires of the Vienna Convention lend further support to this interpretation. In addition, Germany submits that the “United Nations Declaration on the human rights of individuals who are not nationals of the country in which they live”, adopted by General Assembly resolution 40/144 on 13 December 1985, confirms the view that the right of access to the consulate of the home State, as well as the information on this right, constitute individual rights of foreign nationals and are to be regarded as human rights of aliens.

76. The United States questions what this additional claim of diplomatic protection contributes to the case and argues that there are no parallels between the present case and cases of diplomatic protection involving the espousal by a State of economic claims of its nationals. The United States maintains that the right of a State to provide consular assistance to nationals detained in another country, and the right of a State to espouse the claims of its nationals through diplomatic protection, are legally different concepts.

The United States contends, furthermore, that rights of consular notification and access under the Vienna Convention are rights of States, and not of individuals, even though these rights may benefit individuals by permitting States to offer them consular assistance. It maintains that the treatment due to individuals under the Convention is inextricably linked to and derived from the right of the State, acting through its consular officer, to communicate with its nationals, and does not constitute a fundamental right or a human right. The United States argues that the fact that Article 36 by its terms recognizes the rights of individuals does not determine the nature of those rights or the remedies required under the Vienna Convention for breaches of that Article. It points out that Article 36 begins with the words “[w]ith a view to facilitating the exercise of consular functions relating to nationals of the sending State”, and that this wording gives no support to the notion that the rights and obligations enumerated in paragraph 1 of that Article are intended to ensure that nationals of the sending State have any particular rights or
treatment in the context of a criminal prosecution. The *travaux préparatoires* of the Vienna Convention according to the United States do not reflect a consensus that Article 36 was addressing immutable individual rights, as opposed to individual rights derivative of the rights of States.

77. The Court notes that Article 36, paragraph 1 (b), spells out the obligations the receiving State has towards the detained person and the sending State. It provides that, at the request of the detained person, the receiving State must inform the consular post of the sending State of the individual’s detention “without delay”. It provides further that any communication by the detained person addressed to the consular post of the sending State must be forwarded to it by authorities of the receiving State “without delay”. Significantly, this subparagraph ends with the following language: “The said authorities shall inform the person concerned without delay of his rights under this subparagraph” (emphasis added). Moreover, under Article 36, paragraph 1 (c), the sending State’s right to provide consular assistance to the detained person may not be exercised “if he expressly opposes such action”. The clarity of these provisions, viewed in their context, admits of no doubt. It follows, as has been held on a number of occasions, that the Court must apply these as they stand (see *Acquisition of Polish Nationality. Advisory Opinion, 1923, P.C.I.J., Series B. No. 7*, p. 20; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, p. 8; Arbitral Award of 31 July 1989*, *Judgment, I.C.J. Reports 1991*, pp. 69-70, para. 48; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment, I.C.J. Reports 1994*, p. 25, para. 51). Based on the text of these provisions, the Court concludes that Article 36, paragraph 1, creates individual rights, which, by virtue of Article I of the Optional Protocol, may be invoked in this Court by the national State of the detained person. These rights were violated in the present case.

78. At the hearings, Germany further contended that the right of the individual to be informed without delay under Article 36, paragraph 1, of the Vienna Convention was not only an individual right but has today assumed the character of a human right. In consequence, Germany added, “the character of the right under Article 36 as a human right renders the effectiveness of this provision even more imperative”. The Court having found that the United States violated the rights accorded by Article 36, paragraph 1, to the LaGrand brothers, it does not appear necessary to it to consider the additional argument developed by Germany in this regard.

79. The Court will now consider Germany’s second submission, in which it asks the Court to adjudge and declare:

“that the United States, by applying rules of its domestic law, in particular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular Relations, and by ultimately executing them, violated its international legal obligation to Germany under Article 36 paragraph 2 of the Vienna Convention to give full effect to the purposes for which the rights accorded under Article 36 of the said Convention are intended”.

80. Germany argues that, under Article 36, paragraph 2, of the Vienna Convention

“the United States is under an obligation to ensure that its municipal laws and regulations . . . enable full effect to be given to the purposes for which the rights accorded under this article are intended” [and that it] is in breach of this obligation by upholding rules of domestic law which make it impossible to successfully raise a violation of the right to consular notification in proceedings subsequent to a conviction of a defendant by a jury”.

81. Germany points out that the “procedural default” rule is among the rules of United States domestic law whose application make it impossible to invoke a breach of the notification requirement. According to Germany, this rule “is closely connected with the division of labour between federal and state jurisdiction in the United States . . . where [c]riminal jurisdiction belongs to the states except in cases provided for in the Constitution”. This rule, Germany explains, requires “exhaustion of remedies at the state level before a habeus corpus motion can be filed with federal Courts”.

Germany emphasizes that it is not the “procedural default” rule as such that is at issue in the present proceedings, but the manner in which it was applied in that it “deprived the brothers of the possibility to raise the violations of their right to consular notification in US criminal proceedings”.

82. Furthermore, having examined the relevant United States jurisprudence, Germany contends that the procedural default rule had “made it impossible for the LaGrand brothers to effectively raise the issue of the lack of consular notification after they had at last learned of their rights and established contact with the German consulate in Los Angeles in 1992”.

**
83. Finally, Germany states that it seeks

"[n]othing . . . more than compliance, or, at least, a system in place which does not automatically reproduce violation after violation of the Vienna Convention, only interrupted by the apologies of the United States Government".

84. The United States objects to Germany's second submission, since it considers that "Germany's position goes far beyond the wording of the Convention, the intentions of the parties when it was negotiated, and the practice of States, including Germany's practice".

85. In the view of the United States:

"[t]he Vienna Convention does not require States Party to create a national law remedy permitting individuals to assert claims involving the Convention in criminal proceedings. If there is no such requirement, it cannot violate the Convention to require that efforts to assert such claims be presented to the first court capable of adjudicating them".

According to the United States,

"[i]f there is no obligation under the Convention to create such individual remedies in criminal proceedings, the rule of procedural default — requiring that claims seeking such remedies be asserted at an appropriately early stage — cannot violate the Convention".

86. The United States believes that Article 36, paragraph 2, "has a very clear meaning" and

"means, as it says, that the rights referred to in paragraph 1 shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso that said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under the Article are intended".

In the view of the United States,

"[i]n the context of a foreign national in detention, the relevant laws and regulations contemplated by Article 36 (2) are those that may affect the exercise of specific rights under Article 36 (1), such as those addressing the timing of communications, visiting hours, and security in a detention facility. There is no suggestion in the text of Article 36 (2) that the rules of criminal law and procedure under which a defendant would be tried or have his conviction and sentence reviewed by appellate courts are also within the scope of this provision."

87. The United States concludes that Germany's second submission must be rejected "because it is premised on a misinterpretation of Article 36, paragraph 2, which reads the context of the provision — the exercise of a right under paragraph 1 — out of existence".

88. Article 36, paragraph 2, of the Vienna Convention reads as follows:

"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."

89. The Court cannot accept the argument of the United States which proceeds, in part, on the assumption that paragraph 2 of Article 36 applies only to the rights of the sending State and not also to those of the detained individual. The Court has already determined that Article 36, paragraph 1, creates individual rights for the detained person in addition to the rights accorded the sending State, and that consequently the reference to "rights" in paragraph 2 must be read as applying not only to the rights of the sending State, but also to the rights of the detained individual (see paragraph 77 above).

90. Turning now to the "procedural default" rule, the application of which in the present case Germany alleges violated Article 36, paragraph 2, the Court emphasizes that a distinction must be drawn between that rule as such and its specific application in the present case. In itself, the rule does not violate Article 36 of the Vienna Convention. The problem arises when the procedural default rule does not allow the detained individual to challenge a conviction and sentence by claiming, in reliance on Article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information "without delay", thus preventing the person from seeking and obtaining consular assistance from the sending State.

91. In this case, Germany had the right at the request of the LaGrands "to arrange for [their] legal representation" and was eventually able to provide some assistance to that effect. By that time, however, because of the failure of the American authorities to comply with their obligation under Article 36, paragraph 1 (b), the procedural default rule prevented counsel for the LaGrands to effectively challenge their convictions and sentences other than on United States constitutional grounds. As a result, although United States courts could and did examine the professional competence of counsel assigned to the indigent LaGrands by reference to United States constitutional standards, the procedural default rule prevented them from attaching any legal significance to the fact, inter alia, that the violation of the rights set forth in Article 36, paragraph 1, prevented Germany, in a timely fashion, from retaining private counsel for
them and otherwise assisting in their defence as provided for by the Convention. Under these circumstances, the procedural default rule had the effect of preventing “full effect [from being] given to the purposes for which the rights accorded under this article are intended”, and thus violated paragraph 2 of Article 36.

* * *

92. The Court will now consider Germany’s third submission, in which it asks the Court to adjudge and declare:

“that the United States, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, violated its international legal obligation to comply with the Order on provisional measures issued by the Court on 3 March 1999, and to refrain from any action which might interfere with the subject matter of a dispute while judicial proceedings are pending”.

93. In its Memorial, Germany contended that “[p]rovisional [m]easures indicated by the International Court of Justice [were] binding by virtue of the law of the United Nations Charter and the Statute of the Court”. In support of its position, Germany developed a number of arguments in which it referred to the “principle of effectiveness”, to the “procedural prerequisites” for the adoption of provisional measures, to the binding nature of provisional measures as a “necessary consequence of the bindingness of the final decision”, to “Article 94 (1), of the United Nations Charter”, to “Article 41 (1), of the Statute of the Court” and to the “practice of the Court”.

Referring to the duty of the “parties to a dispute before the Court . . . to preserve its subject-matter”, Germany added that:

“[f]rom having violated its duties under Art. 94 (1) of the United Nations Charter and Art. 41 (1) of the Statute, the United States has also violated the obligation to refrain from any action which might interfere with the subject-matter of a dispute while judicial proceedings are pending”.

At the hearings, Germany further stated the following:

“A judgment by the Court on jurisdiction or merits cannot be treated on exactly the same footing as a provisional measure . . . Article 59 and Article 60 [of the Statute] do not apply to provisional measures or, to be more exact, apply to them only by implication; that is to say, to the extent that such measures, being both incidental and provisional, contribute to the exercise of a judicial function whose end-result is, by definition, the delivery of a judicial decision. There is here an inherent logic in the judicial procedure, and to disregard it would be tantamount, as far as the Parties are concerned, to deviating from the principle of good faith and from what the German pleadings call ‘the principle of institutional effectiveness’ . . . [P]rovisional measures . . . are indeed legal decisions, but they are decisions of procedure . . . Since their decisional nature is, however, implied by the logic of urgency and by the need to safeguard the effectiveness of the proceedings, they accordingly create genuine legal obligations on the part of those to whom they are addressed.”

94. Germany claims that the United States committed a threefold violation of the Court’s Order of 3 March 1999:

“(1) Immediately after the International Court of Justice had rendered its Order on Provisional Measures, Germany appealed to the US Supreme Court in order to reach a stay of the execution of Walter LaGrand, in accordance with the International Court’s Order to the same effect. In the course of these proceedings — and in full knowledge of the Order of the International Court — the Office of the Solicitor General, a section of the US Department of Justice — in a letter to the Supreme Court argued once again that: ‘an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief’.

This statement of a high-ranking official of the Federal Government . . . had a direct influence on the decision of the Supreme Court.

(2) In the following, the US Supreme Court — an agency of the United States — refused by a majority vote to order that the execution be stayed. In doing so, it rejected the German arguments based essentially on the Order of the International Court of Justice on Provisional Measures . . .

(3) Finally, the Governor of Arizona did not order a stay of the execution of Walter LaGrand although she was vested with the right to do so by the laws of the State of Arizona. Moreover, in the present case, the Arizona Executive Board of Clemency — for the first time in the history of this institution — had issued a recommendation for a temporary stay, not least in light of the international legal issues involved in the case . . . ”

95. The United States argues that it “did what was called for by the Court’s 3 March Order, given the extraordinary and unprecedented cir-
circumstances in which it was forced to act". It points out in this connection that the United States Government "immediately transmitted the Order to the Governor of Arizona", that "the United States placed the Order in the hands of the one official who, at that stage, might have had legal authority to stop the execution" and that by a letter from the Legal Counsellor of the United States Embassy in The Hague dated 8 March 1999, it informed the International Court of Justice of all the measures which had been taken in implementation of the Order.

The United States further states that:

"[t]wo central factors constrained the United States' ability to act. The first was the extraordinarily short time between issuance of the Court's Order and the time set for the execution of Walter LaGrand ..."

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

The second constraining factor was the character of the United States of America as a federal republic of divided powers."

96. The United States also alleges that the "terms of the Court's 3 March Order did not create legal obligations binding on [it]". It argues in this respect that "[t]he language used by the Court in the key portions of its Order is not the language used to create binding legal obligations" and that

"the Court does not need here to decide the difficult and controversial legal question of whether its orders indicating provisional measures would be capable of creating international legal obligations if worded in mandatory ... terms".

It nevertheless maintains that those orders cannot have such effects and, in support of that view, develops arguments concerning "the language and history of Article 41 (1) of the Court's Statute and Article 94 of the Charter of the United Nations", the "Court's and State practice under these provisions", and the "weight of publicists' commentary".

Concerning Germany's argument based on the "principle of effectiveness", the United States contends that

"[i]n an arena where the concerns and sensitivities of States, and not abstract logic, have informed the drafting of the Court's constitutive documents, it is perfectly understandable that the Court might have the power to issue binding final judgments, but a more circumscribed authority with respect to provisional measures".

Referring to Germany's argument that the United States "violated the obligation to refrain from any action which might interfere with the subj-
stances l’exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

2. En attendant l’arrêt définitif, l’indication de ces mesures est immédiatement notifiée aux parties et au Conseil de sécurité.”

(Emphasis added.)

In this text, the terms “indiquer” and “l’indication” may be deemed to be neutral as to the mandatory character of the measure concerned; by contrast the words “doivent être prises” have an imperative character.

For its part, the English version of Article 41 reads as follows:

“1. 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.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.”

(Emphasis added.)

According to the United States, the use in the English version of “indicate” instead of “order”, of “ought” instead of “must” or “shall”, and of “suggested” instead of “ordered”, is to be understood as implying that decisions under Article 41 lack mandatory effect. It might however be argued, having regard to the fact that in 1920 the French text was the original version, that such terms as “indicate” and “ought” have a meaning equivalent to “order” and “must” or “shall”.

101. Finding itself faced with two texts which are not in total harmony, the Court will first of all note that according to Article 92 of the Charter, the Statute “forms an integral part of the present Charter”. Under Article 111 of the Charter, the French and English texts of the latter are “equally authentic”. The same is equally true of the Statute.

In cases of divergence between the equally authentic versions of the Statute, neither it nor the Charter indicates how to proceed. In the absence of agreement between the parties in this respect, it is appropriate to refer to paragraph 4 of Article 33 of the Vienna Convention on the Law of Treaties, which in the view of the Court again reflects customary international law. This provision reads “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”.

The Court will therefore now consider the object and purpose of the Statute together with the context of Article 41.

102. The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein, and, in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved. It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court. The contention that provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article.

103. A related reason which points to the binding character of orders made under Article 41 and to which the Court attaches importance is the existence of a principle which has already been recognized by the Permanent Court of International Justice when it spoke of “the principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute” (Electricity Company of Sofia and Bulgaria. Order of 5 December 1939, P.C.I.J. Series A/B, No. 79, p. 199).


104. Given the conclusions reached by the Court above in interpreting the text of Article 41 of the Statute in the light of its object and purpose, it does not consider it necessary to resort to the preparatory work in order to determine the meaning of that Article. The Court would nevertheless point out that the preparatory work of the Statute
does not preclude the conclusion that orders under Article 41 have binding force.

105. The initial preliminary draft of the Statute of the Permanent Court of International Justice, as prepared by the Committee of Jurists established by the Council of the League of Nations, made no mention of provisional measures. A provision to this effect was inserted only at a later stage in the draft prepared by the Committee, following a proposal from the Brazilian jurist Raul Fernandes.

Basing himself on the Bryan Treaty of 13 October 1914 between the United States and Sweden, Raul Fernandes had submitted the following text:

"Dans le cas où la cause du différend consiste en actes déterminés déjà effectués ou sur le point de l'être, la Cour pourra ordonner, dans le plus bref délai, à titre provisoire, des mesures conservatoires adéquates, en attendant le jugement définitif." (Comité consultatif de juristes, Procès-verbaux des séances du comité, 16 juin-24 juillet 1920 (avec annexes), La Haye, 1920, p. 609.)

In its English translation this text read as follows:

"In case the cause of the dispute should consist of certain acts already committed or about to be committed, the Court may, provisionally and with the least possible delay, order adequate protective measures to be taken, pending the final judgment of the Court." (Advisory Committee of Jurists, Procès-verbaux of the Proceedings of the Committee, 16 June-24 July 1920 (with Annexes), The Hague, 1920, p. 609.)

The Drafting Committee prepared a new version of this text, to which two main amendments were made: on the one hand, the words "la Cour pourra ordonner" ("the Court may . . . order") were replaced by "la Cour a le pouvoir d'indiquer" ("the Court shall have the power to suggest"), while, on the other, a second paragraph was added providing for notice to be given to the parties and to the Council of the "measures suggested" by the Court. The draft Article 2bis as submitted by the Drafting Committee thus read as follows:

"Dans le cas où la cause du différend consiste en un acte effectué ou sur le point de l'être, la Cour a le pouvoir d'indiquer, si elle estime que les circonstances l'exigent, quelles mesures conservatoires du droit de chacun doivent être prises à titre provisoire.

En attendant son arrêt, cette suggestion de la Cour est immédiatement transmise aux parties et au Conseil." (Comité consultatif de juristes, Procès-verbaux des séances du comité, 16 juin-24 juillet 1920 (avec annexes), La Haye, 1920, p. 567-568.)

The English version read:

"If the dispute arises out of an act which has already taken place or which is imminent, the Court shall have the power to suggest, if it considers that circumstances so require, the provisional measures that should be taken to preserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council." (Advisory Committee of Jurists, Procès-verbaux of the Proceedings of the Committee, 16 June-24 July 1920 (with Annexes), The Hague, 1920, pp. 567-568.)

The Committee of Jurists eventually adopted a draft Article 39, which amended the former Article 2bis only in its French version: in the second paragraph, the words "cette suggestion" were replaced in French by the words "l'indication".

106. When the draft Article 39 was examined by the Sub-Committee of the Third Committee of the first Assembly of the League of Nations, a number of amendments were considered. Raul Fernandes suggested again to use the word "ordonner" in the French version. The Sub-Committee decided to stay with the word "indiquer", the Chairman of the Sub-Committee observing that the Court lacked the means to execute its decisions. The language of the first paragraph of the English version was then made to conform to the French text: thus the word "suggest" was replaced by "indicate", and "should" by "ought to". However, in the second paragraph of the English version, the phrase "measures suggested" remained unchanged.

The provision thus amended in French and in English by the Sub-Committee was adopted as Article 41 of the Statute of the Permanent Court of International Justice. It passed as such into the Statute of the present Court without any discussion in 1945.

107. The preparatory work of Article 41 shows that the preference given in the French text to "indiquer" over "ordonner" was motivated by the consideration that the Court did not have the means to assure the execution of its decisions. However, the lack of means of execution and the lack of binding force are two different matters. Hence, the fact that the Court does not itself have the means to ensure the execution of orders made pursuant to Article 41 is not an argument against the binding nature of such orders.

108. The Court finally needs to consider whether Article 94 of the United Nations Charter precludes attributing binding effect to orders indicating provisional measures. That Article reads as follows:

"1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it
deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

The question arises as to the meaning to be attributed to the words “the decision of the International Court of Justice” in paragraph 1 of this Article. This wording could be understood as referring not merely to the Court’s judgments but to any decision rendered by it, thus including orders indicating provisional measures. It could also be interpreted to mean only judgments rendered by the Court as provided in paragraph 2 of Article 94. In this regard, the fact that in Articles 56 to 60 of the Court’s Statute both the word “decision” and the word “judgment” are used does little to clarify the matter.

Under the first interpretation of paragraph 1 of Article 94, the text of the paragraph would confirm the binding nature of provisional measures; whereas the second interpretation would in no way preclude their being accorded binding force under Article 41 of the Statute. The Court accordingly concludes that Article 94 of the Charter does not prevent orders made under Article 41 from having a binding character.

109. In short, it is clear that none of the sources of interpretation referred to in the relevant Articles of the Vienna Convention on the Law of Treaties, including the preparatory work, contradict the conclusions drawn from the terms of Article 41 read in their context and in the light of the object and purpose of the Statute. Thus, the Court has reached the conclusion that orders on provisional measures under Article 41 have binding effect.

*

110. The Court will now consider the Order of 3 March 1999. This Order was not a mere exhortation. It had been adopted pursuant to Article 41 of the Statute. This Order was consequently binding in character and created a legal obligation for the United States.

*

111. As regards the question whether the United States has complied with the obligation incumbent upon it as a result of the Order of 3 March 1999, the Court observes that the Order indicated two provisional measures, the first of which states that

“[t]he United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order”.

The second measure required the Government of the United States to

“transmit this Order to the Governor of the State of Arizona”. The information required on the measures taken in implementation of this Order was given to the Court by a letter of 8 March 1999 from the Legal Counsellor of the United States Embassy at The Hague. According to this letter, on 3 March 1999 the State Department had transmitted to the Governor of Arizona a copy of the Court’s Order. “In view of the extremely late hour of the receipt of the Court’s Order”, the letter of 8 March went on to say, “no further steps were feasible”.

The United States authorities have thus limited themselves to the mere transmission of the text of the Order to the Governor of Arizona. This certainly met the requirement of the second of the two measures indicated. As to the first measure, the Court notes that it did not create an obligation of result, but that the United States was asked to “take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings”. The Court agrees that due to the extremely late presentation of the request for provisional measures, there was certainly very little time for the United States authorities to act.

112. The Court observes, nevertheless, that the mere transmission of its Order to the Governor of Arizona without any comment, particularly without even so much as a plea for a temporary stay and an explanation that there is no general agreement on the position of the United States that orders of the International Court of Justice on provisional measures are non-binding, was certainly less than could have been done even in the short time available. The same is true of the United States Solicitor General’s categorical statement in his brief letter to the United States Supreme Court that “an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief” (see paragraph 33 above). This statement went substantially further than the amicus brief referred to in a mere footnote in his letter, which was filed on behalf of the United States in earlier proceedings before the United States Supreme Court in the case of Angel Francisco Bream (see Bream v. Greene, United States Supreme Court, 14 April 1998, International Legal Materials, Vol. 37 (1998), p. 824; Memorial of Germany, Ann. 34). In that amicus brief, the same Solicitor General had declared less than a year earlier that “there is substantial disagreement among jurists as to whether an ICJ order indicating provisional measures is binding . . . The better reasoned position is that such an order is not binding.”

113. It is also noteworthy that the Governor of Arizona, to whom the
Court's Order had been transmitted, decided not to give effect to it, even though the Arizona Clemency Board had recommended a stay of execution for Walter LaGrand.

114. Finally, the United States Supreme Court rejected a separate application by Germany for a stay of execution, "[given the tardiness of the pleas and the jurisdictional barriers they implicate]. Yet it would have been open to the Supreme Court, as one of its members urged, to grant a preliminary stay, which would have given it "time to consider, after briefing from all interested parties, the jurisdictional and international legal issues involved . . ." (Federal Republic of Germany et al. v. United States et al., United States Supreme Court, 3 March 1999).

115. The review of the above steps taken by the authorities of the United States with regard to the Order of the International Court of Justice of 3 March 1999 indicates that the various competent United States authorities failed to take all the steps they could have taken to give effect to the Court's Order. The Order did not require the United States to exercise powers it did not have; but it did impose the obligation to "take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings . . .". The Court finds that the United States did not discharge this obligation.

Under these circumstances the Court concludes that the United States has not complied with the Order of 3 March 1999.

116. The Court observes finally that in the third submission Germany requests the Court to adjudge and declare only that the United States violated its international legal obligation to comply with the Order of 3 March 1999; it contains no other request regarding that violation. Moreover, the Court points out that the United States was under great time pressure in this case, due to the circumstances in which Germany had instituted the proceedings. The Court notes moreover that at the time when the United States authorities took their decision the question of the binding character of orders indicating provisional measures had been extensively discussed in the literature, but had not been settled by its jurisprudence. The Court would have taken these factors into consideration had Germany's submission included a claim for indemnification.

* * *

117. Finally, the Court will consider Germany's fourth submission, in which it asks the Court to adjudge and declare

"that the United States shall provide Germany an assurance that it will not repeat its unlawful acts and that, in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations. In particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36."

118. Germany states that:

"Concerning the requested assurances and guarantees of non-repetition of the United States, they are appropriate because of the existence of a real risk of repetition and the seriousness of the injury suffered by Germany. Further, the choice of means by which full conformity of the future conduct of the United States with Article 36 of the Vienna Convention is to be ensured may be left to the United States."

Germany explains that:

"the effective exercise of the right to consular notification embodied in [Article 36] paragraph 2, requires that, where it cannot be excluded that the judgment was impaired by the violation of the right to consular notification, appellate proceedings allow for a reversal of the judgment and for either a retrial or a re-sentencing".

Finally, Germany points out that its fourth submission has been so worded "as to . . . leave the choice of means by which to implement the remedy [it seeks] to the United States."

119. In reply, the United States argues as follows:

"Germany's fourth submission is clearly of a wholly different nature than its first three submissions. Each of the first three submissions seeks a judgment and declaration by the Court that a violation of a stated international legal obligation has occurred. Such judgments are at the core of the Court's function, as an aspect of reparation.

In contrast, however, to the character of the relief sought in the first three submissions, the requirement of assurances of non-repetition sought in the fourth submission has no precedent in the jurisprudence of this Court and would exceed the Court's jurisdiction and authority in this case. It is exceptional even as a non-legitimate undertaking in State practice, and it would be entirely inappropriate for the Court to require such assurances with respect to the duty to inform undertaken in the Consular Convention in the circumstances of this case."
It points out that “US authorities are working energetically to strengthen the regime of consular notification at the state and local level throughout the United States, in order to reduce the chances of cases such as this recurring” and adds that:

“the German request for an assurance as to the duty to inform foreign nationals without delay of their right to consular notification . . . . seeks to have the Court require the United States to assure that it will never again fail to inform a German foreign national of his or her right to consular notification”. 

and that “the Court is aware that the United States is not in a position to provide such an assurance”. The United States further contends that it “has already provided appropriate assurances to Germany on this point”. Finally, the United States recalls that:

“[w]ith respect to the alleged breach of Article 36, paragraph 2. . . Germany seeks an assurance that, ‘in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36’”.

According to the United States, 

“[s]uch an assurance] is again absolute in character . . . [and] seeks to create obligations on the United States that exceed those that are contained in the Vienna Convention. For example, the requirement of consular notification under Article 36, paragraph 1 (b), of the Convention applies when a foreign national is arrested, committed to prison or to custody pending trial or detained in any other manner. It does not apply, as the submission would have it, to any future criminal proceedings. That is a new obligation, and it does not arise out of the Vienna Convention.”

The United States further observes that:

“[e]ven if this Court were to agree that, as a result of the application of procedural default with respect to the claims of the LaGrands, the United States committed a second internationally wrongful act, it should limit that judgment to the application of that law in the particular case of the LaGrands. It should resist the invitation to require an absolute assurance as to the application of US domestic law in all such future cases. The imposition of such an additional obligation on the United States would . . . be unprecedented in international jurisprudence and would exceed the Court’s authority and jurisdiction.”

120. The Court observes that in its fourth submission Germany seeks several assurances. First it seeks a straightforward assurance that the United States will not repeat its unlawful acts. This request does not specify the means by which non-repetition is to be assured.

Additionally, Germany seeks from the United States that

“in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations”.

This request goes further, for, by referring to the law of the United States, it appears to require specific measures as a means of preventing recurrence.

Germany finally requests that

“[i]n particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36”.

This request goes even further, since it is directed entirely towards securing specific measures in cases involving the death penalty.

121. Turning first to the general demand for an assurance of non-repetition, the Court observes that it has been informed by the United States of the “substantial measures [which it is taking] aimed at preventing any recurrence” of the breach of Article 36, paragraph 1 (b). Throughout these proceedings, oral as well as written, the United States has insisted that it “keenly appreciates the importance of the Vienna Convention’s consular notification obligation for foreign citizens in the United States as well as for United States citizens travelling and living abroad”; that “effective compliance with the consular notification requirements of Article 36 of the Vienna Convention requires constant effort and attention”; and that

“the Department of State is working intensively to improve understanding of and compliance with consular notification and access requirements throughout the United States, so as to guard against future violations of these requirements”.

The United States points out that

“[t]his effort has included the January 1998 publication of a booklet entitled ‘Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding
Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them*, and development of a small reference card designed to be carried by individual arresting officers”.

According to the United States, it is estimated that until now over 60,000 copies of the brochure as well as over 400,000 copies of the pocket card have been distributed to federal, state and local law enforcement and judicial officials throughout the United States. The United States is also conducting training programmes reaching out to all levels of government. In the Department of State a permanent office to focus on United States and foreign compliance with consular notification and access requirements has been created.

122. Germany has stated that it “does not consider the so-called ‘assurances’ offered by the Respondent as adequate”. It says

“[t]he violations of Article 36 followed by death sentences and executions cannot be remedied by apologies or the distribution of leaflets. An effective remedy requires certain changes in US law and practice”.

In order to illustrate its point, Germany has presented to the Court a “[l]ist of German nationals detained after January 1, 1998, who claim not to have been informed of their consular rights”. The United States has criticized this list as misleading and inaccurate.

123. The Court notes that the United States has acknowledged that, in the case of the LaGrand brothers, it did not comply with its obligations to give consular notification. The United States has presented an apology to Germany for this breach. The Court considers however that an apology is not sufficient in this case, as it would not be in other cases where foreign nationals have not been advised without delay of their rights under Article 36, paragraph 1, of the Vienna Convention and have been subjected to prolonged detention or sentenced to severe penalties.

In this respect, the Court has taken note of the fact that the United States repeated in all phases of these proceedings that it is carrying out a vast and detailed programme in order to ensure compliance by its competent authorities at the federal as well as at the state and local levels with its obligation under Article 36 of the Vienna Convention.

124. The United States has provided the Court with information, which it considers important, on its programme. If a State, in proceedings before this Court, repeatedly refers to substantial activities which it is carrying out in order to achieve compliance with certain obligations under a treaty, then this expresses a commitment to follow through with the efforts in this regard. The programme in question certainly cannot provide an assurance that there will never again be a failure by the United States to observe the obligation of notification under Article 36 of the Vienna Convention. But no State could give such a guarantee and Germany does not seek it. The Court considers that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), must be regarded as meeting Germany’s request for a general assurance of non-repetition.

125. The Court will now examine the other assurances sought by Germany in its fourth submission. The Court observes in this regard that it can determine the existence of a violation of an international obligation. If necessary, it can also hold that a domestic law has been the cause of this violation. In the present case the Court has made its findings of violations of the obligations under Article 36 of the Vienna Convention when it dealt with the first and the second submission of Germany. But it has not found that a United States law, whether substantive or procedural in character, is inherently inconsistent with the obligations undertaken by the United States in the Vienna Convention. In the present case the violation of Article 36, paragraph 2, was caused by the circumstances in which the procedural default rule was applied, and not by the rule as such.

In the present proceedings the United States has apologized to Germany for the breach of Article 36, paragraph 1, and Germany has not requested material reparation for this injury to itself and to the LaGrand brothers. It does, however, seek assurances:

“that, in any future cases of detention or of criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations”;

and that

“[i]n particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by the violation of the rights under Article 36”.

The Court considers in this respect that if the United States, notwithstanding its commitment referred to in paragraph 124 above, should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and
sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention. This obligation can be carried out in various ways. The choice of means must be left to the United States.

126. Given the foregoing ruling by the Court regarding the obligation of the United States under certain circumstances to review and reconsider convictions and sentences, the Court need not examine Germany's further argument which seeks to found a like obligation on the contention that the right of a detained person to be informed without delay pursuant to Article 36, paragraph 1, of the Vienna Convention is not only an individual right but has today assumed the character of a human right.

127. In reply to the fourth submission of Germany, the Court will therefore limit itself to taking note of the commitment undertaken by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Vienna Convention, as well as the aforementioned duty of the United States to address violations of that Convention should they still occur in spite of its efforts to achieve compliance.

* * *

128. For these reasons,

THE COURT,

(1) By fourteen votes to one,

Finds that it has jurisdiction, on the basis of Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations of 24 April 1963, to entertain the Application filed by the Federal Republic of Germany on 2 March 1999;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: Judge Parra-Aranguren;

(2) (a) By thirteen votes to two,

Finds that the first submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: Judges Oda, Parra-Aranguren;

(b) By fourteen votes to one,

Finds that the second submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: Judge Oda;

(c) By twelve votes to three,

Finds that the third submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Kooijmans, Rezek, Al-Khasawneh;

AGAINST: Judges Oda, Parra-Aranguren, Buergenthal;

(d) By fourteen votes to one,

Finds that the fourth submission of the Federal Republic of Germany is admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: Judge Oda;

(3) By fourteen votes to one,

Finds that, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, paragraph 1 (b), of the Convention, and by thereby depriving the Federal Republic of Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States of America breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under Article 36, paragraph 1;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

AGAINST: Judge Oda;

(4) By fourteen votes to one,

Finds that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to in paragraph (3) above had been established, the United States of America breached its obligation to the Federal Republic of Ger-
many and to the LaGrand brothers under Article 36, paragraph 2, of the Convention;

**IN FAVOUR:** President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

**AGAINST:** Judge Oda;

(5) By thirteen votes to two,

*Finds* that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States of America breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999;

**IN FAVOUR:** President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

**AGAINST:** Judges Oda, Parra-Aranguren;

(6) Unanimously,

*Takes note* of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Convention; and *finds* that this commitment must be regarded as meeting the Federal Republic of Germany’s request for a general assurance of non-repetition;

(7) By fourteen votes to one,

*Finds* that should rationalis of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention;

**IN FAVOUR:** President Guillaume; Vice-President Shi; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetic, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal;

**AGAINST:** Judge Oda.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-seventh day of June, two thousand and one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Germany and the Government of the United States of America, respectively.

(Signed) Gilbert Guillaume, President.

(Signed) Philippe Couvreur, Registrar.

President Guillaume makes the following declaration:

Subparagraph (7) of the operative part of the Court’s Judgment envisages a situation where, despite the commitment by the United States noted by the Court in subparagraph (6), a severe penalty is imposed upon a German national without his or her rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations having been respected. The Court states that, in such a case, “the United States, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention”.

This subparagraph represents a response to certain submissions by Germany and hence rules only on the obligations of the United States in cases of severe penalties imposed upon German nationals.

Thus, subparagraph (7) does not address the position of nationals of other countries or that of individuals sentenced to penalties that are not of a severe nature. However, in order to avoid any ambiguity, it should be made clear that there can be no question of applying an *a contrario* interpretation to this paragraph.

(Signed) Gilbert Guillaume.

Vice-President Shi appends a separate opinion to the Judgment of the Court; Judge Oda appends a dissenting opinion to the Judgment of the Court; Judges Koroma and Parra-Aranguren append separate opinions to the Judgment of the Court; Judge Buergenthal appends a dissenting opinion to the Judgment of the Court.

(Initialled) G.G.

(Initialled) Ph.C.
Avena and Other Mexican Nationals
(Mexico v. United States of America),
Judgment, I.C.J. Reports 2004
CASE CONCERNING AVENA AND OTHER MEXICAN NATIONALS

(MEXICO v. UNITED STATES OF AMERICA)


Mexico’s objection to the United States objections to jurisdiction and admissibility — United States objections not presented as preliminary objections — Article 79 of Rules of Court not pertinent in present case.

Jurisdiction of the Court:

First United States objection to jurisdiction — Contention that Mexico’s submissions invite the Court to rule on the operation of the United States criminal justice system — Jurisdiction of Court to determine the nature and extent of obligations arising under Vienna Convention — Enquiry into the conduct of criminal proceedings in United States courts a matter belonging to the merits.

Second United States objection to jurisdiction — Contention that the first submission of Mexico’s Memorial is excluded from the Court’s jurisdiction — Mexico defending an interpretation of the Vienna Convention whereby not only the absence of consular notification but also the arrest, detention, trial and conviction of its nationals were unlawful, failing such notification — Interpretation of Vienna Convention a matter within the Court’s jurisdiction.

Third United States objection to jurisdiction — Contention that Mexico’s submissions on remedies go beyond the Court’s jurisdiction — Jurisdiction of Court to consider the question of remedies — Question whether or how far the Court may order the requested remedies a matter belonging to the merits.

Admissibility of Mexico’s claims.

First United States objection to admissibility — Contention that Mexico’s submissions on remedies seek to have the Court function as a court of criminal appeal — Question belonging to the merits.

Second United States objection to admissibility — Contention that Mexico’s claims to exercise its right of diplomatic protection are inadmissible on grounds that local remedies have not been exhausted — Interdependence in the present case of rights of the State and of individual rights — Mexico requesting the Court to rule on the violation of rights which it suffered both directly and through the violation of individual rights of its nationals — Duty to exhaust local remedies does not apply to such a request.

Third United States objection to admissibility — Contention that certain Mexican nationals also have United States nationality — Question belonging to the merits.

Fourth United States objection to admissibility — Contention that Mexico had actual knowledge of a breach but failed to bring such breach to the attention of the United States or did so only after considerable delay — No contention in the present case of any prejudice caused by such delay — No implied waiver by Mexico of its rights.

Fifth United States objection to admissibility — Contention that Mexico invokes standards that it does not follow in its own practice — Nature of Vienna Convention precludes such an argument.

Article 36, paragraph 1 — Mexican nationality of 52 individuals concerned — United States has not proved its contention that some were also United States nationals.

Article 36, paragraph 1 (b) — Consular information — Duty to provide consular information as soon as arresting authorities realize that arrested person is a foreign national, or have grounds for so believing — Provision of consular information in parallel with reading of “Miranda rights” — Contention that seven individuals stated at the time of arrest that they were United States nationals — Interpretation of phrase “without delay” — Violation by United States of the obligation to provide consular information in 51 cases.

Consular notification — Violation by United States of the obligation of consular notification in 49 cases.

Article 36, paragraph 1 (a) and (c) — Interrelated nature of the three subparagraphs of paragraph 1 — Violation by United States of the obligation to enable Mexican consular officers to communicate with, have access to and visit their nationals in 49 cases — Violation by United States of the obligation to minister to their consular needs in 49 cases.
enable Mexican consular officers to arrange for legal representation of their nationals in 34 cases.

Article 36, paragraph 2 — "Procedural default" rule — Possibility of judicial remedies still open in 49 cases — Violation by United States of its obligations under Article 36, paragraph 2, in three cases.

* * *

Legal consequences of the breach.

Question of adequate reparation for violations of Article 36 — Review and reconsideration by United States courts of convictions and sentences of the Mexican nationals — Choice of means left to United States — Review and reconsideration to be carried out by taking account of violation of Vienna Convention rights — "Procedural default" rule.

Judicial process suited to the task of review and reconsideration — Clemency process, as currently practised within the United States criminal justice system, not sufficient in itself to serve as appropriate means of "review and reconsideration" — Appropriate clemency procedures can supplement judicial review and reconsideration.

Mexico requesting cessation of wrongful acts and guarantees and assurances of non-repetition — No evidence to establish "regular and continuing" pattern of breaches by United States of Article 36 of Vienna Convention — Measures taken by United States to comply with its obligations under Article 36, paragraph 1 — Commitment undertaken by United States to ensure implementation of its obligations under that provision.

* * *

No a contrario argument can be made in respect of the Court's findings in the present Judgment concerning Mexican nationals.

* * *

United States obligations declared in Judgment to replace those arising from Provisional Measures Order of 5 February 2003 — In the three cases where the United States violated its obligations under Article 36, paragraph 2, it must find an appropriate remedy having the nature of review and reconsideration according to the criteria indicated in the Judgment.

JUDGMENT

Present: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Versicherin, Higgins, Parra-Aranguren, Koizum, Rezek, Al-Khasawneh, Buergerenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepulveda; Registrar Couveur.

In the case concerning Avena and other Mexican nationals,

between the United Mexican States, represented by
H.E. Mr. Juan Manuel Gómez-Robledo, Ambassador, former Legal Adviser, Ministry of Foreign Affairs, Mexico City, as Agent;
H.E. Mr. Santiago Oñate, Ambassador of Mexico to the Kingdom of the Netherlands, as Agent (until 12 February 2004);
Mr. Arturo A. Dager, Legal Adviser, Ministry of Foreign Affairs, Mexico City,
Ms María del Refugio González Domínguez, Chief, Legal Co-ordination Unit, Ministry of Foreign Affairs, Mexico City, as Agents (from 2 March 2004);
H.E. Ms Sandra Fuentes Berain, Ambassador-Designate of Mexico to the Kingdom of the Netherlands, as Agent (from 17 March 2004);
Mr. Pierre-Marie Dupuy, Professor of Public International Law at the University of Paris II (Panthéon-Assas) and at the European University Institute, Florence,
Mr. Donald Francis Donovan, Attorney at Law, Debevoise & Plimpton, New York,
Ms Sandra L. Babcock, Attorney at Law, Director of the Mexican Capital Legal Assistance Programme,
Mr. Carlos Bernal, Attorney at Law, Noriega y Escobedo, and Chairman of the Commission on International Law at the Mexican Bar Association, Mexico City,
Ms Katherine Birmingham Wilmore, Attorney at Law, Debevoise & Plimpton, London,
Mr. Dietmar W. Prager, Attorney at Law, Debevoise & Plimpton, New York,
Ms Socorro Flores Liera, Chief of Staff, Under-Secretariat for Global Affairs and Human Rights, Ministry of Foreign Affairs, Mexico City,
Mr. Victor Manuel Uribe Aviña, Head of the International Litigation Section, Legal Adviser’s Office, Ministry of Foreign Affairs, Mexico City, as Counsellors and Advocates;
Mr. Erasmo A. Lara Cabrera, Head of the International Law Section, Legal Adviser’s Office, Ministry of Foreign Affairs, Mexico City,
Ms Natalie Klein, Attorney at Law, Debevoise & Plimpton, New York,
Ms Catherine Amirfar, Attorney at Law, Debevoise & Plimpton, New York,
Mr. Thomas Bollyky, Attorney at Law, Debevoise & Plimpton, New York,
Ms Cristina Hoss, Research Fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg,
Mr. Mark Warren, International Law Researcher, Ottawa, as Advisers;
the United States of America,
represented by
The Honourable William H. Taft, IV, Legal Adviser, United States Department of State,
as Agent;
Mr. James H. Thessin, Principal Deputy Legal Adviser, United States Department of State,
as Co-Agent;
Ms Catherine W. Brown, Assistant Legal Adviser for Consular Affairs, United States Department of State,
Mr. D. Stephen Mathias, Assistant Legal Adviser for United Nations Affairs, United States Department of State,
Mr. Patrick F. Philbin, Associate Deputy Attorney General, United States Department of Justice,
Mr. John Byron Sandage, Attorney-Adviser for United Nations Affairs, United States Department of State,
Mr. Thomas Weigend, Professor of Law and Director of the Institute of Foreign and International Criminal Law, University of Cologne,
Ms Elisabeth Zoller, Professor of Public Law, University of Paris II (Panthéon-Assas),
as Counsel and Advocates;
Mr. Jacob Katz Cogan, Attorney-Adviser for United Nations Affairs, United States Department of State,
Ms Sara Criccielli, Member of the Bar of the State of New York,
Mr. Robert J. Erickson, Principal Deputy Chief, Criminal Appellate Section, United States Department of Justice,
Mr. Noel J. Francisco, Deputy Assistant Attorney General, Office of Legal Counsel, United States Department of Justice,
Mr. Steven Hill, Attorney-Adviser for Economic and Business Affairs, United States Department of State,
Mr. Clifton M. Johnson, Legal Counsellor, United States Embassy, The Hague,
Mr. David A. Kaye, Deputy Legal Counsellor, United States Embassy, The Hague,
Mr. Peter W. Mason, Attorney-Adviser for Consular Affairs, United States Department of State,
as Counsel;
Ms Barbara Barrett-Spencer, United States Department of State,
Ms Marianne Hata, United States Department of State,
Ms Cecile Joubert, United States Embassy, Paris,
Ms Joanne Nelligan, United States Department of State,
Ms Laura Romain, United States Embassy, The Hague,
as Administrative Staff,

The Court,
composed as above,
after deliberation,
delivers the following Judgment:

1. On 9 January 2003 the United Mexican States (hereinafter referred to as "Mexico") filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter referred to as the "United States") for "violations of the Vienna Convention on Consular Relations" of 24 April 1963 (hereinafter referred to as the "Vienna Convention") allegedly committed by the United States.

In its Application, Mexico based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention (hereinafter referred to as the "Optional Protocol").

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Government of the United States; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. On 9 January 2003, the day on which the Application was filed, the Mexican Government also filed in the Registry of the Court a request for the indication of provisional measures based on Article 41 of the Statute and Articles 73, 74 and 75 of the Rules of Court.

By an Order of 5 February 2003, the Court indicated the following provisional measures:

"(a) The United States of America shall take all measures necessary to ensure that Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera are not executed pending final judgment in these proceedings;
(b) The Government of the United States of America shall inform the Court of all measures taken in implementation of this Order."

It further decided that, "until the Court has rendered its final judgment, it shall remain seized of the matters" which formed the subject of that Order.

In a letter of 2 November 2003, the Agent of the United States advised the Court that the United States had "informed the relevant state authorities of Mexico's application"; that, since the Order of 5 February 2003, the United States had "obtained from them information about the status of the fifty-four cases, including the three cases identified in paragraph 59 (b) (a) of that Order"; and that the United States could "confirm that none of the named individuals [had] been executed".

4. In accordance with Article 43 of the Rules of Court, the Registrar sent the notification referred to in Article 63, paragraph 1, of the Statute to all States parties to the Vienna Convention or to that Convention and the Optional Protocol.

5. By an Order of 5 February 2003, the Court, taking account of the views of the Parties, fixed 6 June 2003 and 6 October 2003, respectively, as the time-limits for the filing of a Memorial by Mexico and of a Counter-Memorial by the United States.
6. By an Order of 22 May 2003, the President of the Court, on the joint request of the Agents of the two Parties, extended to 20 June 2003 the time-limit for the filing of the Memorial; the time-limit for the filing of the Counter-Memorial was extended, by the same Order, to 3 November 2003.

By a letter dated 20 June 2003 and received in the Registry on the same day, the Agent of Mexico informed the Court that Mexico was unable for technical reasons to file the original of its Memorial on time and accordingly asked the Court to decide, under Article 44, paragraph 3, of the Rules of Court, that the filing of the Memorial after the expiration of the time-limit fixed therefor would be considered as valid; that letter was accompanied by two electronic copies of the Memorial and its annexes. Mexico having filed the original of the Memorial on 23 June 2003 and the United States having informed the Court, by a letter of 24 June 2003, that it had no comment to make on the matter, the Court decided on 25 June 2003 that the filing would be considered as valid.

7. In a letter of 14 October 2003, the Agent of Mexico expressed his Government's wish to amend its submissions in order to include therein the cases of two Mexican nationals, Mr. Víctor Miranda Guerrero and Mr. Tonatiuh Aguilera Saucedo, who had been sentenced to death, after the filing of Mexico's Memorial, as a result of criminal proceedings in which, according to Mexico, the United States had failed to comply with its obligations under Article 36 of the Vienna Convention.

In a letter of 2 November 2003, under cover of which the United States filed its Counter-Memorial within the time-limit prescribed, the Agent of the United States informed the Court that his Government objected to the amendment of Mexico's submissions, on the grounds that the request was late, that Mexico had submitted no evidence concerning the alleged facts and that there was not enough time for the United States to investigate them.

In a letter received in the Registry on 28 November 2003, Mexico responded to the United States objection and at the same time amended its submissions so as to withdraw its request for relief in the cases of two Mexican nationals mentioned in the Memorial, Mr. Enrique Zambrano Garibi and Mr. Pedro Hernández Alberto, having come to the conclusion that the former had dual Mexican and United States nationality and that the latter had been informed of his right of consular notification prior to interrogation.

On 9 December 2003, the Registrar informed Mexico and the United States that, in order to ensure the procedural equality of the Parties, the Court had decided not to authorize the amendment of Mexico's submissions so as to include the two additional Mexican nationals mentioned above. He also informed the Parties that the Court had taken note that the United States had made no objection to the withdrawal by Mexico of its request for relief in the cases of Mr. Zambrano and Mr. Hernández.

8. On 28 November 2003 and 2 December 2003, Mexico filed various documents which it wished to produce in accordance with Article 56 of the Rules of Court. By file notice of 2 December 2003 and 5 December 2003, the Agent of the United States informed the Court that his Government did not object to the production of these new documents and that it intended to exercise its right to comment upon these documents and to submit documents in support of its comments, pursuant to paragraph 3 of that Article. By letters dated 9 December 2003, the Registrar informed the Parties that the Court had taken note that

the United States had no objection to the production of these documents and that accordingly counsel would be free to refer to them in the course of the hearings. On 10 December 2003, the Agent of the United States filed the comments of his Government on the new documents produced by Mexico, together with a number of documents in support of those comments.

9. Since the Court included upon the Bench no judge of Mexican nationality, Mexico availed itself of its right under Article 31, paragraph 2, of the Statute to choose a judge ad hoc to sit in the case; it chose Mr. Bernardo Sepúlveda.

10. Pursuant to Article 53, paragraph 2, of its Rules, the Court, having consulted the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

11. Public sittings were held between 15 and 19 December 2003, at which the Court heard the oral arguments and replies of:

For Mexico:

H.E. Mr. Juan Manuel Gómez-Robledo, Ms Sandra L. Babcock,
Mr. Víctor Manuel Uribe Avilá,
Mr. Donald Francis Donovan,
Ms Katherine Birmingham Wilmore,
H.E. Mr. Santiago Oñate,
Ms Socorro Flores Liera,
Mr. Carlos Bernál,
Mr. Dietmar W. Prager,
Mr. Pierre-Marie Dupuy.

For the United States:

The Honourable William H. Taft, IV,
Ms Elisabeth Zoller,
Mr. Patrick F. Philbin,
Mr. John Byron Sandage,
Ms Catherine W. Brown,
Mr. D. Stephen Mathias,
Mr. James H. Thessin,
Mr. Thomas Weigand.

* 

12. In its Application, Mexico formulated the decision requested in the following terms:

"The Government of the United Mexican States therefore asks the Court to adjudge and declare:

(1) that the United States, in arresting, detaining, trying, convicting, and sentencing the 54 Mexican nationals on death row described in this Application, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of consular protection of its nationals, as provided by Articles 5 and 36, respectively of the Vienna Convention;

(2) that Mexico is therefore entitled to restitution in integrum;

(3) that the United States is under an international legal obligation not to
apply the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise of the rights afforded by Article 36 of the Vienna Convention;

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the 54 Mexican nationals on death row or any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are international or internal in character;

(5) that the right to consular notification under the Vienna Convention is a human right;

and that, pursuant to the foregoing international legal obligations,

(1) the United States must restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and convictions and sentences of, Mexico's nationals in violation of the United States international legal obligations;

(2) the United States must take the steps necessary and sufficient to ensure that the provisions of its municipal law enable full effect to be given to the purposes for which the rights afforded by Article 36 are intended;

(3) the United States must take the steps necessary and sufficient to establish a meaningful remedy at law for violations of the rights afforded to Mexico and its nationals by Article 36 of the Vienna Convention, including by barring the imposition, as a matter of municipal law, of any procedural penalty for the failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention; and

(4) the United States, in light of the pattern and practice of violations set forth in this Application, must provide Mexico a full guarantee of the non-repetition of the illegal acts."

13. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Mexico,
in the Memorial:

“For these reasons, . . . the Government of Mexico respectfully requests the Court to adjudge and declare

(1) that the United States, in arresting, detaining, trying, convicting, and sentencing the fifty-four Mexican nationals on death row described in

Mexico’s Application and this Memorial, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of diplomatic protection of its nationals, as provided by Article 36 of the Vienna Convention;

(2) that the obligation in Article 36 (1) of the Vienna Convention requires notification before the competent authorities of the receiving State interrogate the foreign national or take any other action potentially detrimental to his or her rights;

(3) that the United States, in applying the doctrine of procedural default, or any other doctrine of its municipal law, to preclude the exercise and review of the rights afforded by Article 36 of the Vienna Convention, violated its international legal obligations to Mexico, in its own right and in the exercise of its right of diplomatic protection of its nationals, as provided by Article 36 of the Vienna Convention; and

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against the fifty-four Mexican nationals on death row and any other Mexican national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are international or internal in character;

and that, pursuant to the foregoing international legal obligations,

(1) Mexico is entitled to restitutio in integrum and the United States therefore is under an obligation to restore the status quo ante, that is, re-establish the situation that existed at the time of the detention and prior to the interrogation of, proceedings against, and convictions and sentences of, Mexico's nationals in violation of the United States' international legal obligations, specifically by, among other things,

(a) vacating the convictions of the fifty-four Mexican nationals;
(b) vacating the sentences of the fifty-four Mexican nationals;
(c) excluding any subsequent proceedings against the fifty-four Mexican nationals any statements and confessions obtained from them prior to notification of their rights to consular notification and access;
(d) preventing the application of any procedural penalty for a Mexican national's failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his rights under the Convention;
(e) preventing the application of any municipal law doctrine or judicial holding that prevents a court in the United States from providing a remedy, including the relief to which this Court holds that Mexico is entitled here, to a Mexican national whose Article 36 rights have been violated; and

(ff) preventing the application of any municipal law doctrine or judicial holding that requires an individualized showing of prejudice as a prerequisite to relief for the violations of Article 36;

(2) the United States, in light of the regular and continuous violations set forth in Mexico's Application and Memorial, is under an obligation to take all legislative, executive, and judicial steps necessary to:

(a) ensure that the regular and continuing violations of the Article 36 consular notification, access, and assistance rights of Mexico and its nationals cease;

(b) guarantee that its competent authorities, of federal, state, and local jurisdiction, maintain regular and routine compliance with their Article 36 obligations;

(c) ensure that its judicial authorities cease applying, and guarantee that in the future they will not apply:

(i) any procedural penalty for a Mexican national's failure timely to raise a claim or defence based on the Vienna Convention where competent authorities of the United States have breached their obligation to advise the national of his or her rights under the Convention;

(ii) any municipal law doctrine or judicial holding that prevents a court in the United States from providing a remedy, including the relief to which this Court holds that Mexico is entitled here, to a Mexican national whose Article 36 rights have been violated; and

(iii) any municipal law doctrine or judicial holding that requires an individualized showing of prejudice as a prerequisite to relief for the Vienna Convention violations shown here."

On behalf of the Government of the United States,

in the Counter-Memorial:

"On the basis of the facts and arguments set out above, the Government of the United States of America requests that the Court adjudge and declare that the claims of the United Mexican States are dismissed."

14. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Mexico,

"The Government of Mexico respectfully requests the Court to adjudge and declare

(1) that the United States of America, in arresting, detaining, trying, convicting, and sentencing the 52 Mexican nationals on death row described in Mexico's Memorial, violated its international legal obligations to Mexico, in its own right and in the exercise of its right to diplomatic protection of its nationals, by failing to inform, without delay, the 52 Mexican nationals after their arrest of their right to consular notification and access under Article 36 (1) (b) of the Vienna Convention on Consular Relations, and by depriving Mexico of its right to provide consular protection and the 52 nationals' right to receive such protection as Mexico would provide under Article 36 (1) (a) and (c) of the Convention;

(2) that the obligation in Article 36 (1) of the Vienna Convention requires notification of consular rights and a reasonable opportunity for consular access before the competent authorities of the receiving State take any action potentially detrimental to the foreign national's rights;

(3) that the United States of America violated its obligations under Article 36 (2) of the Vienna Convention by failing to provide meaningful and effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1); by substituting for such review and reconsideration clemency proceedings; and by applying the 'procedural default' doctrine and other municipal law doctrines that fail to attach legal significance to an Article 36 (1) violation on its own terms;

(4) that pursuant to the injuries suffered by Mexico in its own right and in the exercise of diplomatic protection of its nationals, Mexico is entitled to full reparation for those injuries in the form of restitution in integrum;

(5) that this restitution consists of the obligation to restore the status quo ante by annulling or otherwise depriving of full force or effect the convictions and sentences of all 52 Mexican nationals;

(6) that this restitution also includes the obligation to take all measures necessary to ensure that a prior violation of Article 36 shall not affect the subsequent proceedings;

(7) that to the extent that any of the 52 convictions or sentences are not annulled, the United States shall provide, by means of its own choosing, meaningful and effective review and reconsideration of the convictions and sentences of the 52 nationals, and that this obligation cannot be satisfied by means of clemency proceedings or if any municipal law rule or doctrine inconsistent with paragraph (3) above is applied; and
(8) that the United States of America shall cease its violations of Article 36 of the Vienna Convention with regard to Mexico and its 52 nationals and shall provide appropriate guarantees and assurances that it shall take measures sufficient to achieve increased compliance with Article 36 (1) and to ensure compliance with Article 36 (2)."

On behalf of the Government of the United States,

"On the basis of the facts and arguments made by the United States in its Counter-Memorial and in these proceedings, the Government of the United States of America requests that the Court, taking into account that the United States has conformed its conduct to this Court’s Judgment in the LaGrand Case (Germany v. United States of America), not only with respect to German nationals but, consistent with the Declaration of the President of the Court in that case, to all detained foreign nationals, adjudge and declare that the claims of the United Mexican States are dismissed."

* * *

15. The present proceedings have been brought by Mexico against the United States on the basis of the Vienna Convention, and of the Optional Protocol providing for the jurisdiction of the Court over “disputes arising out of the interpretation or application” of the Convention. Mexico and the United States are, and were at all relevant times, parties to the Vienna Convention and to the Optional Protocol. Mexico claims that the United States has committed breaches of the Vienna Convention in relation to the treatment of a number of Mexican nationals who have been tried, convicted and sentenced to death in criminal proceedings in the United States. The original claim related to 54 such persons, but as a result of subsequent adjustments to its claim made by Mexico (see paragraph 7 above), only 52 individual cases are involved. These criminal proceedings have been taking place in nine different States of the United States, namely California (28 cases), Texas (15 cases), Illinois (three cases), Arizona (one case), Arkansas (one case), Nevada (one case), Ohio (one case), Oklahoma (one case) and Oregon (one case), between 1979 and the present.

16. For convenience, the names of the 52 individuals, and the numbers by which their cases will be referred to, are set out below:

1. Carlos Avena Guillen
2. Héctor Juan Ayala
3. Vicente Benavides Figueroa
4. Constantino Carrera Montenegro
5. Jorge Contreras López
6. Daniel Covarrubias Sánchez
7. Marcos Esquivel Barrera
8. Rubén Gómez Pérez
9. Jaime Armando Hoyos
10. Arturo Juárez Suárez
11. Juan Manuel López
12. José Lupercio Casares
13. Luis Alberto Maciel Hernández
14. Abelino Manríquez Jáquez
15. Omar Fuentes Martínez (a.k.a. Luis Aviles de la Cruz)
16. Miguel Angel Martínez Sánchez
17. Martín Mendoza García
18. Sergio Ochoa Tamayo
19. Enrique Parra Duquetés
20. Juan de Dios Ramírez Villa
21. Magdaleno Salazar
22. Ramón Salcido Bojórquez
23. Juan Ramón Sánchez Ramírez
24. Ignacio Tafaya Arriola
25. Alfredo Valdez Reyes
26. Eduardo David Vargas
27. Tomás Verano Cruz
28. [Case withdrawn]
29. Samuel Zamudio Jiménez
30. Juan Carlos Alvarez Bandá
31. César Roberto Fierro Reyna
32. Héctor García Torres
33. Ignacio Gómez
34. Ramiro Hernández Llanas
35. Ramiro Rubi Ibarra
36. Humberto Leal García
37. Virgilio Maldonado
38. José Ernesto Medellín Rojas
39. Roberto Moreno Ramos
40. Daniel Angel Plata Estrada
41. Rubén Ramírez Cárdenas
42. Félix Rocha Díaz
43. Oswaldo Regalado Soriano
44. Edgar Arias Tamayo
45. Juan Caballero Hernández
46. Mario Flores Urbán
47. Gabriel Solache Romero
48. Martín Raúl Fong Soto
49. Rafael Camargo Ojeda
50. [Case withdrawn]
51. Carlos René Pérez Gutiérrez
52. José Trinidad Loza
53. Osvaldo Netzahualcóyotl Torres Aguilera
54. Horacio Alberto Reyes Camarena

17. The provisions of the Vienna Convention of which Mexico alleges violations are contained in Article 36. Paragraphs 1 and 2 of this Article are set out respectively in paragraphs 50 and 108 below. Article 36 relates, according to its title, to "Communication and contact with nationals of the sending State". Paragraph 1 (b) of that Article provides that if a national of that State "is arrested or committed to prison or to custody pending trial or is detained in any other manner", and he so requests, the local consular post of the sending State is to be notified. The Article goes on to provide that the "competent authorities of the receiving State" shall "inform the person concerned without delay of his rights" in this respect. Mexico claims that in the present case these provisions were not complied with by the United States authorities in respect of the 52 Mexican nationals the subject of its claims. As a result, the United States has according to Mexico committed breaches of paragraph 1 (b); moreover, Mexico claims, for reasons to be explained below (see paragraphs 98 et seq.), that the United States is also in breach of paragraph 1 (a) and (c) and of paragraph 2 of Article 36, in view of the relationship of these provisions with paragraph 1 (b).

18. As regards the terminology employed to designate the obligations incumbent upon the receiving State under Article 36, paragraph 1 (b), the Court notes that the Parties have used the terms "inform" and "notify" in differing senses. For the sake of clarity, the Court, when speaking in its own name in the present Judgment, will use the word "inform" when referring to an individual being made aware of his rights under that subparagraph and the word "notify" when referring to the giving of notice to the consular post.

19. The underlying facts alleged by Mexico may be briefly described as follows: some are conceded by the United States, and some disputed. Mexico states that all the individuals the subject of its claims were Mexican nationals at the time of their arrest. It further contends that the United States authorities that arrested and interrogated these individuals had sufficient information at their disposal to be aware of the foreign nationality of those individuals. According to Mexico's account, in 50 of the specified cases, Mexican nationals were never informed by the competent United States authorities of their rights under Article 36, paragraph 1 (b), of the Vienna Convention and, in the two remaining cases, such information was not provided "without delay", as required by that provision. Mexico has indicated that in 29 of the 52 cases its consular authorities learned of the detention of the Mexican nationals only after death sentences had been handed down. In the 23 remaining cases, Mexico contends that it learned of the cases through means other than notification to the consular post by the competent United States authorities under Article 36, paragraph 1 (b). It explains that in five cases this was too late to affect the trials, that in 15 cases the defendants had already made incriminating statements, and that it became aware of the other three cases only after considerable delay.

20. Of the 52 cases referred to in Mexico's final submissions, 49 are currently at different stages of the proceedings before United States judicial authorities at state or federal level, and in three cases, those of Mr. Fierro (case No. 31), Mr. Moreno (case No. 39) and Mr. Torres (case No. 53), judicial remedies within the United States have already been exhausted. The Court has been informed of the variety of types of proceedings and forms of relief available in the criminal justice systems of the United States, which can differ from state to state. In very general terms, and according to the description offered by both Parties in their pleadings, it appears that the 52 cases may be classified into three categories: 24 cases which are currently in direct appeal; 25 cases in which means of direct appeal have been exhausted, but post-conviction relief (habeas corpus), either at state or at federal level, is still available; and three cases in which no judicial remedies remain. The Court also notes that, in at least 33 cases, the alleged breach of the Vienna Convention was raised by the defendant either during pre-trial, at trial, on appeal or in habeas corpus proceedings, and that some of these claims were dismissed on procedural or substantive grounds and others are still pending. To date, in none of the 52 cases have the defendants had recourse to the clemency process.

21. On 9 January 2003, the day on which Mexico filed its Application and a request for the indication of provisional measures, all 52 individuals the subject of the claims were on death row. However, two days later the Governor of the State of Illinois, exercising his power of clemency review, commuted the sentences of all convicted individuals awaiting execution in that State, including those of three individuals named in Mexico's Application (Mr. Caballero (case No. 45), Mr. Flores (case No. 46) and Mr. Solache (case No. 47)). By a letter dated 20 January 2003, Mexico informed the Court that, further to that decision, it withdrew its request for the indication of provisional measures on behalf of these three individuals, but that its Application remained unchanged. In the Order of 5 February 2003, mentioned in paragraph 3 above, on the request by Mexico for the indication of provisional measures, the Court considered that it was apparent from the information before it that the three Mexican nationals named in the Application who had exhausted all judicial remedies in the United States (see paragraph 20 above) were at risk of execution in the following months, or even weeks. Consequently, it ordered by way of provisional measure that the United States take all measures necessary to ensure that these individuals would not be executed.
pending final judgment in these proceedings. The Court notes that, at the date of the present Judgment, these three individuals have not been executed, but further notes with great concern that, by an Order dated 1 March 2004, the Oklahoma Court of Criminal Appeals has set an execution date of 18 May 2004 for Mr. Torres.

* * *

THE MEXICAN OBJECTION TO THE UNITED STATES OBJECTIONS TO JURISDICTION AND ADMISSIBILITY

22. As noted above, the present dispute has been brought before the Court by Mexico on the basis of the Vienna Convention and the Optional Protocol to that Convention. Article I of the Optional Protocol provides:

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

23. The United States has presented a number of objections to the jurisdiction of the Court, as well as a number of objections to the admissibility of the claims advanced by Mexico. It is however the contention of Mexico that all the objections raised by the United States are inadmissible as having been raised after the expiration of the time-limit laid down by the Rules of Court. Mexico draws attention to the text of Article 79, paragraph 1, of the Rules of Court as amended in 2000, which provides that:

"Any objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible, and not later than three months after the delivery of the Memorial."

The previous text of this paragraph required objections to be made "within the time-limit fixed for delivery of the Counter-Memorial". In the present case the Memorial of Mexico was filed on 23 June 2003; the objections of the United States to jurisdiction and admissibility were presented in its Counter-Memorial, filed on 3 November 2003, more than four months later.

24. The United States has observed that, during the proceedings on the request made by Mexico for the indication of provisional measures in this case, it specifically reserved its right to make jurisdictional arguments at the appropriate stage, and that subsequently the Parties agreed that there should be a single round of pleadings. The Court would however emphasize that parties to cases before it cannot, by purporting to "reserve their rights" to take some procedural action, exempt themselves from the application to such action of the provisions of the Statute and Rules of


The Court notes, however, that Article 79 of the Rules applies only to preliminary objections, as is indicated by the title of the subsection of the Rules which it constitutes. As the Court observed in the Lockerbie cases, "if it is to be covered by Article 79, an objection must . . . possess a 'preliminary' character", and "Paragraph 1 of Article 79 of the Rules of Court characterizes as 'preliminary' an objection 'the decision upon which is requested before any further proceedings'" (Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, I.C.J. Reports 1998, p. 26, para. 47; p. 131, para. 46); and the effect of the timely presentation of such an objection is that the proceedings on the merits are suspended (paragraph 5 of Article 79). An objection that is not presented as a preliminary objection in accordance with paragraph 1 of Article 79 does not thereby become inadmissible. There are of course circumstances in which the party failing to put forward an objection to jurisdiction might be held to have acquiesced in jurisdiction (Appeal Relating to the Jurisdiction of the ICAO Council, Judgment, I.C.J. Reports 1972, p. 52, para. 13). However, apart from such circumstances, a party failing to avail itself of the Article 79 procedure may forfeit the right to bring about a suspension of the proceedings on the merits, but can still argue the objection along with the merits. That is indeed what the United States has done in this case; and, for reasons to be indicated below, many of its objections are of such a nature that they would in any event probably have had to be heard along with the merits. The Court concludes that it should not exclude from consideration the objections of the United States to jurisdiction and admissibility by reason of the fact that they were not presented within three months from the date of filing of the Memorial.

25. The United States has submitted four objections to the jurisdiction of the Court, and five to the admissibility of the claims of Mexico. As noted above, these have not been submitted as preliminary objections under Article 79 of the Rules of Court; and they are not of such a nature that the Court would be required to examine and dispose of all of them in limine, before dealing with any aspect of the merits of the case. Some are expressed to be only addressed to certain claims; some are directed to questions of the remedies to be indicated if the Court finds that breaches of the Vienna Convention have been committed; and some are of such a nature that they would have to be dealt with along with the merits. The Court will however now examine each of them in turn.

* * *
United States Objections to Jurisdiction

26. The United States contends that the Court lacks jurisdiction to decide many of Mexico's claims, inasmuch as Mexico's submissions in the Memorial asked the Court to decide questions which do not arise out of the interpretation or application of the Vienna Convention, and which the United States has never agreed to submit to the Court.

27. By its first jurisdictional objection, the United States suggested that the Memorial is fundamentally addressed to the treatment of Mexican nationals in the federal and state criminal justice systems of the United States, and the operation of the United States criminal justice system as a whole. It suggested that Mexico's invitation to the Court to make what the United States regards as "far-reaching and unsustainable findings concerning the United States criminal justice systems" would be an abuse of the Court's jurisdiction. At the hearings, the United States contended that Mexico is asking the Court to interpret and apply the treaty as if it were intended principally to govern the operation of a State's criminal justice system as it affects foreign nationals.

28. The Court would recall that its jurisdiction in the present case has been invoked under the Vienna Convention and Optional Protocol to determine the nature and extent of the obligations undertaken by the United States towards Mexico by becoming party to that Convention. If and so far as the Court may find that the obligations accepted by the parties to the Vienna Convention included commitments as to the conduct of their municipal courts in relation to the nationals of other parties, then in order to ascertain whether there have been breaches of the Convention, the Court must be able to examine the actions of those courts in the light of international law. The Court is unable to uphold the contention of the United States that, as a matter of jurisdiction, it is ceded from enquiring into the conduct of criminal proceedings in United States courts. How far it may do so in the present case is a matter for the merits. The first objection of the United States to jurisdiction cannot therefore be upheld.

29. The second jurisdictional objection presented by the United States was addressed to the first of the submissions presented by Mexico in its Memorial (see paragraph 13 above). The United States pointed out that Article 36 of the Vienna Convention "creates no obligations constraining the rights of the United States to arrest a foreign national"; and that similarly the "detaining, trying, convicting and sentencing" of Mexican nationals could not constitute breaches of Article 36, which merely lays down obligations of notification. The United States deduced from this that the matters raised in Mexico's first submission are outside the jurisdiction of the Court under the Vienna Convention and the Optional Protocol, and it maintains this objection in response to the revised submission, presented by Mexico at the hearings, whereby it asks the Court to adjudge and declare:

"That the United States of America, in arresting, detaining, trying, convicting, and sentencing the 52 Mexican nationals on death row described in Mexico's Memorial, violated its international legal obligations to Mexico, in its own right and in the exercise of its right to diplomatic protection of its nationals, by failing to inform, without delay, the 52 Mexican nationals after their arrest of their right to consular notification and access under Article 36 (1) (b) of the Vienna Convention on Consular Relations, and by depriving Mexico of its right to provide consular protection and the 52 nationals' right to receive such protection as Mexico would provide under Article 36 (1) (a) and (c) of the Convention."

30. This issue is a question of interpretation of the obligations imposed by the Vienna Convention. It is true that the only obligation of the receiving State toward a foreign national that is specifically enunciated by Article 36, paragraph 1 (b), of the Vienna Convention is to inform such foreign national of his rights, when he is "arrested or committed to prison or to custody pending trial or is detained in any other manner"; the text does not restrain the receiving State from "arresting, detaining, trying, convicting, and sentencing" the foreign national, or limit its power to do so. However, as regards the detention, trial, conviction and sentence of its nationals, Mexico argues that depriving a foreign national facing criminal proceedings of consular notification and assistance renders those proceedings fundamentally unfair. Mexico explains in this respect that:

"Consular notification constitutes a basic component of due process by ensuring both the procedural equality of a foreign national in the criminal process and the enforcement of other fundamental due process guarantees to which that national is entitled";
and that "It is therefore an essential requirement for fair criminal proceedings against foreign nationals." In Mexico's contention, "consular notification has been widely recognized as a fundamental due process right, and indeed, a human right". On this basis it argues that the rights of the detained Mexican nationals have been violated by the authorities of the United States, and that those nationals have been "subjected to criminal proceedings without the fairness and dignity to which each person is entitled". Consequently, in the contention of Mexico, "the integrity of these proceedings has been hopelessly undermined, their outcomes rendered irrevocably unjust". For Mexico to contend on this basis, that not merely the failure to notify, but the arrest, detention, trial and conviction of its nationals were unlawful is to argue in favour of a particular interpretation of the Vienna Convention. Such an interpretation may or may not be confirmed on the merits, but is not excluded from the jurisdiction conferred on the Court by the Optional Protocol to the Vienna Convention. The second objection of the United States to jurisdiction cannot therefore be upheld.

* * *

31. The third objection by the United States to the jurisdiction of the Court refers to the first of the submissions in the Mexican Memorial concerning remedies. By that submission, which was confirmed in substance in the final submissions, Mexico claimed that

"Mexico is entitled to restitutio in integrum, and the United States therefore is under an obligation to restore the status quo ante, that is, re-establish the situation that existed at the time of the detention and prior to the interrogation of, proceedings against, and convictions and sentences of, Mexico's nationals in violation of the United States' international legal obligations . . ."

On that basis, Mexico went on in its first submission to invite the Court to declare that the United States was bound to vacate the convictions and sentences of the Mexican nationals concerned, to exclude from any subsequent proceedings any statements and confessions obtained from them, to prevent the application of any procedural penalty for failure to raise a timely defence on the basis of the Convention, and to prevent the application of any municipal law rule preventing courts in the United States from providing a remedy for the violation of Article 36 rights.

32. The United States objects that so to require specific acts by the United States in its municipal criminal justice systems would intrude deeply into the independence of its courts; and that for the Court to declare that the United States is under a specific obligation to vacate convictions and sentences would be beyond its jurisdiction. The Court, the United States claims, has no jurisdiction to review appropriateness of sentences in criminal cases, and even less to determine guilt or innocence, matters which only a court of criminal appeal could go into.

33. For its part, Mexico points out that the United States accepts that the Court has jurisdiction to interpret the Vienna Convention and to determine the appropriate form of reparation under international law. In Mexico's view, these two considerations are sufficient to defeat the third objection to jurisdiction of the United States.

34. For the same reason as in respect of the second jurisdictional objection, the Court is unable to uphold the contention of the United States that, even if the Court were to find that breaches of the Vienna Convention have been committed by the United States of the kind alleged by Mexico, it would still be without jurisdiction to order restitutio in integrum as requested by Mexico. The Court would recall in this regard, as it did in the LaGrand case, that, where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court in order to consider the remedies a party has requested for the breach of the obligation (I.C.J. Reports 2001, p. 485, para. 48). Whether or how far the Court may order the remedy requested by Mexico are matters to be determined as part of the merits of the dispute. The third objection of the United States to jurisdiction cannot therefore be upheld.

* * *

35. The fourth and last jurisdictional objection of the United States is that "the Court lacks jurisdiction to determine whether or not consular notification is a 'human right', or to declare fundamental requirements of substantive or procedural due process". As noted above, it is on the basis of Mexico's contention that the right to consular notification has been widely recognized as a fundamental due process right, and indeed a human right, that it argues that the rights of the detained Mexican nationals have been violated by the authorities of the United States, and that they have been "subjected to criminal proceedings without the fairness and dignity to which each person is entitled". The Court observes that Mexico has presented this argument as being a matter of interpretation of Article 36, paragraph 1 (b), and therefore belonging to the merits. The Court considers that this is indeed a question of interpretation of the Vienna Convention, for which it has jurisdiction; the fourth objection of the United States to jurisdiction cannot therefore be upheld.
36. In its Counter-Memorial, the United States has advanced a number of arguments presented as objections to the admissibility of Mexico's claims. It argues that

"Before proceeding, the Court should weigh whether characteristics of the case before it today, or special circumstances related to particular claims, render either the entire case, or particular claims, inappropriate for further consideration and decision by the Court."

*

37. The first objection under this head is that "Mexico's submissions should be found inadmissible because they seek to have this Court function as a court of criminal appeal"; there is, in the view of the United States, "no other apt characterization of Mexico's two submissions in respect of remedies". The Court notes that this contention is addressed solely to the question of remedies. The United States does not contend on this ground that the Court should decline jurisdiction to enquire into the question of breaches of the Vienna Convention at all, but simply that, if such breaches are shown, the Court should do no more than decide that the United States must provide "review and reconsideration" along the lines indicated in the Judgment in the LaGrand case (I.C.J. Reports 2001, pp. 513-514, para. 125). The Court notes that this is a matter of merits. The first objection of the United States to admissibility cannot therefore be upheld.

*

38. The Court now turns to the objection of the United States based on the rule of exhaustion of local remedies. The United States contends that the Court "should find inadmissible Mexico's claim to exercise its right of diplomatic protection on behalf of any Mexican national who has failed to meet the customary legal requirement of exhaustion of municipal remedies." It asserts that in a number of the cases the subject of Mexico's claims, the detained Mexican national, even with the benefit of the provision of Mexican consular assistance, failed to raise the alleged non-compliance with Article 36, paragraph 1, of the Vienna Convention at the trial. Furthermore, it contends that all of the claims relating to cases referred to in the Mexican Memorial are inadmissible because local remedies remain available in every case. It has drawn attention to the fact that litigation is pending before courts in the United States in a large number of the cases the subject of Mexico's claims and that, in those cases where judicial remedies have been exhausted, the defendants have not had recourse to the clemency process available to them; from this it concludes that none of the cases "is in an appropriate posture for review by an international tribunal."

39. Mexico responds that the rule of exhaustion of local remedies cannot preclude the admissibility of its claims. It first states that a majority of the Mexican nationals referred to in paragraph 16 above have sought judicial remedies in the United States based on the Vienna Convention and that their claims have been barred, notably on the basis of the procedural default doctrine. In this regard, it quotes the Court's statement in the LaGrand case that

"the United States may not . . . rely before this Court on this fact in order to preclude the admissibility of Germany's [claim] . . ., as it was the United States itself which had failed to carry out its obligation under the Convention to inform the LaGrand brothers" (I.C.J. Reports 2001, p. 488, para. 60).

Further, in respect of the other Mexican nationals, Mexico asserts that

"the courts of the United States have never granted a judicial remedy to any foreign national for a violation of Article 36. The United States courts hold either that Article 36 does not create an individual right, or that a foreign national who has been denied his Article 36 rights but given his constitutional and statutory rights, cannot establish prejudice and therefore cannot get relief."

It concludes that the available judicial remedies are thus ineffective. As for clemency procedures, Mexico contends that they cannot count for purposes of the rule of exhaustion of local remedies, because they are not a judicial remedy.

40. In its final submissions Mexico asks the Court to adjudge and declare that the United States, in failing to comply with Article 36, paragraph 1, of the Vienna Convention, has "violated its international legal obligations to Mexico, in its own right and in the exercise of its right of diplomatic protection of its nationals".

The Court would first observe that the individual rights of Mexican nationals under paragraph 1 (b) of Article 36 of the Vienna Convention are rights which are to be asserted, at any rate in the first place, within the domestic legal system of the United States. Only when that process is completed and local remedies are exhausted would Mexico be entitled to espouse the individual claims of its nationals through the procedure of diplomatic protection.

In the present case Mexico does not, however, claim to be acting solely on that basis. It also asserts its own claims, basing them on the injury which it contends that it has itself suffered, directly and through its
nations, as a result of the violation by the United States of the obligations incumbent upon it under Article 36, paragraph 1 (a), (b) and (c).

The Court would recall that, in the _LaGrand_ case, it recognized that “Article 36, paragraph 1 [of the Vienna Convention], creates individual rights [for the national concerned], which . . . may be invoked in this Court by the national State of the detained person” (I.C.J. Reports 2001, p. 494, para. 77).

It would further observe that violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual. In these special circumstances of interdependence of the rights of the State and of individual rights, Mexico may, in submitting a claim in its own name, request the Court to rule on the violation of rights which it claims to have suffered both directly and through the violation of individual rights conferred on Mexican nationals under Article 36, paragraph 1 (b). The duty to exhaust local remedies does not apply to such a request. Further, for reasons just explained, the Court does not find it necessary to deal with Mexico’s claims of violation under a distinct heading of diplomatic protection. Without needing to pronounce at this juncture on the issues raised by the procedural default rule, as explained by Mexico in paragraph 39 above, the Court accordingly finds that the second objection by the United States to admissibility cannot be upheld.

41. The Court now turns to the question of the alleged dual rationality of certain of the Mexican nationals the subject of Mexico’s claims. This question is raised by the United States by way of an objection to the admissibility of those claims: the United States contends that in its Memorial Mexico had failed to establish that it may exercise diplomatic protection based on breaches of Mexico’s rights under the Vienna Convention with respect to those of its nationals who are also nationals of the United States. The United States regards it as an accepted principle that, when a person arrested or detained in the receiving State is a national of that State, then even if he is also a national of another State party to the Vienna Convention, Article 36 has no application, and the authorities of the receiving State are not required to proceed as laid down in that Article; and Mexico has indicated that, for the purposes of the present case it does not contest that dual nationals have no right to be advised of their rights under Article 36.

42. It has however to be recalled that Mexico, in addition to seeking to exercise diplomatic protection of its nationals, is making a claim in its own right on the basis of the alleged breaches by the United States of Article 36 of the Vienna Convention. Seen from this standpoint, the question of dual nationality is not one of admissibility, but of merits. A claim may be made by Mexico of breach of Article 36 of the Vienna Convention in relation to any of its nationals, and the United States is them free to show that, because the person concerned was also a United States national, Article 36 had no application to that person, so that no breach of treaty obligations could have occurred. Furthermore, as regards the claim to exercise diplomatic protection, the question whether Mexico is entitled to protect a person having dual Mexican and United States nationality is subordinated to the question whether, in relation to such a person, the United States was under any obligation in terms of Article 36 of the Vienna Convention. It is thus in the course of its examination of the merits that the Court will have to consider whether the individuals concerned, or some of them, were dual nationals in law. Without prejudice to the outcome of such examination, the third objection of the United States to admissibility cannot therefore be upheld.

43. The Court now turns to the fourth objection advanced by the United States to the admissibility of Mexico’s claims: the contention that “The Court should not permit Mexico to pursue a claim against the United States with respect to any individual case where Mexico had actual knowledge of a breach of the [Vienna Convention] but failed to bring such breach to the attention of the United States or did so only after considerable delay.”

In the Counter-Memorial, the United States advances two considerations in support of this contention: that if the cases had been mentioned promptly, corrective action might have been possible; and that by inaction Mexico created an impression that it considered that the United States was meeting its obligations under the Convention, as Mexico understood them. At the hearings, the United States suggested that Mexico had in effect waived its right to claim in respect of the alleged breaches of the Convention, and to seek reparations.

44. As the Court observed in the case of _Certain Phosphate Lands in Nauru_ (Nauru v. Australia), “delay on the part of a claimant State may render an application inadmissible”, but “international law does not lay down any specific time-limit in that regard” (I.C.J. Reports 1992, pp. 253-254, para. 32). In that case the Court recognized that delay might prejudice the respondent State “with regard to both the establishment of the facts and the determination of the content of the applicable law” (ibid., p. 255, para. 36), but it has not been suggested that there is any such risk of prejudice in the present case. So far as inadmissibility might be based on an implied waiver of rights, the Court considers that only a much
more prolonged and consistent inaction on the part of Mexico than any that the United States has alleged might be interpreted as implying such a waiver. Furthermore, Mexico indicated a number of ways in which it brought to the attention of the United States the breaches which it perceived of the Vienna Convention. The fourth objection of the United States to admissibility cannot therefore be upheld.

* * *

45. The Court has now to examine the objection of the United States that the claim of Mexico is inadmissible in that Mexico should not be allowed to invoke against the United States standards that Mexico does not follow in its own practice. The United States contends that, in accordance with basic principles of administration of justice and the equality of States, both litigants are to be held accountable to the same rules of international law. The objection in this regard was presented in terms of the interpretation of Article 36 of the Vienna Convention, in the sense that, according to the United States, a treaty may not be interpreted so as to impose a significantly greater burden on any one party than the other (Diversion of Water from the Meuse. Judgment, 1937, P.C.I.J., Series A/B, No. 70, p. 20).

46. The Court would recall that the United States had already raised an objection of a similar nature before it in the LaGrand case; there, the Court held that it need not decide "whether this argument of the United States, if true, would result in the inadmissibility of Germany's submissions", since the United States had failed to prove that Germany's own practice did not conform to the standards it was demanding from the United States (I.C.J. Reports 2001, p. 489, para. 63).

47. The Court would recall that it is in any event essential to have in mind the nature of the Vienna Convention. It lays down certain standards to be observed by all States parties, with a view to the "unimpeded conduct of consular relations", which, as the Court observed in 1979, is important in present-day international law "in promoting the development of friendly relations among nations, and ensuring protection and assistance for aliens resident in the territories of other States" (United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, pp. 19-20, para. 40). Even if it were shown, therefore, that Mexico's practice as regards the application of Article 36 was not beyond reproach, this would not constitute a ground of objection to the admissibility of Mexico's claim. The fifth objection of the United States to admissibility cannot therefore be upheld.

* * *

48. Having established that it has jurisdiction to entertain Mexico's claims and that they are admissible, the Court will now turn to the merits of those claims.

* * *

ARTICLE 36, PARAGRAPH 1

49. In its final submissions Mexico asks the Court to adjudge and declare that,

"the United States of America, in arresting, detaining, trying, convicting, and sentencing the 52 Mexican nationals on death row described in Mexico's Memorial, violated its international legal obligations to Mexico, in its own right and in the exercise of its right to diplomatic protection of its nationals, by failing to inform, without delay, the 52 Mexican nationals after their arrest of their right to consular notification and access under Article 36 (1) (b) of the Vienna Convention on Consular Relations, and by depriving Mexico of its right to provide consular protection and the 52 nationals' right to receive such protection as Mexico would provide under Article 36 (1) (a) and (c) of the Convention".

50. The Court has already in its Judgment in the LaGrand case described Article 36, paragraph 1, as "an interrelated régime designed to facilitate the implementation of the system of consular protection" (I.C.J. Reports 2001, p 492, para. 74). It is thus convenient to set out the entirety of that paragraph.

"With a view toward 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 judgment. 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."

51. The United States as the receiving State does not deny its duty to perform these obligations. However, it claims that the obligations apply only to individuals shown to be of Mexican nationality alone, and not to those of dual Mexican/United States nationality. The United States further contends *inter alia* that it has not committed any breach of Article 36, paragraph 1 (b), upon the proper interpretation of "without delay" as used in that subparagraph.

52. Thus two major issues under Article 36, paragraph 1 (b), that are in dispute between the Parties are, first, the question of the nationality of the individuals concerned; and second, the question of the meaning to be given to the expression "without delay". The Court will examine each of these in turn.

53. The Parties have advanced their contentions as to nationality in three different legal contexts. The United States has begun by making an objection to admissibility, which the Court has already dealt with (see paragraphs 41 and 42 above). The United States has further contended that a substantial number of the 52 persons listed in paragraph 16 above were United States nationals and that it thus had no obligation to these individuals under Article 36, paragraph 1 (b). The Court will address this aspect of the matter in the following paragraphs. Finally, the Parties disagree as to whether the requirement under Article 36, paragraph 1 (b), for the information to be given "without delay" becomes operative upon arrest or upon ascertainment of nationality. The Court will address this issue later (see paragraph 63 below).

54. The Parties disagree as to what each of them must show as regards nationality in connection with the applicability of the terms of Article 36, paragraph 1, and as to how the principles of evidence have been met on the facts of the cases.

55. Both Parties recognize the well-settled principle in international law that a litigant seeking to establish the existence of a fact bears the burden of proving it (cf. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 437, para. 101). Mexico acknowledges that it has the burden of proof to show that the 52 persons listed in paragraph 16 above were Mexican nationals to whom the provisions of Article 36, paragraph 1 (b), in principle apply. It claims it has met this burden by providing the Court the birth certificates of these nationals, and declarations from 42 of them that they have not acquired United States nationality. Mexico further contends that the burden of proof lies on the United States should it wish to contend that particular arrested persons of Mexican nationality were, at the relevant time, also United States nationals.

56. The United States accepts that in such cases it has the burden of proof to demonstrate United States nationality, but contends that nonetheless the "burden of evidence" as to this remains with Mexico. This distinction is explained by the United States as arising out of the fact that persons of Mexican nationality may also have acquired United States citizenship by operation of law, depending on their parents' dates and places of birth, places of residency, marital status at time of their birth and so forth. In the view of the United States "virtually all such information is in the hands of Mexico through the now 52 individuals it represents". The United States contends that it was the responsibility of Mexico to produce such information, which responsibility it has not discharged.

57. The Court finds that it is for Mexico to show that the 52 persons listed in paragraph 16 above held Mexican nationality at the time of their arrest. The Court notes that to this end Mexico has produced birth certificates and declarations of nationality, whose contents have not been challenged by the United States.

The Court observes further that the United States has, however, questioned whether some of these individuals were not also United States nationals. Thus, the United States has informed the Court that, "in the case of defendant Ayala (case No. 2) we are close to certain that Ayala is a United States citizen", and that this could be confirmed with absolute certainty if Mexico produced facts about this matter. Similarly Mr. Avena (case No. 1) was said to be "likely" to be a United States citizen, and there was "some possibility" that some 16 other defendants were United States citizens. As to six others, the United States said it "cannot rule out the possibility" of United States nationality. The Court takes the view that it was for the United States to demonstrate that this was so and to furnish the Court with all information on the matter in its possession. In so far as relevant data on that matter are said by the United States to lie within the knowledge of Mexico, it was for the United States to have
sought that information from the Mexican authorities. The Court cannot accept that, because such information may have been in part in the hands of Mexico, it was for Mexico to produce such information. It was for the United States to seek such information, with sufficient specificity, and to demonstrate both that this was done and that the Mexican authorities declined or failed to respond to such specific requests. At no stage, however, has the United States shown the Court that it made specific enquiries of those authorities about particular cases and that responses were not forthcoming. The Court accordingly concludes that the United States has not met its burden of proof in its attempt to show that persons of Mexican nationality were also United States nationals.

The Court therefore finds that, as regards the 52 persons listed in paragraph 16 above, the United States had obligations under Article 36, paragraph 1 (b).

58. Mexico asks the Court to find that

“the obligation in Article 36, paragraph 1, of the Vienna Convention requires notification of consular rights and a reasonable opportunity for consular access before the competent authorities of the receiving State take any action potentially detrimental to the foreign national’s rights”.

59. Mexico contends that, in each of the 52 cases before the Court, the United States failed to provide the arrested persons with information as to their rights under Article 36, paragraph 1 (b), “without delay”. It alleges that in one case, Mr. Esquivel (case No. 7), the arrested person was informed, but only some 18 months after the arrest, while in another, that of Mr. Juárez (case No. 10), information was given to the arrested person of his rights some 40 hours after arrest. Mexico contends that this still constituted a violation, because “without delay” is to be understood as meaning “immediately”, and in any event before any interrogation occurs. Mexico further draws the Court’s attention to the fact that in this case a United States court found that there had been a violation of Article 36, paragraph 1 (b), and claims that the United States cannot disavow such a determination by its own courts. In an Annex to its Memorial, Mexico mentions that, in a third case (Mr. Ayala, case No. 2), the accused was informed of his rights upon his arrival on death row, some four years after arrest. Mexico contends that in the remaining cases the Mexicans concerned were in fact never so informed by the United States authorities.

60. The United States disputes both the facts as presented by Mexico and the legal analysis of Article 36, paragraph 1 (b), of the Vienna Convention offered by Mexico. The United States claims that Mr. Solache (case No. 47) was informed of his rights under the Vienna Convention some seven months after his arrest. The United States further claims that many of the persons concerned were of United States nationality and that at least seven of these individuals “appear to have affirmatively claimed to be United States citizens at the time of their arrest”. These cases were said to be those of Avena (case No. 1), Ayala (case No. 2), Benavides (case No. 3), Ochoa (case No. 18), Salcido (case No. 22), Tafoya (case No. 24), and Alvarez (case No. 30). In the view of the United States no duty of consular information arose in these cases. Further, in the contention of the United States, in the cases of Mr. Ayala (case No. 2) and Mr. Salcido (case No. 22) there was no reason to believe that the arrested persons were Mexican nationals at any stage; the information in the case of Mr. Juárez (case No. 10) was given “without delay”.

61. The Court thus now turns to the interpretation of Article 36, paragraph 1 (b), having found in paragraph 57 above that it is applicable to the 52 persons listed in paragraph 16. It begins by noting that Article 36, paragraph 1 (b), contains three separate but interrelated elements: the right of the individual concerned to be informed without delay of his rights under Article 36, paragraph 1 (b); the right of the consular post to be notified without delay of the individual’s detention, if he so requests; and the obligation of the receiving State to forward without delay any communication addressed to the consular post by the detained person.

62. The third element of Article 36, paragraph 1 (b), has not been raised on the facts before the Court. The Court thus begins with the right of an arrested or detained individual to information.

63. The Court finds that the duty upon the detaining authorities to give the Article 36, paragraph 1 (b), information to the individual arises once it is realized that the person is a foreign national, or once there are grounds to think that the person is probably a foreign national. Precisely when this may occur will vary with circumstances. The United States Department of State booklet, Consular Notification and Access — Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, issued to federal, state and local authorities in order to promote compliance with Article 36 of the Vienna Convention points out in such cases that: “most, but not all, persons born outside the United States are not [citizens]. Unfamiliarity with English may also indicate foreign nationality.” The Court notes that when an arrested person himself claims to be of United States nationality, the realization by the authorities that he is not in fact a United States national, or grounds for that realization, is likely to come somewhat later in time.
64. The United States has told the Court that millions of aliens reside, either legally or illegally, on its territory, and moreover that its laws concerning citizenship are generous. The United States has also pointed out that it is a multicultural society, with citizenship being held by persons of diverse appearance, speaking many languages. The Court appreciates that in the United States the language that a person speaks, or his appearance, does not necessarily indicate that he is a foreign national. Nevertheless, and particularly in view of the large numbers of foreign nationals living in the United States, these very circumstances suggest that it would be desirable for enquiries routinely to be made of the individual as to his nationality upon his detention, so that the obligations of the Vienna Convention may be complied with. The United States has informed the Court that some of its law enforcement authorities do routinely ask persons taken into detention whether they are United States citizens. Indeed, were each individual to be told at that time that, should he be a foreign national, he is entitled to ask for his consular post to be contacted, compliance with this requirement under Article 36, paragraph 1 (b), would be greatly enhanced. The provision of such information could parallel the reading of those rights of which any person taken into custody in connection with a criminal offence must be informed prior to interrogation by virtue of what in the United States is known as the “Miranda rule”; these rights include, inter alia, the right to remain silent, the right to have an attorney present during questioning, and the right to have an attorney appointed at government expense if the person cannot afford one. The Court notes that, according to the United States, such a practice in respect of the Vienna Convention rights is already being followed in some local jurisdictions.

65. Bearing in mind the complexities explained by the United States, the Court now begins by examining the application of Article 36, paragraph 1 (b), of the Vienna Convention to the 52 cases. In 45 of these cases, the Court has no evidence that the arrested persons claimed United States nationality, or were reasonably thought to be United States nationals, with specific enquiries being made in timely fashion to verify such dual nationality. The Court has explained in paragraph 57 above what enquiries it would have expected to have been made, within a short time period, and what information should have been provided to the Court.

66. Seven persons, however, are asserted by the United States to have stated at the time of arrest that they were United States citizens. Only in the case of Mr. Salcido (case No. 22) has the Court been provided by the United States with evidence of such a statement. This has been acknowledged by Mexico. Further, there has been no evidence before the Court to suggest that there were in this case at the same time also indications of Mexican nationality, which should have caused rapid enquiry by the arresting authorities and the providing of consular information “without delay”. Mexico has accordingly not shown that in the case of Mr. Salcido the United States violated its obligations under Article 36, paragraph 1 (b).

67. In the case of Mr. Ayala (case No. 2), while he was identified in a court record in 1989 (three years after his arrest) as a United States citizen, there is no evidence to show this Court that the accused did indeed claim upon his arrest to be a United States citizen. The Court has not been informed of any enquiries made by the United States to confirm these assertions of United States nationality.

68. In the five other cases listed by the United States as cases where the individuals “appear to have affirmatively claimed to be United States citizens at the time of their arrest”, no evidence has been presented that such a statement was made at the time of arrest.

69. Mr. Avena (case No. 1) is listed in his arrest report as having been born in California. His prison records describe him as of Mexican nationality. The United States has not shown the Court that it was engaged in enquiries to confirm United States nationality.

70. Mr. Benavides (case No. 3) was carrying an Immigration and Naturalization Service immigration card at the time of arrest in 1991. The Court has not been made aware of any reason why the arresting authorities should nonetheless have believed at the time of arrest that he was a United States national. The evidence that his defence counsel in June 1993 informed the court that Mr. Benavides had become a United States citizen is irrelevant to what was understood as to his nationality at time of arrest.

71. So far as Mr. Ochoa is concerned (case No. 18), the Court observes that his arrest report in 1990 refers to him as having been born in Mexico, an assertion that is repeated in a second police report. Some two years later details in his court record refer to him as a United States citizen born in Mexico. The Court is not provided with any further details. The United States has not shown this Court that it was aware of, or was engaged in active enquiry as to, alleged United States nationality at the time of his arrest.

72. Mr. Tafoya (case No. 24) was listed on the police booking sheet as having been born in Mexico. No further information is provided by the United States as to why this was done and what, if any, further enquiries were being made concerning the defendant’s nationality.

73. Finally, the last of the seven persons referred to by the United States in this group, Mr. Alvarez (case No. 30), was arrested in Texas on 20 June 1998. Texas records identified him as a United States citizen. Within three days of his arrest, however, the Texas authorities were
informed that the Immigration and Naturalization Service was holding investigations to determine whether, because of a previous conviction, Mr. Alvarez was subject to deportation as a foreign national. The Court has not been presented with evidence that rapid resolution was sought as to the question of Mr. Alvarez's nationality.

74. The Court concludes that Mexico has failed to prove the violation by the United States of its obligations under Article 36, paragraph 1 (b), in the case of Mr. Salcido (case No. 22), and his case will not be further commented upon. On the other hand, as regards the other individuals who are alleged to have claimed United States nationality on arrest, whose cases have been considered in paragraphs 67 to 73 above, the argument of the United States cannot be upheld.

75. The question nonetheless remains as to whether, in each of the 45 cases referred to in paragraph 65 and of the six cases mentioned in paragraphs 67 to 73, the United States did provide the required information to the arrested persons “without delay”. It is to that question that the Court now turns.

76. The Court has been provided with declarations from a number of the Mexican nationals concerned that attest to their never being informed of their rights under Article 36, paragraph 1 (b). The Court at the outset notes that, in 47 such cases, the United States nowhere challenges this fact of information not being given. Nevertheless, in the case of Mr. Hernández (case No. 34), the United States observes that

“Although the [arresting] officer did not ask Hernández Llanas whether he wanted them to inform the Mexican Consulate of his arrest, it was certainly not unreasonable for him to assume that an escaped convict would not want the Consulate of the country from which he escaped notified of his arrest.”

The Court notes that the clear duty to provide consular information under Article 36, paragraph 1 (b), does not invite assumptions as to what the arrested person might prefer, as a ground for not informing him. It rather gives the arrested person, once informed, the right to say he nonetheless does not wish his consular post to be notified. It necessarily follows that in each of these 47 cases, the duty to inform “without delay” has been violated.

77. In four cases, namely Ayala (case No. 2), Esquivel (case No. 7), Juárez (case No. 10) and Solache (case No. 47), some doubts remain as to whether the information that was given was provided without delay. For these, some examination of the term is thus necessary.

78. This is a matter on which the Parties have very different views.

According to Mexico, the timing of the notice to the detained person “is critical to the exercise of the rights provided by Article 36” and the phrase “without delay” in paragraph 1 (b) requires “unqualified immediacy”. Mexico further contends that, in view of the object and purpose of Article 36, which is to enable “meaningful consular assistance” and the safeguarding of the vulnerability of foreign nationals in custody,

“consular notification . . . must occur immediately upon detention and prior to any interrogation of the foreign detainee, so that the consul may offer useful advice about the foreign legal system and provide assistance in obtaining counsel before the foreign national makes any ill-informed decisions or the State takes any action potentially prejudicial to his rights”.

79. Thus, in Mexico’s view, it would follow that in any case in which a foreign national was interrogated before being informed of his rights under Article 36, there would ipso facto be a breach of that Article, however rapidly after the interrogation the information was given to the foreign national. Mexico accordingly includes the case of Mr. Juárez among those where it claims violation of Article 36, paragraph 1 (b), as he was interrogated before being informed of his consular rights, some 40 hours after arrest.

80. Mexico has also invoked the travaux préparatoires of the Vienna Convention in support of its interpretation of the requirement that the arrested person be informed “without delay” of the right to ask that the consular post be notified. In particular, Mexico recalled that the phrase proposed to the Conference by the International Law Commission, “without undue delay”, was replaced by the United Kingdom proposal to delete the word “undue”. The United Kingdom representative had explained that this would avoid the implication that “some delay was permissible” and no delegate had expressed dissent with the USSR and Japanese statements that the result of the amendment would be to require information “immediately”.

81. The United States disputed this interpretation of the phrase “without delay”. In its view it did not mean “immediately, and before interrogation” and such an understanding was supported neither by the terminology, nor by the object and purpose of the Vienna Convention, nor by its travaux préparatoires. In the booklet referred to in paragraph 63 above, the State Department explains that “without delay” means “there should be no deliberate delay” and that the required action should be taken “as soon as reasonably possible under the circumstances”. It was normally to be expected that “notification to consular officers” would have been made “within 24 to 72 hours of the arrest or detention”. The United States further contended that such an interpretation of the words “without delay” would be reasonable in itself and also allow a consistent
interpretation of the phrase as it occurs in each of the three different occasions in Article 36, paragraph 1 (b). As for the travaux préparatoires, they showed only that undue or deliberate delay had been rejected as unacceptable.

82. According to the United States, the purpose of Article 36 was to facilitate the exercise of consular functions by a consular officer:

"The significance of giving consular information to a national is thus limited . . . It is a procedural device that allows the foreign national to trigger the related process of notification . . . (It) cannot possibly be fundamental to the criminal justice process."

83. The Court now addresses the question of the proper interpretation of the expression "without delay" in the light of arguments put to it by the Parties. The Court begins by noting that the precise meaning of "without delay", as it is to be understood in Article 36, paragraph 1 (b), is not defined in the Convention. This phrase therefore requires interpretation according to the customary rules of treaty interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

84. Article I of the Vienna Convention on Consular Relations, which defines certain of the terms used in the Convention, offers no definition of the phrase "without delay". Moreover, in the different language versions of the Convention various terms are employed to render the phrases "without delay" in Article 36 and "immediately" in Article 14. The Court observes that dictionary definitions, in the various languages of the Vienna Convention, offer diverse meanings of the term "without delay" (and also of "immediately"). It is therefore necessary to look elsewhere for an understanding of this term.

85. As for the object and purpose of the Convention, the Court observes that Article 36 provides for consular officers to be free to communicate with nationals of the sending State, to have access to them, to visit and speak with them and to arrange for their legal representation. It is not envisaged, either in Article 36, paragraph 1, or elsewhere in the Convention, that consular functions entail a consular officer himself or herself acting as the legal representative or more directly engaging in the criminal justice process. Indeed, this is confirmed by the wording of Article 36, paragraph 2, of the Convention. Thus, neither the terms of the Convention as normally understood, nor its object and purpose, suggest that "without delay" is to be understood as "immediately upon arrest and before interrogation".

86. The Court further notes that, notwithstanding the uncertainties in the travaux préparatoires, they too do not support such an interpretation. During the diplomatic conference, the conference’s expert, former Special Rapporteur of the International Law Commission, explained to the delegates that the words “without undue delay” had been introduced by the Commission, after long discussion in both the plenary and drafting committee, to allow for special circumstances which might permit information as to consular notification not to be given at once. Germany, the only one of two States to present an amendment, proposed adding “but at latest within one month”. There was an extended discussion by many different delegates as to what such outer time-limit would be acceptable. During that debate no delegate proposed “immediately”. The shortest specific period suggested was by the United Kingdom, namely “promptly” and no later than “48 hours” afterwards. Eventually, in the absence of agreement on a precise time period, the United Kingdom’s other proposal to delete the word “undue” was accepted as the position around which delegates could converge. It is also of interest that there is no suggestion in the travaux that the phrase “without delay” might have different meanings in each of the three sets of circumstances in which it is used in Article 36, paragraph 1 (b).

87. The Court thus finds that “without delay” is not necessarily to be interpreted as “immediately” upon arrest. It further observes that during the Conference debates on this term, no delegate made any connection with the issue of interrogation. The Court considers that the provision in Article 36, paragraph 1 (b), that the receiving State authorities “shall inform the person concerned without delay of his rights” cannot be interpreted to signify that the provision of such information must necessarily precede any interrogation, so that the commencement of interrogation before the information is given would be a breach of Article 36.

88. Although, by application of the usual rules of interpretation, “without delay” as regards the duty to inform an individual under Article 36, paragraph 1 (b), is not to be understood as necessarily meaning “immediately upon arrest”, there is nonetheless a duty upon the arresting authorities to give that information to an arrested person as soon as it is realized that the person is a foreign national, or once there are grounds to think that the person is probably a foreign national.

89. With one exception, no information as to entitlement to consular notification was given in any of the cases cited in paragraph 77 within any of the various time periods suggested by the delegates to the Conference on the Vienna Convention, or by the United States itself (see paragraphs 81 and 86 above). Indeed, the information was given either not at all or at periods very significantly removed from the time of arrest. In the case of Mr. Juárez (case No. 10), the defendant was informed of his
consular rights 40 hours after his arrest. The Court notes, however, that Mr. Juárez's arrest report stated that he had been born in Mexico; moreover, there had been indications of his Mexican nationality from the time of his initial interrogation by agents of the Federal Bureau of Investigation (FBI) following his arrest. It follows that Mr. Juárez's Mexican nationality was apparent from the outset of his detention by the United States authorities. In these circumstances, in accordance with its interpretation of the expression "without delay" (see paragraph 88 above), the Court concludes that the United States violated the obligation incumbent upon it under Article 36, paragraph 1 (b), to inform Mr. Juárez without delay of his consular rights. The Court notes that the same finding was reached by a California Superior Court, albeit on different grounds.

90. The Court accordingly concludes that, with respect to each of the individuals listed in paragraph 16, with the exception of Mr. Salcido (case No. 22; see paragraph 74 above), the United States has violated its obligation under Article 36, paragraph 1 (b), of the Vienna Convention to provide information to the arrested person.

91. As noted above, Article 36, paragraph 1 (b), contains three elements. Thus far, the Court has been dealing with the right of an arrested person to be informed that he may ask for his consular post to be notified. The Court now turns to another aspect of Article 36, paragraph 1 (b). The Court finds the United States is correct in observing that the fact that a Mexican consular post was not notified under Article 36, paragraph 1 (b), does not of necessity show that the arrested person was not informed of his rights under that provision. He may have been informed and declined to have his consular post notified. The giving of the information is relevant, however, for satisfying the element in Article 36, paragraph 1 (b), on which the other two elements therein depend.

92. In only two cases has the United States claimed that the arrested person was informed of his consular rights but asked for the consular post not to be notified. These are Mr. Juárez (case No. 10) and Mr. Solache (case No. 47).

93. The Court is satisfied that when Mr. Juárez (case No. 10) was informed of his consular rights 40 hours after his arrest (see paragraph 89) he chose not to have his consular post notified. As regards Mr. Solache (case No. 47), however, it is not sufficiently clear to the Court, on the evidence before it, that he requested that his consular post should not be notified. Indeed, the Court has not been provided with any reasons as to why, if a request of non-notification was made, the consular post was then notified some three months later.

94. In a further three cases, the United States alleges that the consular post was formally notified of the detention of one of its Mexican nationals without prior information to the individual as to his consular rights. These are Mr. Covarrubias (case No. 6), Mr. Hernández (case No. 34) and Mr. Reyes (case No. 54). The United States further contends that the Mexican authorities were contacted regarding the case of Mr. Loza (case No. 52).

95. The Court notes that, in the case of Mr. Covarrubias (case No. 6), the consular authorities learned from third parties of his arrest shortly after it occurred. Some 16 months later, a court-appointed interpreter requested that the consulate intervene in the case prior to trial. It would appear doubtful whether an interpreter can be considered a competent authority for triggering the interrelated provisions of Article 36, paragraph 1 (b), of the Vienna Convention. In the case of Mr. Reyes (case No. 54), the United States has simply told the Court that an Oregon Department of Justice attorney had advised United States authorities that both the District Attorney and the arresting detective advised the Mexican consular authorities of his arrest. No information is given as to when this occurred, in relation to the date of his arrest. Mr. Reyes did receive assistance before his trial. In these two cases, the Court considers that, even on the hypothesis that the conduct of the United States had no serious consequences for the individuals concerned, it did nonetheless constitute a violation of the obligations incumbent upon the United States under Article 36, paragraph 1 (b).

96. In the case of Mr. Loza (case No. 52), a United States Congressman from Ohio contacted the Mexican Embassy on behalf of Ohio prosecutors, some four months after the accused's arrest, "to enquire about the procedures for obtaining a certified copy of Loza's birth certificate". The Court has not been provided with a copy of the Congressman's letter and is therefore unable to ascertain whether it explained that Mr. Loza had been arrested. The response from the Embassy (which is also not included in the documentation provided to the Court) was passed by the Congressman to the prosecuting attorney, who then asked the Civil Registry of Guadalajara for a copy of the birth certificate. This request made no specific mention of Mr. Loza's arrest. Mexico contends that its consulate was never formally notified of Mr. Loza's arrest, of which it only became aware after he had been convicted and sentenced to death. Mexico includes the case of Mr. Loza among those in which the United States was in breach of its obligation of consular notification. Taking account of all these elements, and in particular of the fact that the Embassy was contacted four months after the arrest, and that the consular post became aware of the defendant's detention only after he had been convicted and sentenced, the Court concludes that in the case of Mr. Loza the United States violated the obligation of consular notification without delay incumbent upon it under Article 36, paragraph 1 (b).
97. Mr. Hernández (case No. 34) was arrested in Texas on Wednesday 15 October 1997. The United States authorities had no reason to believe he might have American citizenship. The consular post was notified the following Monday, that is five days (corresponding to only three working days) thereafter. The Court finds that, in the circumstances, the United States did notify the consular post without delay, in accordance with its obligation under Article 36, paragraph 1 (b).

98. In the first of its final submissions, Mexico also asks the Court to find that the violations it ascribes to the United States in respect of Article 36, paragraph 1 (b), have also deprived “Mexico of its right to provide consular protection and the 52 nationals’ right to receive such protection as Mexico would provide under Article 36 (1) (a) and (c) of the Convention”.

99. The relationship between the three subparagraphs of Article 36, paragraph 1, has been described by the Court in its Judgment in the LaGrand case (I.C.J. Reports 2001, p. 492, para. 74) as “an interrelated régime”. The legal conclusions to be drawn from that interrelationship necessarily depend upon the facts of each case. In the LaGrand case, the Court found that the failure for 16 years to inform the brothers of their right to have their consul notified effectively prevented the exercise of other rights that Germany might have chosen to exercise under subparagraphs (a) and (c).

100. It is necessary to revisit the interrelationship of the three subparagraphs of Article 36, paragraph 1, in the light of the particular facts and circumstances of the present case.

101. The Court would first recall that, in the case of Mr. Juárez (case No. 10) (see paragraph 93 above), when the defendant was informed of his rights, he declined to have his consular post notified. Thus in this case there was no violation of either subparagraph (a) or subparagraph (c) of Article 36, paragraph 1.

102. In the remaining cases, because of the failure of the United States to act in conformity with Article 36, paragraph 1 (b), Mexico was in effect precluded (in some cases totally, and in some cases for prolonged periods of time) from exercising its right under paragraph 1 (a) to communicate with its nationals and have access to them. As the Court has already had occasion to explain, it is immaterial whether Mexico would have offered consular assistance, “or whether a different verdict would have been rendered. It is sufficient that the Convention conferred these rights” (I.C.J. Reports 2001, p. 492, para. 74), which might have been acted upon.

103. The same is true, pari passu, of certain rights identified in subparagraph (c): “consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, and to converse and correspond with him...”.

104. On the other hand, and on the particular facts of this case, no such generalized answer can be given as regards a further entitlement mentioned in subparagraph (c), namely, the right of consular officers “to arrange for [the] legal representation” of the foreign national. Mexico has placed much emphasis in this litigation upon the importance of consular officers being able to arrange for such representation before and during trial, and especially at sentencing, in cases in which a severe penalty may be imposed. Mexico has further indicated the importance of any financial or other assistance that consular officers may provide to defence counsel, inter alia, for investigation of the defendant’s family background and mental condition, when such information is relevant to the case. The Court observes that the exercise of the rights of the sending State under Article 36, paragraph 1 (c), depends upon notification by the authorities of the receiving State. It may be, however, that information drawn to the attention of the sending State by other means may still enable its consular officers to assist in arranging legal representation for its national. In the following cases, the Mexican consular authorities learned of their national’s detention in time to provide such assistance, either through notification by United States authorities (albeit belatedly in terms of Article 36, paragraph 1 (b)) or through other channels: Benavides (case No. 3); Covarrubias (case No. 6); Esquivel (case No. 7); Hoyos (case No. 9); Mendoza (case No. 17); Ramírez (case No. 20); Sánchez (case No. 23); Verano (case No. 27); Zamudio (case No. 29); Gómez (case No. 33); Hernández (case No. 34); Ramírez (case No. 41); Rocha (case No. 42); Solache (case No. 47); Camargo (case No. 49) and Reyes (case No. 54).

105. In relation to Mr. Manríquez (case No. 14), the Court lacks precise information as to when his consular post was notified. It is merely given to understand that it was two years prior to conviction, and that Mr. Manríquez himself had never been informed of his consular rights. There is also divergence between the Parties in regard to the case of Mr. Fuertes (case No. 15), where Mexico claims it became aware of his detention during trial and the United States says this occurred during jury selection, prior to the actual commencement of the trial. In the case of Mr. Arias (case No. 44), the Mexican authorities became aware of his detention less than one week before the commencement of the trial. In those three cases, the Court concludes that the United States violated its obligations under Article 36, paragraph 1 (c).

106. On this aspect of the case, the Court thus concludes:

(1) that the United States committed breaches of the obligation incumbent upon it under Article 36, paragraph 1 (b), of the Vienna Convention to inform detained Mexican nationals of their rights under
that paragraph, in the case of the following 51 individuals: Avena (case No. 1), Ayala (case No. 2), Benavides (case No. 3), Carrera (case No. 4), Contreras (case No. 5), Covarrubias (case No. 6), Esquivel (case No. 7), Gómez (case No. 8), Hoyos (case No. 9), Juárez (case No. 10), López (case No. 11), Lupericio (case No. 12), Maciel (case No. 13), Manriquez (case No. 14), Fuentes (case No. 15), Martínez (case No. 16), Mendoza (case No. 17), Ochoa (case No. 18), Parra (case No. 19), Ramírez (case No. 20), Salazar (case No. 21), Sánchez (case No. 23), Tafoya (case No. 24), Valdez (case No. 25), Vargas (case No. 26), Verano (case No. 27), Zamudio (case No. 29), Alvarez (case No. 30), Fierro (case No. 31), García (case No. 32), Gómez (case No. 33), Hernández (case No. 34), Ibarra (case No. 35), Leal (case No. 36), Maldonado (case No. 37), Medellín (case No. 38), Moreno (case No. 39), Plata (case No. 40), Ramírez (case No. 41), Rocha (case No. 42), Regalado (case No. 43), Arias (case No. 44), Caballero (case No. 45), Flores (case No. 46), Solache (case No. 47), Fong (case No. 48), Camargo (case No. 49), Pérez (case No. 51), Loza (case No. 52), Torres (case No. 53) and Reyes (case No. 54);

(2) that the United States committed breaches of the obligation incumbent upon it under Article 36, paragraph 1 (b), to notify the Mexican consular post of the detention of the Mexican nationals listed in subparagraph (1) above, except in the cases of Mr. Juárez (No. 10) and Mr. Hernández (No. 34);

(3) that by virtue of its breaches of Article 36, paragraph 1 (b), as described in subparagraph (2) above, the United States also violated the obligation incumbent upon it under Article 36, paragraph 1 (a), of the Vienna Convention to enable Mexican consular officers to communicate with and have access to their nationals, as well as its obligation under paragraph 1 (c) of that Article regarding the right of consular officers to visit their detained nationals;

(4) that the United States, by virtue of these breaches of Article 36, paragraph 1 (b), also violated the obligation incumbent upon it under paragraph 1 (c) of that Article to enable Mexican consular officers to arrange for legal representation of their nationals in the case of the following individuals: Avena (case No. 1), Ayala (case No. 2), Carrera (case No. 4), Contreras (case No. 5), Gómez (case No. 8), López (case No. 11), Lupericio (case No. 12), Maciel (case No. 13), Manriquez (case No. 14), Fuentes (case No. 15), Martínez (case No. 16), Ochoa (case No. 18), Parra (case No. 19), Salazar (case No. 21), Tafoya (case No. 24), Valdez (case No. 25), Vargas (case No. 26), Alvarez (case No. 30), Fierro (case No. 31), García (case No. 32), Ibarra (case No. 35), Leal (case No. 36), Maldonado (case No. 37), Medellín (case No. 38), Moreno (case No. 39), Plata (case No. 40), Regalado (case No. 43), Arias (case No. 44), Caballero (case No. 45), Flores (case No. 46), Fong (case No. 48), Pérez (case No. 51), Loza (case No. 52) and Torres (case No. 53).

* *

ARTICLE 36, PARAGRAPH 2

107. In its third final submission Mexico asks the Court to adjudge and declare that

"the United States violated its obligations under Article 36 (2) of the Vienna Convention by failing to provide meaningful and effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1)".

108. Article 36, paragraph 2, provides:

"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."

109. In this connection, Mexico has argued that the United States

"By applying provisions of its municipal law to defeat or foreclose remedies for the violation of rights conferred by Article 36 — thus failing to provide meaningful review and reconsideration of severe sentences imposed in proceedings that violated Article 36 — ... has violated, and continues to violate, the Vienna Convention."

More specifically, Mexico contends that:

"The United States uses several municipal legal doctrines to prevent finding any legal effect from the violations of Article 36. First, despite this Court's clear analysis in LaGrand, US courts, at both the state and federal level, continue to invoke default doctrines to bar any review of Article 36 violations — even when the national had been unaware of his rights to consular notification and communication and thus his ability to raise their violation as an issue at trial, due to the competent authorities' failure to comply with Article 36."

110. Against this contention by Mexico, the United States argues that:

"the criminal justice systems of the United States address all errors
in process through both judicial and executive clemency proceedings, relying upon the latter when rules of default have closed out the possibility of the former. That is, the "laws and regulations" of the United States provide for the correction of mistakes that may be relevant to a criminal defendant to occur through a combination of judicial review and clemency. These processes together, working with other competent authorities, give full effect to the purposes for which Article 36 (1) is intended, in conformity with Article 36 (2).

And, insofar as a breach of Article 36 (1) has occurred, these procedures satisfy the remedial function of Article 36 (2) by allowing the United States to provide review and reconsideration of convictions and sentences consistent with *LaGrand*.

111. The "procedural default" rule in United States law has already been brought to the attention of the Court in the *LaGrand* case. The following brief definition of the rule was provided by Mexico in its Memorial in this case and has not been challenged by the United States: "a defendant who could have raised, but fails to raise, a legal issue at trial generally not be permitted to raise it in future proceedings, on appeal or in a petition for a writ of habeas corpus". The rule requires exhaustion of remedies, *inter alia*, at the state level and before a habeas corpus motion can be filed with federal courts. In the *LaGrand* case, the rule in question was applied by United States federal courts; in the present case, Mexico also complains of the application of the rule in certain state courts of criminal appeal.

112. The Court has already considered the application of the "procedural default" rule, alleged by Mexico to be a hindrance to the full implementation of the international obligations of the United States under Article 36, in the *LaGrand* case, when the Court addressed the issue of its implications for the application of Article 36, paragraph 2, of the Vienna Convention. The Court emphasized that "a distinction must be drawn between that rule as such and its specific application in the present case". The Court stated:

"In itself, the rule does not violate Article 36 of the Vienna Convention. The problem arises when the procedural default rule does not allow the detained individual to challenge a conviction and sentence by claiming, in reliance on Article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information "without delay", thus preventing the person from seeking and obtaining consular assistance from the sending State." (*I.C.J. Reports 2001*, p. 497, para. 90.)

113. The Court will return to this aspect below, in the context of Mexico's claims as to remedies. For the moment, the Court simply notes that the procedural default rule has not been revised, nor has any provision been made to prevent its application in cases where it has been the failure of the United States itself to inform that may have precluded counsel from being in a position to have raised the question of a violation of the Vienna Convention in the initial trial. It thus remains the case that the procedural default rule may continue to prevent courts from attaching legal significance to the fact, *inter alia*, that the violation of the rights set forth in Article 36, paragraph 1, prevented Mexico, in a timely fashion, from retaining private counsel for certain nationals and otherwise assisting in their defence. In such cases, application of the procedural default rule would have the effect of preventing "full effect [from being] given to the purposes for which the rights accorded under this article are intended", and thus violate paragraph 2 of Article 36. The Court notes moreover that in several of the cases cited in Mexico's final submissions the procedural default rule has already been applied, and that in others it could be applied at subsequent stages in the proceedings. However, in none of the cases, save for the three mentioned in paragraph 114 below, have the criminal proceedings against the Mexican nationals concerned already reached a stage at which there is no further possibility of judicial reexamination of those cases; that is to say, all possibility is not yet excluded of "review and reconsideration" of conviction and sentence, as called for in the *LaGrand* case, and as explained further in paragraphs 128 and following below. It would therefore be premature for the Court to conclude at this stage that, in these cases, there is already a violation of the obligations under Article 36, paragraph 2, of the Vienna Convention.

114. By contrast, the Court notes that in the case of three Mexican nationals, Mr. Fierro (case No. 31), Mr. Moreno (case No. 39), and Mr. Torres (case No. 53), conviction and sentence have become final. Moreover, in the case of Mr. Torres the Oklahoma Court of Criminal Appeals has set an execution date (see paragraph 21 above, *in fine*). The Court must therefore conclude that, in relation to these three individuals, the United States is in breach of the obligations incumbent upon it under Article 36, paragraph 2, of the Vienna Convention.

* *
LEGAL CONSEQUENCES OF THE BREACH

115. Having concluded that in most of the cases brought before the Court by Mexico in the 52 instances, there has been a failure to observe the obligations prescribed by Article 36, paragraph 1 (b), of the Vienna Convention, the Court now proceeds to the examination of the legal consequences of such a breach and of what legal remedies should be considered for the breach.

116. Mexico in its fourth, fifth and sixth submissions asks the Court to adjudge and declare:

"(4) that pursuant to the injuries suffered by Mexico in its own right and in the exercise of diplomatic protection of its nationals, Mexico is entitled to full reparation for these injuries in the form of \textit{restitutio in integrum};"

"(5) that this restitution consists of the obligation to restore the \textit{status quo ante} by annulling or otherwise depriving of full force or effect the conviction and sentences of all 52 Mexican nationals; [and]

"(6) that this restitution also includes the obligation to take all measures necessary to ensure that a prior violation of Article 36 shall not affect the subsequent proceedings."

117. In support of its fourth and fifth submissions, Mexico argues that "It is well-established that the primary form of reparation available to a State injured by an internationally wrongful act is \textit{restitutio in integrum}, and that "The United States is therefore obliged to take the necessary action to restore the \textit{status quo ante} in respect of Mexico’s nationals detained, tried, convicted and sentenced in violation of their internationally recognized rights." To restore the \textit{status quo ante}, Mexico contends that "restitution here must take the form of annulling the convictions and sentences that resulted from the proceedings tainted by the Article 36 violations", and that "It follows from the very nature of \textit{restitutio} that, when a violation of an international obligation is manifested in a judicial act, that act must be annull and thereby deprived of any force or effect in the national legal system." Mexico therefore asks in its submissions that the convictions and sentences of the 52 Mexican nationals be annulled, and that, in any future criminal proceedings against these 52 Mexican nationals, evidence obtained in breach of Article 36 of the Vienna Convention be excluded.

118. The United States on the other hand argues:

"\textit{LaGrand}'s holding calls for the United States to provide, in each case, 'review and reconsideration' that 'takes account of the viola-

119. The general principle on the legal consequences of the commission of an internationally wrongful act was stated by the Permanent Court of International Justice in the \textit{Factory at Chorzów} case as follows: "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form." (\textit{Factory at Chorzów, Jurisdiction, 1927}, P.C.I.J., Series A, No. 9, p. 21.) What constitutes "reparation in an adequate form" clearly varies depending upon the concrete circumstances surrounding each case and the precise nature and scope of the injury, since the question has to be examined from the viewpoint of what is the "reparation in an adequate form" that corresponds to the injury. In a subsequent phase of the same case, the Permanent Court went on to elaborate on this point as follows:

"The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." (\textit{Factory at Chorzów, Merits, 1928}, P.C.I.J., Series A, No. 17, p. 47.)

120. In the \textit{LaGrand} case the Court made a general statement on the principle involved as follows:

"The Court considers in this respect that if the United States, notwithstanding its commitment [to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b)], should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention. This obligation can be carried out in various ways. The choice of means must be left to the United States." (I.C.J. Reports 2001, pp. 513-514, para. 125.)

121. Similarly, in the present case the Court's task is to determine what would be adequate reparation for the violations of Article 36. It should be clear from what has been observed above that the internationally wrongful acts committed by the United States were the failure of its
competent authorities to inform the Mexican nationals concerned, to notify Mexican consular posts and to enable Mexico to provide consular assistance. It follows that the remedy to make good these violations should consist in an obligation on the United States to permit review and reconsideration of these nations' cases by the United States courts, as the Court will explain further in paragraphs 128 to 134 below, with a view to ascertaining whether in each case the violation of Article 36 committed by the competent authorities caused actual prejudice to the defendant in the process of administration of criminal justice.

122. The Court reafirms that the case before it concerns Article 36 of the Vienna Convention and not the correctness as such of any conviction or sentence. The question of whether the violations of Article 36, paragraph 1, are to be regarded as having, in the causal sequence of events, ultimately led to convictions and severe penalties is an integral part of criminal proceedings before the courts of the United States and is for them to determine in the process of review and reconsideration. In so doing, it is for the courts of the United States to examine the facts, and in particular the prejudice and its causes, taking account of the violation of the rights set forth in the Convention.

123. It is not to be presumed, as Mexico asserts, that partial or total annulment of conviction or sentence provides the necessary and sole remedy. In this regard, Mexico cites the recent judgment of the Court in the case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), in which the “Court ordered the cancellation of an arrest warrant issued by a Belgian judicial official in violation of the international immunity of the Congo Minister for Foreign Affairs”. However, the present case has clearly to be distinguished from the Arrest Warrant case. In that case, the question of the legality under international law of the act of issuing the arrest warrant against the Congolese Minister for Foreign Affairs by the Belgian judicial authorities was itself the subject-matter of the dispute. Since the Court found that this act to be in violation of international law relating to immunity, the proper legal consequence was for the Court to order the cancellation of the arrest warrant in question (I.C.J. Reports 2002, p. 33). By contrast, in the present case it is not the convictions and sentences of the Mexican nationals which are to be regarded as a violation of international law, but solely certain breaches of treaty obligations which preceded them.

124. Mexico has further contended that the right to consular notification and consular communication under the Vienna Convention is a fundamental human right that constitutes part of due process in criminal proceedings and should be guaranteed in the territory of each of the Contracting Parties to the Vienna Convention; according to Mexico, this right, as such, is so fundamental that its infringement will ipso facto produce the effect of vitiating the entire process of the criminal proceedings conducted in violation of this fundamental right. Whether or not the Vienna Convention rights are human rights is not a matter that this Court need decide. The Court would, however, observe that neither the text nor the object and purpose of the Convention, nor any indication in the travaux préparatoires, support the conclusion that Mexico draws from its contention in that regard.

125. For these reasons, Mexico’s fourth and fifth submissions cannot be upheld.

126. The reasoning of the Court on the fifth submission of Mexico is equally valid in relation to the sixth submission of Mexico. In elaboration of its sixth submission, Mexico contends that,

“As an aspect of restitutio in integrum, Mexico is also entitled to an order that in any subsequent criminal proceedings against the nationals, statements and confessions obtained prior to notification to the national of his right to consular assistance be excluded.”

Mexico argues that “The exclusionary rule applies in both common law and civil law jurisdictions and requires the exclusion of evidence that is obtained in a manner that violates due process obligations”, and on this basis concludes that

“The status of the exclusionary rule as a general principle of law permits the Court to order that the United States is obliged to apply this principle in respect of statements and confessions given to United States law enforcement officials prior to the accused Mexican nationals being advised of their consular rights in any subsequent criminal proceedings against them.”

127. The Court does not consider that it is necessary to enter into an examination of the merits of the contention advanced by Mexico that the “exclusionary rule” is “a general principle of law under Article 38 (1) (c) of the . . . Statute” of the Court. The issue raised by Mexico in its sixth submission relates to the question of what legal consequences flow from the breach of the obligations under Article 36, paragraph 1 — a question which the Court has already sufficiently discussed above in relation to the fourth and the fifth submissions of Mexico. The Court is of the view that this question is one which has to be examined under the concrete circumstances of each case by the United States courts concerned in the process of their review and reconsideration. For this reason, the sixth submission of Mexico cannot be upheld.

128. While the Court has rejected the fourth, fifth and sixth submissions of Mexico relating to the remedies for the breaches by the United
States of its international obligations under Article 36 of the Vienna Convention, the fact remains that such breaches have been committed, as the Court has found, and it is thus incumbent upon the Court to specify what remedies are required in order to redress the injury done to Mexico and to its nationals by the United States through non-compliance with those international obligations. As has already been observed in paragraph 120, the Court in the LaGrand Judgment stated the general principle to be applied in such cases by way of a remedy to redress an injury of this kind (I.C.J. Reports 2001, pp. 513-514, para. 125).

129. In this regard, Mexico’s seventh submission also asks the Court to adjudge and declare:

“That to the extent that any of the 52 convictions or sentences are not annulled, the United States shall provide, by means of its own choosing, meaningful and effective review and reconsideration of the convictions and sentences of the 52 nationals, and that this obligation cannot be satisfied by means of clemency proceedings or if any municipal law rule or doctrine [that fails to attach legal significance to an Article 36 (1) violation] is applied.”

130. On this question of “review and reconsideration”, the United States takes the position that it has indeed conformed its conduct to the LaGrand Judgment. In a further elaboration of this point, the United States argues that “[t]he Court said in LaGrand that the choice of means for allowing the review and reconsideration it called for ‘must be left’ to the United States”, but that “Mexico would not leave this choice to the United States but have the Court undertake the review instead and decide at once that the breach requires the conviction and sentence to be set aside in each case”.

131. In stating in its Judgment in the LaGrand case that “the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence” (I.C.J. Reports 2001, p. 516, para. 128 (7); emphasis added), the Court acknowledged that the concrete modalities for such review and reconsideration should be left primarily to the United States. It should be underlined, however, that this freedom in the choice of means for such review and reconsideration is not without qualification: as the passage of the Judgment quoted above makes abundantly clear, such review and reconsideration has to be carried out “by taking account of the violation of the rights set forth in the Convention” (I.C.J. Reports 2001, p. 514, para. 125), including, in particular, the question of the legal consequences of the violation upon the criminal proceedings that have followed the violation.

132. The United States argues (1) “that the Court’s decision in LaGrand in calling for review and reconsideration called for a process to re-examine a conviction and sentence in light of a breach of Article 36”; (2) that, “in calling for a process of review, the Court necessarily implied that one legitimate result of that process might be a conclusion that the conviction and sentence should stand”; and (3) “that the relief Mexico seeks in this case is flatly inconsistent with the Judgment in LaGrand: it seeks precisely the award of a substantive outcome that the LaGrand Court declined to provide”.

133. However, the Court wishes to point out that the current situation in the United States criminal procedure, as explained by the Agent at the hearings, is that

“If the defendant alleged at trial that a failure of consular information resulted in harm to a particular right essential to a fair trial, an appeals court can review how the lower court handled that claim of prejudice”;

but that

“If the foreign national did not raise his Article 36 claim at trial, he may face procedural constraints [i.e., the application of the procedural default rule] on raising that particular claim in direct or collateral judicial appeals” (emphasis added).

As a result, a claim based on the violation of Article 36, paragraph 1, of the Vienna Convention, however meritorious in itself, could be barred in the courts of the United States by the operation of the procedural default rule (see paragraph 111 above).

134. It is not sufficient for the United States to argue that “[whatever label [the Mexican defendant] places on his claim, his right . . . must and will be vindicated if it is raised in some form at trial” (emphasis added), and that

“In that way, even though a failure to label the complaint as a breach of the Vienna Convention may mean that he has technically speaking forfeited his right to raise this issue as a Vienna Convention claim, on appeal that failure would not bar him from independently asserting a claim that he was prejudiced because he lacked this critical protection needed for a fair trial.” (Emphasis added.)

The crucial point in this situation is that, by the operation of the procedural default rule as it is applied at present, the defendant is effectively barred from raising the issue of the violation of his rights under Article 36 of the Vienna Convention and is limited to seeking the vindication of his rights under the United States Constitution.

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135. Mexico, in the latter part of its seventh submission, has stated that “this obligation [of providing review and reconsideration] cannot be
satisfied by means of clemency proceedings”. Mexico elaborates this point by arguing first of all that “the United States’s reliance on clemency proceedings is wholly inconsistent with its obligation to provide a remedy, as that obligation was found by this Court in LaGrand”. More specifically, Mexico contends:

“First, it is clear that the Court’s direction to the United States in LaGrand clearly contemplated that ‘review and reconsideration’ would be carried out by judicial procedures . . . .

Second, the Court was fully aware that the LaGrand brothers had received a clemency hearing, during which the Arizona Pardons Board took into account the violation of their consular rights. Accordingly, the Court determined in LaGrand that clemency review alone did not constitute the required ‘review and reconsideration’ . . .

Finally, the Court specified that the United States must ‘allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention’. . . . it is a basic matter of U.S. criminal procedural law that courts review convictions; clemency panels do not. With the rare exception of pardons based on actual innocence, the focus of capital clemency review is on the propriety of the sentence and not on the underlying conviction.”

Furthermore, Mexico argues that the clemency process is in itself an ineffective remedy to satisfy the international obligations of the United States. It concludes: “Clemency review is standardless, secretive, and immune from judicial oversight”.

Finally, in support of its contention, Mexico argues that

“the failure of state clemency authorities to pay heed to the intervention of the US Department of State in cases of death-sentenced Mexican nationals refutes the [United States] contention that clemency review will provide meaningful consideration of the violations of rights conferred under Article 36”.

136. Against this contention of Mexico, the United States claims that it “gives ‘full effect’ to the ‘purposes for which the rights accorded under Article 36, paragraph 1, are intended’ through executive clemency”. It argues that “[t]he clemency process . . . is well suited to the task of providing review and reconsideration”. The United States explains that “Clemency . . . is more than a matter of grace; it is part of the overall scheme for ensuring justice and fairness in the legal process” and that

“Clemency procedures are an integral part of the existing ‘laws and regulations’ of the United States through which errors are addressed”.

137. Specifically in the context of the present case, the United States contends that the following two points are particularly noteworthy:

“First, these clemency procedures allow for broad participation by advocates of clemency, including an inmate’s attorney and the sending state’s consular officer . . . Second, these clemency officials are not bound by principles of procedural default, finality, prejudice standards, or any other limitations on judicial review. They may consider any facts and circumstances that they deem appropriate and relevant, including specifically Vienna Convention claims.”

138. The Court would emphasize that the “review and reconsideration” prescribed by it in the LaGrand case should be effective. Thus it should “take[ ] account of the violation of the rights set forth in [the] Convention” (I.C.J. Reports 2001, p. 516, paras. 128 (7)) and guarantee that the violation and the possible prejudice caused by that violation will be fully examined and taken into account in the review and reconsideration process. Lastly, review and reconsideration should be both of the sentence and of the conviction.

139. Accordingly, in a situation of the violation of rights under Article 36, paragraph 1, of the Vienna Convention, the defendant raises his claim in this respect not as a case of “harm to a particular right essential to a fair trial” — a concept relevant to the enjoyment of due process rights under the United States Constitution — but as a case involving the infringement of his rights under Article 36, paragraph 1. The rights guaranteed under the Vienna Convention are treaty rights which the United States has undertaken to comply with in relation to the individual concerned, irrespective of the due process rights under United States constitutional law. In this regard, the Court would point out that what is crucial in the review and reconsideration process is the existence of a procedure which guarantees that full weight is given to the violation of the rights set forth in the Vienna Convention, whatever may be the actual outcome of such review and reconsideration.

140. As has been explained in paragraphs 128 to 134 above, the Court is of the view that, in cases where the breach of the individual rights of Mexican nationals under Article 36, paragraph 1 (b), of the Convention has resulted, in the sequence of judicial proceedings that has followed, in the individuals concerned being subjected to prolonged detention or convicted and sentenced to severe penalties, the legal consequences of this breach have to be examined and taken into account in the course of
review and reconsideration. The Court considers that it is the judicial process that is suited to this task.

141. The Court in the *LaGrand* case left to the United States the choice of means as to how review and reconsideration should be achieved, especially in the light of the procedural default rule. Nevertheless, the premise on which the Court proceeded in that case was that the process of review and reconsideration should occur within the overall judicial proceedings relating to the individual defendant concerned.

142. As regards the clemency procedure, the Court notes that this performs an important function in the administration of criminal justice in the United States and is "the historic remedy for preventing miscarriages of justice where judicial process has been exhausted" (*Herrera v. Collins*, 506 US 390 (1993) at pp. 411-412). The Court accepts that executive clemency, while not judicial, is an integral part of the overall scheme for ensuring justice and fairness in the legal process within the United States criminal justice system. It must, however, point out that what is at issue in the present case is not whether executive clemency as an institution is or is not an integral part of the "existing laws and regulations of the United States", but whether the clemency process as practised within the criminal justice systems of different states in the United States can, and of itself, qualify as an appropriate means for undertaking the effective "review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention", as the Court prescribed in the *LaGrand* Judgment (*I.C.J. Reports 2001*, p. 514, para. 125).

143. It may be true, as the United States argues, that in a number of cases "clemency in fact results in pardons of convictions as well as commutations of sentences". In that sense and to that extent, it might be argued that the facts demonstrated by the United States testify to a degree of effectiveness of the clemency procedures as a means of relieving defendants on death row from execution. The Court notes, however, that the clemency process, as currently practised within the United States criminal justice system, does not appear to meet the requirements described in paragraph 138 above and that it is therefore not sufficient in itself to serve as an appropriate means of "review and reconsideration" as envisaged by the Court in the *LaGrand* case. The Court considers nevertheless that appropriate clemency procedures can supplement judicial review and reconsideration, in particular where the judicial system has failed to take due account of the violation of the rights set forth in the Vienna Convention, as has occurred in the case of the three Mexican nationals referred to in paragraph 114 above.

144. Finally, the Court will consider the eighth submission of Mexico, in which it asks the Court to adjudge and declare:

"That the [United States] shall cease its violations of Article 36 of the Vienna Convention with regard to Mexico and its 52 nationals and shall provide appropriate guarantees and assurances that it shall take measures sufficient to achieve increased compliance with Article 36 (1) and to ensure compliance with Article 36 (2)."

145. In this respect, Mexico recognizes the efforts by the United States to raise awareness of consular assistance rights, through the distribution of pamphlets and pocket cards and by the conduct of training programmes, and that the measures adopted by the United States to that end were noted by the Court in its decision in the *LaGrand* case (*I.C.J. Reports 2001*, pp. 511-513, paras. 121, 123-124). Mexico, however, notes with regret that

"the United States programme, whatever its components, has proven ineffective to prevent the regular and continuing violation by its competent authorities of consular notification and assistance rights guaranteed by Article 36".

146. In particular, Mexico claims in relation to the violation of the obligations under Article 36, paragraph 1, of the Vienna Convention:

"First, competent authorities of the United States regularly fail to provide the timely notification required by Article 36 (1) (b) and thereby to [sic] frustrate the communication and access contemplated by Article 36 (1) (a) and the assistance contemplated by Article 36 (1) (c). These violations continue notwithstanding the Court's judgment in *LaGrand* and the programme described there.

Mexico has demonstrated, moreover, that the pattern of regular non-compliance continues. During the first half of 2003, Mexico has identified at least one hundred cases in which Mexican nationals have been arrested by competent authorities of the United States for serious felonies but not timely notified of their consular notification rights."

Furthermore, in relation to the violation of the obligations under Article 36, paragraph 2, of the Vienna Convention, Mexico claims:

"Second, courts in the United States continue to apply doctrines of procedural default and non-retroactivity that prevent those courts from reaching the merits of Vienna Convention claims, and those courts that have addressed the merits of those claims (because no procedural bar applies) have repeatedly held that no remedy is avail-
able for a breach of the obligations of Article 36 . . . Likewise, the United States' reliance on clemency proceedings to meet LaGrand's requirement of review and reconsideration represents a deliberate decision to allow these legal rules and doctrines to continue to have their inevitable effect. Hence, the United States continues to breach Article 36 (2) by failing to give full effect to the purposes for which the rights accorded under Article 36 are intended."

147. The United States contradicts this contention of Mexico by claiming that "its efforts to improve the conveyance of information about consular notification are continuing unabated and are achieving tangible results". It contends that Mexico "fails to establish a 'regular and continuing' pattern of breaches of Article 36 in the wake of LaGrand".

148. Mexico emphasizes the necessity of requiring the cessation of the wrongful acts because, it alleges, the violation of Article 36 with regard to Mexico and its 52 nationals still continues. The Court considers, however, that Mexico has not established a continuing violation of Article 36 of the Vienna Convention with respect to the 52 individuals referred to in its final submissions; it cannot therefore uphold Mexico's claim seeking cessation. The Court would moreover point out that, inasmuch as these 52 individual cases are at various stages of criminal proceedings before the United States courts, they are in the state of "pendente lite"; and the Court has already indicated in respect of them what it regards as the appropriate remedy, namely review and reconsideration by reference to the breach of the Vienna Convention.

149. The Mexican request for guarantees of non-repetition is based on its contention that beyond these 52 cases there is a "regular and continuing" pattern of breaches by the United States of Article 36. In this respect, the Court observes that there is no evidence properly before it that would establish a general pattern. While it is a matter of concern that, even in the wake of the LaGrand Judgment, there remain a substantial number of cases of failure to carry out the obligation to furnish consular information to Mexican nationals, the Court notes that the United States has been making considerable efforts to ensure that its law enforcement authorities provide consular information to every arrested person they know or have reason to believe is a foreign national. Especially at the stage of pre-trial consular information, it is noteworthy that the United States has been making good faith efforts to implement the obligations incumbent upon it under Article 36, paragraph 1, of the Vienna Convention, through such measures as a new outreach programme launched in 1998, including the dissemination to federal, state and local authorities of the State Department booklet mentioned above in para-

graph 63. The Court wishes to recall in this context what it has said in paragraph 64 about efforts in some jurisdictions to provide the information under Article 36, paragraph 1 (b), in parallel with the reading of the "Miranda rights".

150. The Court would further note in this regard that in the LaGrand case Germany sought, inter alia, "a straightforward assurance that the United States will not repeat its unlawful acts" (I.C.J. Reports 2001, p. 511, para. 120). With regard to this general demand for an assurance of non-repetition, the Court stated:

"If a State, in proceedings before this Court, repeatedly refers to substantial activities which it is carrying out in order to achieve compliance with certain obligations under a treaty, then this expresses a commitment to follow through with the efforts in this regard. The programme in question certainly cannot provide an assurance that there will never again be a failure by the United States to observe the obligations of notification under Article 36 of the Vienna Convention. But no State could give such a guarantee and Germany does not seek it. The Court considers that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), must be regarded as meeting Germany's request for a general assurance of non-repetition." (I.C.J. Reports 2001, pp. 512-513, para. 124.)

The Court believes that as far as the request of Mexico for guarantees and assurances of non-repetition is concerned, what the Court stated in this passage of the LaGrand Judgment remains applicable, and therefore meets that request.

* * *

151. The Court would now re-emphasize a point of importance. In the present case, it has had occasion to examine the obligations of the United States under Article 36 of the Vienna Convention in relation to Mexican nationals sentenced to death in the United States. Its findings as to the duty of review and reconsideration of convictions and sentences have been directed to the circumstance of severe penalties being imposed on foreign nationals who happen to be of Mexican nationality. To avoid any ambiguity, it should be made clear that, while what the Court has stated concerns the Mexican nationals whose cases have been brought before it by Mexico, the Court has been addressing the issues of principle raised in
the course of the present proceedings from the viewpoint of the general
application of the Vienna Convention, and there can be no question of
making an a contrario argument in respect of any of the Court's findings
in the present Judgment. In other words, the fact that in this case the
Court's ruling has concerned only Mexican nationals cannot be taken to
imply that the conclusions reached by it in the present Judgment: do not
apply to other foreign nationals finding themselves in similar situations in
the United States.

* * *

152. By its Order of 5 February 2003 the Court, acting on a request by
Mexico, indicated by way of provisional measure that

"The United States of America shall take all measures necessary
to ensure that Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno
Ramos and Mr. Osvaldo Torres Aguilara are not executed pending
final judgment in these proceedings" (I.C.J. Reports 2003, pp. 91-92,
para. 59 (I)) (see paragraph 21 above).

The Order of 5 February 2003, according to its terms and to Article 41 of
the Statute, was effective pending final judgment, and the obligations of
the United States in that respect are, with effect from the date of the
present Judgment, replaced by those declared in this Judgment. The
Court has rejected Mexico's submission that, by way of restitutio in integrum, the United States is obliged to annul the convictions and sentences of
all of the Mexican nationals the subject of its claims (see above, para-
graphs 115-125). The Court has found that, in relation to these three persons (among others), the United States has committed breaches of its
obligations under Article 36, paragraph 1 (b), of the Vienna Convention
and Article 36, paragraphs 1 (a) and (c), of that Convention, moreover,
in respect of those three persons alone, the United States has also
committed breaches of Article 36, paragraph 2, of the said Convention.
The review and reconsideration of conviction and sentence required by
Article 36, paragraph 2, which is the appropriate remedy for breaches of
Article 36, paragraph 1, has not been carried out. The Court considers
that in these three cases it is for the United States to find an appropriate
remedy having the nature of review and reconsideration according to the
criteria indicated in paragraphs 138 et seq. of the present Judgment.

* * *

153. For these reasons,

THE COURT,

(1) By thirteen votes to two,
breached the obligations incumbent upon it under Article 36, paragraph 1 (a) and (c), of the Convention;

**In favour:** President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshcheticin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepúlveda;

**Against:** Judge Parra-Aranguren;

(7) By fourteen votes to one,

*Finds* that, in relation to the 34 Mexican nationals referred to in paragraph 106 (4) above, the United States of America deprived the United Mexican States of the right, in a timely fashion, to arrange for legal representation of those nationals, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1 (c), of the Convention;

**In favour:** President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshcheticin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepúlveda;

**Against:** Judge Parra-Aranguren;

(8) By fourteen votes to one,

*Finds* that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Oswaldo Torres Aguilara, after the violations referred to in subparagraph (4) above had been established in respect of those individuals, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 2, of the Convention;

**In favour:** President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshcheticin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepúlveda;

**Against:** Judge Parra-Aranguren;

(9) By fourteen votes to one,

*Finds* that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals referred to in subparagraphs (4), (5), (6) and (7) above, by taking account both of the violation of the rights set forth in Article 36 of the Convention and of paragraphs 138 to 141 of this Judgment;

**In favour:** President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshcheticin, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepúlveda;

**Against:** Judge Parra-Aranguren;

(10) Unanimously,

*Takes note* of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Vienna Convention; and *finds* that this commitment must be regarded as meeting the request by the United Mexican States for guarantees and assurances of non-repetition;

(11) Unanimously,

*Finds* that, should Mexican nationals nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America shall provide, by means of its own choosing, review and reconsideration of the conviction and sentence, so as to allow full weight to be given to the violation of the rights set forth in the Convention, taking account of paragraphs 138 to 141 of this Judgment.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirty-first day of March, two thousand and four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Mexican States and the Government of the United States of America, respectively.

(Signed) Su Jiuyong,
President.

(Signed) Philippe COUVREUR,
Registrar.

President Shi and Vice-President Ranjeva append declarations to the Judgment of the Court; Judges Vereshcheticin, Parra-Aranguren and Tomka and Judge ad hoc Sepulveda append separate opinions to the Judgment of the Court.

(Initialled) J.Y.S.
(Initialled) Ph.C.
SUPREME COURT OF THE UNITED STATES

SYNOPSIS OF THE CASE

SANCHEZ-LLAMAS v. OREGON

CERTIORARI TO THE SUPREME COURT OF OREGON


Article 36(1)(b) of the Vienna Convention on Consular Relations provides that if a person detained by a foreign country “so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State” of such detention, and “inform the [detainee] of his rights under this sub-paragraph.” Article 36(2) specifies: “The rights referred to in paragraph 1 . . . shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso . . . that the said laws . . . must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.” Along with the Convention, the United States ratified the Optional Protocol Concerning the Compulsory Settlement of Disputes, which provides: “Disputes arising out of the . . . Convention shall lie within the compulsory jurisdiction of the International Court of Justice [(ICJ)].” The United States withdrew from the Protocol on March 7, 2005.

Petitioner in No. 04–10566, Moises Sanchez-Llamas, is a Mexican national. When he was arrested after an exchange of gunfire with police, officers did not inform him that he could ask to have the Mexican Consulate notified of his detention. During interrogation, he made incriminating statements regarding the shootout. Before his trial for attempted murder and other offenses, Sanchez-Llamas moved to suppress those statements on the ground, inter alia, that the authorities had failed to comply with Article 36. The state court denied that motion, and Sanchez-Llamas was convicted and sentenced to prison, and the Oregon Court of Appeals affirmed. The State Su-

*Together with No. 05–51, Bustillo v. Johnson, Director, Virginia Department of Corrections, on certiorari to the Supreme Court of Virginia.

SYLLABUS

The Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued.

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.


Held: Even assuming without deciding that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation, and a State may apply its regular procedural default rules to Convention claims. Pp. 7–25.

(a) Because petitioners are not in any event entitled to relief, the Court need not resolve whether the Convention grants individuals enforceable rights, but assumes, without deciding, that Article 36 does so. Pp. 7–8.

(b) Neither the Convention itself nor this Court’s precedents applying the exclusionary rule support suppression of a defendant’s statements to police as a remedy for an Article 36 violation.

The Convention does not mandate suppression or any other specific remedy, but expressly leaves Article 36’s implementation to domestic law: Article 36 rights must “be exercised in conformity with the laws . . . of the receiving State.” Art. 36(2). Sanchez-Llamas’ argument that suppression is appropriate under United States law and should be required under the Court’s authority to develop remedies for the enforcement of federal law in state-court criminal proceedings is rejected. “It is beyond dispute that [this Court does] not hold a supervisory power over the [state] courts.” Dickerson v. United States, 530 U. S. 428, 438. The exclusionary rule cases on which Sanchez-Llamas principally relies are inapplicable because they rest on the Court’s supervisory authority over federal courts.

The Court’s authority to create a judicial remedy applicable in state court must therefore lie, if anywhere, in the treaty itself. Where a treaty provides for a particular judicial remedy, courts must apply it as a requirement of federal law. Cf., e.g., United States v. Giordano, 416 U. S. 505, 524–525. But where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own. Even if the “full effect” language of Article 36(2) implicitly
Syllabus

Second, Bustillo asserts that since Breard, the ICJ’s LaGrand and Avena decisions have interpreted the Convention to preclude the application of procedural default rules to Article 36 claims. Although the ICJ’s interpretation deserves “respectful consideration,” Breard, supra, at 375, it does not compel the Court to reconsider Breard’s understanding of the Convention. “The judicial Power of the United States” is “vested in one supreme Court … and … inferior courts.” U.S. Const., Art. III, §1. That “power . . . extend[s] to . . . treaties,” Art. III, §2, and includes the duty “to say what the law is,” Marbury v. Madison, 1 Cranch 137, 177. If treaties are to be given effect as federal law, determining their meaning as a matter of federal law “is emphatically the province and duty of the judicial department,” headed by the “one supreme Court.” Ibid. Nothing in the ICJ’s structure or purpose suggests that its interpretations were intended to be binding on U.S. courts. Even according “respectful consideration,” the ICJ’s interpretation cannot overcome the plain import of Article 36(2), which states that the rights it implements “shall be exercised in conformity with the laws . . . of the receiving State.” In the United States, this means that the rule of procedural default—which applies even to claimed violations of our own Constitution, see Engle v. Isaac, 456 U.S. 107, 129—applies also to Vienna Convention claims. Bustillo points to nothing in the drafting history of Article 36 or in the contemporary practice of other Convention signatories that undermines this conclusion. LaGrand’s conclusion that applying the procedural default rule denies “full effect” to the purposes of Article 36, by preventing courts from attaching legal significance to an Article 36 violation, is inconsistent with the basic framework of an adversary system. Such a system relies chiefly on the parties to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication. See Castro v. United States, 540 U.S. 375, 386. Procedural default rules generally take on greater importance in an adversary system than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other Convention signatories. Under the ICJ’s reading of “full effect,” Article 36 claims could trump not only procedural default rules, but any number of other rules requiring parties to present their legal claims at the appropriate time for adjudication, such as statutes of limitations and prohibitions against filing successive habeas petitions. This sweeps too broadly, for it reads the “full effect” proviso in a way that leaves little room for the clear instruction in Article 36(2) that Article 36 rights “be exercised in conformity with the laws . . . of the receiving State.” A comparison with a suspect’s rights under Miranda v. Arizona, 384 U.S. 436,处置 of Bustillo’s “full effect” claim. Although the failure to inform defendants of their
right to consular notification may prevent them from becoming aware of their Article 36 rights and asserting them at trial, precisely the same thing is true of Miranda rights. Nevertheless, if a defendant fails to raise his Miranda claim at trial, procedural default rules may bar him from raising the claim in a subsequent postconviction proceeding. Wainwright v. Sykes, 433 U.S. 72, 87. Bustillo's attempt to analogize an Article 36 claim to a claim under Brady v. Maryland, 373 U.S. 83, that the prosecution failed to disclose exculpatory evidence is inapt. Finally, his argument that Article 36 claims are most appropriately raised post-trial or on collateral review under Massaro v. United States, 538 U.S. 500, is rejected. See Dickerson, supra, at 438. Pp. 15–25.

(d) The Court's holding in no way disparages the Convention's importance. It is no slight to the Convention to deny petitioners' claims under the same principles this Court would apply to claims under an Act of Congress or the Constitution itself. P. 25.

No. 04–10566, 338 Ore. 267, 108 P. 3d 573, and No. 05–51, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion, in which STEVENS and SOUTER, JJ., joined, and in which GINSBURG, J., joined as to Part II.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 04–10566 and 05–51

MOISES SANCHEZ-LLAMAS, PETITIONER

v.

OREGON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

MARIO A. BUSTILLO, PETITIONER

04–10566

v.

GENE M. JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[June 28, 2006]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Article 36 of the Vienna Convention on Consular Relations (Vienna Convention or Convention), Apr. 24, 1963, [1970] 21 U. S. T. 77, 100–101, T. I. A. S. No. 6820, addresses communication between an individual and his consular officers when the individual is detained by authorities in a foreign country. These consolidated cases concern the availability of judicial relief for violations of Article 36. We are confronted with three questions. First, does Article 36 create rights that defendants may invoke against the detaining authorities in a criminal trial or in a postconviction proceeding? Second, does a violation of Article 36 require suppression of a defendant's statements

Cite as: 548 U. S. ____ (2006)
to police? *Third*, may a State, in a postconviction proceeding, treat a defendant’s Article 36 claim as defaulted because he failed to raise the claim at trial? We conclude, even assuming the Convention creates judicially enforceable rights, that suppression is not an appropriate remedy for a violation of Article 36, and that a State may apply its regular rules of procedural default to Article 36 claims. We therefore affirm the decisions below.

I

A

The Vienna Convention was drafted in 1963 with the purpose, evident in its preamble, of “contribut[ing] to the development of friendly relations among nations, irrespective of their differing constitutional and social systems.” 21 U.S.T., at 79. The Convention consists of 79 articles regulating various aspects of consular activities. At present, 170 countries are party to the Convention. The United States, upon the advice and consent of the Senate, ratified the Convention in 1969. *Id.*, at 77.

Article 36 of the Convention concerns consular officers’ access to their nationals detained by authorities in a foreign country. The article provides that “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.” Art. 36(1)(b), *id.*, at 101.1 In other words, when a national of one country is detained by authorities in another, the authorities must notify the consular officers of the detainee’s home country if the detainee so requests. Article 36(1)(b) further states that “[t]he said authorities shall inform the person concerned [*i.e.*, the detainee] without delay of his rights under this sub-paragraph.” *Ibid.* The Convention also provides guidance regarding how these requirements, and the other requirements of Article 36, are to be implemented:

“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.” Art. 36(2), *ibid.*

1In its entirety, Article 36 of the Vienna Convention states:

“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 also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

“(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 judgment. 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.” 21 U.S.T., at 100–101.
Along with the Vienna Convention, the United States ratified the Optional Protocol Concerning the Compulsory Settlement of Disputes (Optional Protocol or Protocol), Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820. The Optional Protocol provides that “[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice [ICJ],” and allows parties to the Protocol to bring such disputes before the ICJ. Id., at 326. The United States gave notice of its withdrawal from the Optional Protocol on March 7, 2005. Letter from Condi-leezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations.

Petitioner Moises Sanchez-Llamas is a Mexican national. In December 1999, he was involved in an exchange of gunfire with police in which one officer suffered a gun-shot wound in the leg. Police arrested Sanchez-Llamas and gave him warnings under Miranda v. Arizona, 384 U. S. 436 (1966), in both English and Spanish. At no time, however, did they inform him that he could ask to have the Mexican Consulate notified of his detention.

Shortly after the arrest and Miranda warnings, police interrogated Sanchez-Llamas with the assistance of an interpreter. In the course of the interrogation, Sanchez-Llamas made several incriminating statements regarding the shootout with police. He was charged with attempted aggravated murder, attempted murder, and several other offenses. Before trial, Sanchez-Llamas moved to suppress the statements he made to police. He argued that suppression was warranted because the statements were made involuntarily and because the authorities had failed to comply with Article 36 of the Vienna Convention. The trial court denied the motion. The case proceeded to trial, and Sanchez-Llamas was convicted and sentenced to 20½ years in prison.

He appealed, again arguing that the Vienna Convention violation required suppression of his statements. The Oregon Court of Appeals affirmed. Judgt. order reported at 191 Ore. App. 399, 84 P. 3d 1133 (2004). The Oregon Supreme Court also affirmed, concluding that Article 36 “does not create rights to consular access or notification that are enforceable by detained individuals in a judicial proceeding.” 338 Ore. 267, 276, 108 P. 3d 573, 578 (2005) (en banc). We granted certiorari. 546 U. S. ___ (2005).

C

Petitioner Mario Bustillo, a Honduran national, was with several other men at a restaurant in Springfield, Virginia, on the night of December 10, 1997. That evening, outside the restaurant, James Merry was struck in the head with a baseball bat as he stood smoking a cigarette. He died several days later. Several witnesses at the scene identified Bustillo as the assailant. Police arrested Bustillo the morning after the attack and eventually charged him with murder. Authorities never informed him that he could request to have the Honduran Consulate notified of his detention.

At trial, the defense pursued a theory that another man, known as “Sirena,” was responsible for the attack. Two defense witnesses testified that Bustillo was not the killer. One of the witnesses specifically identified the attacker as Sirena. In addition, a third defense witness stated that she had seen Sirena on a flight to Honduras the day after the victim died. In its closing argument before the jury, the prosecution dismissed the defense theory about Sirena. See App. in No. 05–51, p. 21 (“This whole Sirena thing, I don’t want to dwell on it too much. It’s very convenient that Mr. Sirena apparently isn’t available”). A jury convicted Bustillo of first-degree murder, and he was sentenced to 30 years in prison. His conviction and sen-
tence were affirmed on appeal.

After his conviction became final, Bustillo filed a petition for a writ of habeas corpus in state court. There, for the first time, he argued that authorities had violated his right to consular notification under Article 36 of the Vienna Convention. He claimed that if he had been advised of his right to confer with the Honduran Consulate, he "would have done so without delay." App. in No. 05–51, p. 60. Moreover, the Honduran Consulate executed an affidavit stating that "it would have endeavoured to help Mr. Bustillo in his defense" if he had learned of his detention prior to trial. Id., at 74. Bustillo insisted that the consulate could have helped him locate Sirena prior to trial. His habeas petition also argued, as part of a claim of ineffective assistance of counsel, that his attorney should have advised him of his right to notify the Honduran Consulate of his arrest and detention. 2

The state habeas court dismissed Bustillo's Vienna Convention claim as "procedurally barred" because he had failed to raise the issue at trial or on appeal. App. to Pet. for Cert. in No. 05–51, p. 43a. The court also denied Bustillo's claim of ineffective assistance of counsel, ruling that

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2 Bustillo's habeas petition also presented newly acquired evidence that tended to cast doubt on his conviction. Most notably, he produced a secretly recorded videotape in which Sirena admitted killing Berry and stated that Bustillo had been wrongly convicted. App. in No. 05–51, pp. 38, 54. In addition, Bustillo argued that the prosecution violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose that on the night of the crime, police had questioned a man named "Julio C. Osorio," who is now known to be the same man as "Sirena." The police report concerning the encounter stated that Sirena appeared to have ketchup on his pants. Bustillo contends that these stains might in fact have been the victim's blood. The Commonwealth disputes this. The state habeas court found "no evidence of any transfer of the victim's blood to the assailant," and concluded that the undisclosed encounter between police and Sirena was not material under Brady. App. in No. 05–51, p. 167.
to relief on their claims, we find it unnecessary to resolve
the question whether the Vienna Convention grants indi-
viduals enforceable rights. Therefore, for purposes of
addressing petitioners’ claims, we assume, without decid-
ing, that Article 36 does grant Bustillo and Sanchez-
Llamas such rights.

A

Sanchez-Llamas argues that the trial court was re-
quired to suppress his statements to police because au-
thorities never told him of his rights under Article 36. He
refrains, however, from arguing that the Vienna Conven-
tion itself mandates suppression. We think this a wise
concession. The Convention does not prescribe specific
remedies for violations of Article 36. Rather, it expressly
leaves the implementation of Article 36 to domestic law:
Rights under Article 36 are to “be exercised in conformity
with the laws and regulations of the receiving State.” Art.
36(2), 21 U. S. T., at 101. As far as the text of the Conven-
tion is concerned, the question of the availability of the
exclusionary rule for Article 36 violations is a matter of
domestic law.

It would be startling if the Convention were read to
require suppression. The exclusionary rule as we know it
is an entirely American legal creation. See Bivens v. Six
(Burger, C. J., dissenting) (the exclusionary rule “is unique
to American jurisprudence”). More than 40 years after
the drafting of the Convention, the automatic exclusionary
rule applied in our courts is still “universally rejected” by
other countries. Bradley, Mapp Goes Abroad, 52 Case W.
Res. L. Rev. 375, 399–400 (2001); see also Zicherman v.
understanding “traditionally considered” as an aid to
treaty interpretation). It is implausible that other signato-
ries to the Convention thought it to require a remedy that
nearly all refuse to recognize as a matter of domestic law.
There is no reason to suppose that Sanchez-Llamas would
be afforded the relief he seeks here in any of the other 169
countries party to the Vienna Convention.3

For good reason then, Sanchez-Llamas argues only that
suppression is required because it is the appropriate
remedy for an Article 36 violation under United States
law, and urges us to require suppression for Article 36
violations as a matter of our “authority to develop reme-
dies for the enforcement of federal law in state-court
criminal proceedings.” Reply Brief for Petitioner in No.

3See Declaration of Ambassador Maura A. Harty, Annex 4 to
Counter-Memorial of the United States in Case Concerning Avena and
other Mexican Nationals (Mex. v. U. S.), 2004 I. C. J. No. 128, p. A386,
¶41 (Oct. 25, 2003) (Harty Declaration) (“With the possible exception
of Brazil, we are not aware of a single country that has a law, regulation
or judicial decision requiring that a statement taken before consular
notification and access automatically must be excluded from use at trial” (footnote omitted)). According to the Harty Declaration, the
American Embassy in Brazil has been advised that Brazil considers
consular notification to be a right under the Brazilian Constitution.
Neither the declaration nor the parties point to a case in which a
Brazilian court has suppressed evidence because of a violation of that
right.

In a few cases, as several amici point out, the United Kingdom and
Australia appear to have applied a discretionary rule of exclusion for
violations of domestic statutes implementing the Vienna Convention.
See Brief for United States as Amicus Curiae 26, and n. 9; Brief for
National Association of Criminal Defense Lawyers as Amicus Curiae
16–23. The dissent similarly relies on two cases from Australia, post,
at 32 (opinion of BREYER, J.) (citing Tan Seng Kiah v. Queen (2001) 160
notification rights are governed by a domestic statute that provides
rights beyond those required by Article 36 itself. See Crimes Act, No.
12, 1914, §23p (Australia). The Canadian case on which the dissent
relies, post, at 32, denied suppression, and concerned only the court’s
general discretionary authority to exclude a confession “whose admis-
sion would adversely affect the fairness of an accused’s trial.” Queen v.
Opinion of the Court

04–10566, p. 11.

For their part, the State of Oregon and the United States, as amicus curiae, contend that we lack any such authority over state-court proceedings. They argue that our cases suppressing evidence obtained in violation of federal statutes are grounded in our supervisory authority over the federal courts—an authority that does not extend to state-court proceedings. Brief for Respondent in No. 04–10566, pp. 42–43; Brief for United States 32–34; see McNabb v. United States, 318 U. S. 332, 341 (1943) (suppressing evidence for violation of federal statute requiring persons arrested without a warrant to be promptly presented to a judicial officer); Mallory v. United States, 354 U. S. 449 (1957) (suppressing evidence for violation of similar requirement of Fed. Rule Crim. Proc. 5(a)); Miller v. United States, 357 U. S. 301 (1958) (suppressing evidence obtained incident to an arrest that violated 18 U. S. C. §3109). Unless required to do so by the Convention itself, they argue, we cannot direct Oregon courts to exclude Sanchez-Llamas’ statements from his criminal trial.

To the extent Sanchez-Llamas argues that we should invoke our supervisory authority, the law is clear: “It is beyond dispute that we do not hold a supervisory power over the courts of the several States.” Dickerson v. United States, 530 U. S. 428, 438 (2000); see also Smith v. Phillips, 455 U. S. 209, 221 (1982) (“Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension”). The cases on which Sanchez-Llamas principally relies are inapplicable in light of the limited reach of our supervisory powers. Mallory and McNabb plainly rest on our supervisory authority. Mallory, supra, at 453; McNabb, supra, at 340. And while Miller is not clear about its authority for requiring suppression, we have understood it to have a similar basis. See Ker v. California, 374 U. S. 23, 31 (1963).

We also agree with the State of Oregon and the United States that our authority to create a judicial remedy applicable in state court must lie, if anywhere, in the treaty itself. Under the Constitution, the President has the power, “by and with the Advice and Consent of the Senate, to make Treaties.” Art. II, §2, cl. 2. The United States ratified the Convention with the expectation that it would be interpreted according to its terms. See Restatement (Third) of Foreign Relations Law of the United States §325(1) (1986) (“An international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose”). If we were to require suppression for Article 36 violations without some authority in the Convention, we would in effect be supplementing those terms by enlarging the obligations of the United States under the Convention. This is entirely inconsistent with the judicial function. Cf. The Amiable Isabella, 6 Wheat. 1, 71 (1821) (Story, J.) (“[T]o alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power, and not an exercise of judicial functions. It would be to make, and not to construe a treaty”).

Of course, it is well established that a self-executing treaty binds the States pursuant to the Supremacy Clause, and that the States therefore must recognize the force of the treaty in the course of adjudicating the rights of litigants. See, e.g., Hauenstein v. Lynham, 100 U. S. 483 (1880). And where a treaty provides for a particular judicial remedy, there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches. Courts must apply the remedy as a requirement of federal law. Cf. 18 U. S. C. §2515; United States v. Giordano, 416 U. S. 505, 524–525 (1974). But where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States.
through lawmaking of their own.

Sanchez-Llamas argues that the language of the Convention implicitly requires a judicial remedy because it states that the laws and regulations governing the exercise of Article 36 rights “must enable full effect to be given to the purposes for which the rights . . . are intended,” Art. 36(2), 21 U. S. T., at 101 (emphasis added). In his view, although “full effect” may not automatically require an exclusionary rule, it does require an appropriate judicial remedy of some kind. There is reason to doubt this interpretation. In particular, there is little indication that other parties to the Convention have interpreted Article 36 to require a judicial remedy in the context of criminal prosecutions. See Department of State Answers to Questions Posed by the First Circuit in United States v. Nai Fook Li, No. 97–2034 etc., p. A–9 (Oct. 15, 1999) (“We are unaware of any country party to the [Vienna Convention] that provides remedies for violations of consular notification through its domestic criminal justice system”).

Nevertheless, even if Sanchez-Llamas is correct that Article 36 implicitly requires a judicial remedy, the Convention equally states that Article 36 rights “shall be exercised in conformity with the laws and regulations of the receiving State.” Art. 36(2), 21 U. S. T., at 101. Under our domestic law, the exclusionary rule is not a remedy we apply lightly. “[O]ur cases have repeatedly emphasized that the rule’s ‘costly toll’ upon truth-seeking and law enforcement objectives presents a high obstacle for those urging application of the rule.” Pennsylvania Bd. of Probation and Parole v. Scott, 524 U. S. 357, 364–365 (1998). Because the rule’s social costs are considerable, suppression is warranted only where the rule’s “remedial objectives are thought most efficaciously served.” United States v. Leon, 468 U. S. 897, 908 (1984) (quoting United States v. Calandra, 414 U. S. 338, 348 (1974)).

We have applied the exclusionary rule primarily to deter constitutional violations. In particular, we have ruled that the Convention requires the exclusion of evidence obtained by certain violations of the Fourth Amendment, see Taylor v. Alabama, 457 U. S. 627, 694 (1982) (arrests in violation of the Fourth Amendment); Mapp v. Ohio, 367 U. S. 643, 655–657 (1961) (unconstitutional searches and seizures), and confessions exacted by police in violation of the right against compelled self-incrimination or due process, see Dickerson, 530 U. S., at 435 (failure to give Miranda warnings); Payne v. Arkansas, 356 U. S. 560, 568 (1958) (involuntary confessions).

The few cases in which we have suppressed evidence for statutory violations do not help Sanchez-Llamas. In those cases, the excluded evidence arose directly out of statutory violations that implicated important Fourth and Fifth Amendment interests. McNabb, for example, involved the suppression of incriminating statements obtained during a prolonged detention of the defendants, in violation of a statute requiring persons arrested without a warrant to be promptly presented to a judicial officer. We noted that the statutory right was intended to “avoid all the evil implications of secret interrogation of persons accused of crime,” 318 U. S., at 344, and later stated that McNabb was “responsive to the same considerations of Fifth Amendment policy that . . . face[d] us . . . as to the states” in Miranda, 384 U. S., at 463. Similarly, in Miller, we required suppression of evidence that was the product of a search incident to an unlawful arrest. 357 U. S., at 305; see California v. Hodari D., 499 U. S. 621, 624 (1991) (“We have long understood that the Fourth Amendment’s protection against ‘unreasonable . . . seizures’ includes seizure of the person”).

The violation of the right to consular notification, in contrast, is at best remotely connected to the gathering of evidence. Article 36 has nothing whatsoever to do with searches or interrogations. Indeed, Article 36 does not
guarantee defendants any assistance at all. The provision secures only a right of foreign nationals to have their consulate informed of their arrest or detention—not to have their consulate intervene, or to have law enforcement authorities cease their investigation pending any such notice or intervention. In most circumstances, there is likely to be little connection between an Article 36 violation and evidence or statements obtained by police.

Moreover, the reasons we often require suppression for Fourth and Fifth Amendment violations are entirely absent from the consular notification context. We require exclusion of coerced confessions both because we disapprove of such coercion and because such confessions tend to be unreliable. Watkins v. Souders, 449 U. S. 341, 347 (1981). We exclude the fruits of unreasonable searches on the theory that without a strong deterrent, the constraints of the Fourth Amendment might be too easily disregarded by law enforcement. Elkins v. United States, 364 U. S. 206, 217 (1960). The situation here is quite different. The failure to inform a defendant of his Article 36 rights is unlikely, with any frequency, to produce unreliable confessions. And unlike the search-and-seizure context—where the need to obtain valuable evidence may tempt authorities to transgress Fourth Amendment limitations—police win little, if any, practical advantage from violating Article 36. Suppression would be a vastly disproportionate remedy for an Article 36 violation.

Sanchez-Llamas counters that the failure to inform defendants of their right to consular notification gives them “a misleadingly incomplete picture of [their] legal options,” Brief for Petitioner in No. 04–10566, p. 42, and that suppression will give authorities an incentive to abide by Article 36.

Leaving aside the suggestion that it is the role of police generally to advise defendants of their legal options, we think other constitutional and statutory requirements effectively protect the interests served, in Sanchez-Llamas’ view, by Article 36. A foreign national detained on suspicion of crime, like anyone else in our country, enjoys under our system the protections of the Due Process Clause. Among other things, he is entitled to an attorney, and is protected against compelled self-incrimination. See Wong Wing v. United States, 163 U. S. 228, 238 (1896) (“[A]ll persons within the territory of the United States are entitled to the protection guaranteed by” the Fifth and Sixth Amendments). Article 36 adds little to these “legal options,” and we think it unnecessary to apply the exclusionary rule where other constitutional and statutory protections—many of them already enforced by the exclusionary rule—safeguard the same interests Sanchez-Llamas claims are advanced by Article 36.

Finally, suppression is not the only means of vindicating Vienna Convention rights. A defendant can raise an Article 36 claim as part of a broader challenge to the voluntariness of his statements to police. If he raises an Article 36 violation at trial, a court can make appropriate accommodations to ensure that the defendant secures, to the extent possible, the benefits of consular assistance. Of course, diplomatic avenues—the primary means of enforcing the Convention—also remain open.

In sum, neither the Vienna Convention itself nor our precedents applying the exclusionary rule support suppression of Sanchez-Llamas’ statements to police.

B

The Virginia courts denied petitioner Bustillo’s Article 36 claim on the ground that he failed to raise it at trial or on direct appeal. The general rule in federal habeas cases is that a defendant who fails to raise a claim on direct appeal is barred from raising the claim on collateral review. See Massaro v. United States, 538 U. S. 500, 504 (2003); Bousley v. United States, 523 U. S. 614, 621 (1998).
There is an exception if a defendant can demonstrate both “cause” for not raising the claim at trial, and “prejudice” from not having done so. Massaro, supra, at 504. Like many States, Virginia applies a similar rule in state post-conviction proceedings, and did so here to bar Bustillo’s Vienna Convention claim. Normally, in our review of state-court judgments, such rules constitute an adequate and independent state-law ground preventing us from reviewing the federal claim. Coleman v. Thompson, 501 U.S. 722, 729 (1991). Bustillo contends, however, that state procedural default rules cannot apply to Article 36 claims. He argues that the Convention requires that Article 36 rights be given “full effect” and that Virginia’s procedural default rules “prevented any effect (much less ‘full effect’) from being given to” those rights. Brief for Petitioner in No. 05–51, p. 35.

This is not the first time we have been asked to set aside procedural default rules for a Vienna Convention claim. Respondent Johnson and the United States persuasively argue that this question is controlled by our decision in Breaux v. Greene, 523 U.S. 371 (1998) (per curiam). In Breaux, the petitioner failed to raise an Article 36 claim in state court—at trial or on collateral review—and then sought to have the claim heard in a subsequent federal habeas proceeding. Id., at 375. He argued that “the Convention is the ‘supreme law of the land’ and thus trumps the procedural default doctrine.” Ibid. We rejected this argument as “plainly incorrect,” for two reasons. Ibid. First, we observed, “it has been recognized in international law that, absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State.” Ibid. Furthermore, we reasoned that while treaty protections such as Article 36 may constitute supreme federal law, this is “no less true of provisions of the Constitution itself, to which rules of procedural default apply.” Id., at
“full effect” to the purposes of the Convention, as required by Article 36. The ICJ agreed, explaining that the defendants had procedurally defaulted their claims “because of the failure of the American authorities to comply with their obligation under Article 36.” LaGrand, supra, at 497, ¶91; see also Avina, supra, ¶113. Application of the procedural default rule in such circumstances, the ICJ reasoned, “prevented [courts] from attaching any legal significance” to the fact that the violation of Article 36 kept the foreign governments from assisting in their nationals’ defense. LaGrand, supra, at 497, ¶91; see also Avina, supra, ¶113.

Bustillo argues that LaGrand and Avina warrant revisiting the procedural default holding of Breard. In a similar vein, several amici contend that “the United States is obligated to comply with the Convention, as interpreted by the ICJ.” Brief for ICJ Experts 11 (emphases added). We disagree. Although the ICJ’s interpretation deserves “respectful consideration,” Breard, supra, at 375, we conclude that it does not compel us to reconsider our understanding of the Convention in Breard.4

Under our Constitution, “[t]he judicial Power of the United States” is “vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Art. III, §1. That “judicial Power . . . extend[s] to . . . Treaties.” Id., §2. And, as Chief Justice Marshall famously explained, that judicial power includes the duty “to say what the law is.” Marbury v. Madison, 1 Cranch 137, 177 (1803). If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law “is emphatically the province and duty of the judicial department,” headed by the “one supreme Court” established by the Constitution. Ibid.; see also Williams v. Taylor, 529 U.S. 362, 378–379 (2000) (opinion of STEVENS, J.) (“At the core of [the judicial] power is the federal courts’ independent responsibility—indeed from its coequal branches in the Federal Government, and independent from the separate authority of the several States—to interpret federal law”). It is against this background that the United States ratified, and the Senate gave its advice and consent to, the various agreements that govern referral of Vienna Convention disputes to the ICJ.

Nothing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts.5 The ICJ’s decisions have “no binding force

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4 The dissent, in light of LaGrand and Avina, “would read Breard . . . as not saying that the Convention never trumps any procedural default rule.” Post, at 26 (opinion of BREYER, J.). This requires more than “reading an exception into Breard’s language,” post, at 27, amounting instead to overruling Breard’s plain holding that the Convention does not trump the procedural default doctrine. While the appeal of such a course to a Breard dissenter may be clear, see 523 U.S., at 380 (BREYER, J., dissenting), “respectful consideration” of precedent should begin at home.

5 The dissent’s extensive list of lower court opinions that have “looked to the ICJ for guidance,” post, at 21–22, is less impressive than first appears. Many of the cited opinions merely refer to, or briefly describe, ICJ decisions without in any way relying on them as authority. See, e.g., Committee of United States Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 932, 935 (CADC 1988); Conservation Law Foundation of New England v. Secretary of Interior, 790 F.2d 965, 967 (CA1 1986); Narejji v. Civiletti, 617 F.2d 745, 748 (CADC 1979); Doggs v. Richardson, 555 F.2d 848, 849 (CADC 1976); Rogers v. Societe Internationale Pour Participations Industrielles et Commerciales, S.A., 278 F.2d 268, 273, n. 3 (CADC 1960) (Fahy, J., dissenting). Others cite ICJ opinions alongside law review articles for general propositions about international law. See, e.g., McKesson Corp. v. Islamic Republic of Iran, 52 F.3d 346, 352 (CADC 1995); Prince v. Federal Republic of Germany, 26 F.3d 1166, 1180, 1184 (CADC 1994) (Wald, J., dissenting); Sadat v. Mertes, 615 F.2d 1176, 1187, n. 14 (CA7 1980); United States v. Postal, 589 F.2d 862, 869 (CA5 1979). Moreover, all but two of the cited decisions from this Court concern technical issues of boundary demarcation. See post, at 21.
except between the parties and in respect of that particular case,” Statute of the International Court of Justice, Art. 59, 59 Stat. 1062, T.S. No. 993 (1945) (emphasis added). Any interpretation of law the ICJ renders in the course of resolving particular disputes is thus not binding precedent even as to the ICJ itself; there is accordingly little reason to think that such interpretations were intended to be controlling on our courts. The ICJ’s principal purpose is to arbitrate particular disputes between national governments. Id., at 1055 (ICJ is “the principal judicial organ of the United Nations”); see also Art. 34, id., at 1059 (“Only states [i.e., countries] may be parties in cases before the Court”). While each member of the United Nations has agreed to comply with decisions of the ICJ “in any case to which it is a party,” United Nations Charter, Art. 94(1), 59 Stat. 1051, T. S. No. 933 (1945), the Charter’s procedure for noncompliance—referral to the Security Council by the aggrieved state—contemplates quintessentially international remedies, Art. 94(2), ibid.

In addition, “[w]hile courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight.” Kolovrat v. Oregon, 366 U.S. 187, 194 (1961). Although the United States has agreed to “discharge its international obligations” in having state courts give effect to the decision in Avena, it has not taken the view that the ICJ’s interpretation of Article 36 is binding on our courts. President Bush, Memorandum for the Attorney General (Feb. 28, 2005), App. to Brief for United States as Amicus Curiae in Medellín v. Dretke, O. T. 2004, No. 04–5928, p. 9a. Moreover, shortly after Avena, the United States withdrew from the Optional Protocol concerning Vienna Convention disputes. Whatever the effect of Avena and LaGrand before this withdrawal, it is doubtful that our courts should give decisive weight to the interpretation of a tribunal whose jurisdiction in this area is no longer recognized by the United States.

LaGrand and Avena are therefore entitled only to the “respectful consideration” due an interpretation of an international agreement by an international court. Breeze, 523 U.S., at 375. Even according such consideration, the ICJ’s interpretation cannot overcome the plain import of Article 36. As we explained in Breeze, the procedural rules of domestic law generally govern the implementation of an international treaty. Ibid. In addition, Article 36 makes clear that the rights it provides “shall be exercised in conformity with the laws and regulations of the receiving State” provided that “full effect . . . be given to the purposes for which the rights accorded under this Article are intended.” Art. 36(2), 21 U.S.T., at 101. In the United States, this means that the rule of procedural default—which applies even to claimed violations of our Constitution, see Engle v. Isaac, 456 U.S. 107, 129 (1982)—applies also to Vienna Convention claims. Bustillo points to nothing in the drafting history of Article 36 or in the contemporary practice of other signatories that undermines this conclusion.

The ICJ concluded that where a defendant was not notified of his rights under Article 36, application of the procedural default rule failed to give “full effect” to the purposes of Article 36 because it prevented courts from attaching “legal significance” to the Article 36 violation. LaGrand, 2001 I. C. J., at 497–498, ¶¶90–91. This reasoning overlooks the importance of procedural default rules in an adversary system, which relies chiefly on the parties to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication. See Castro v. United States, 540 U.S. 375, 386 (2003) (SCALIA, J., concurring in part and concurring in judgment) (“Our adversary system is designed around the premise that the parties know what is best for them, and
are responsible for advancing the facts and arguments entitling them to relief”). Procedural default rules are designed to encourage parties to raise their claims promptly and to vindicate “the law’s important interest in the finality of judgments.” Massaro, 538 U.S., at 504. The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim. As a result, rules such as procedural default routinely deny “legal significance”—in the Avena and LaGrand sense—to otherwise viable legal claims.

Procedural default rules generally take on greater importance in an adversary system such as ours than in the sort of magistrate-directed, inquisitorial legal system characteristic of many of the other countries that are signatories to the Vienna Convention. “What makes a system adversarial rather than inquisitorial is . . . the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” McNeil v. Wisconsin, 501 U. S. 171, 181, n. 2 (1991). In an inquisitorial system, the failure to raise a legal error can in part be attributed to the magistrate, and thus to the state itself. In our system, however, the responsibility for failing to raise an issue generally rests with the parties themselves.

The ICJ’s interpretation of Article 36 is inconsistent with the basic framework of an adversary system. Under the ICJ’s reading of “full effect,” Article 36 claims could trump not only procedural default rules, but any number of other rules requiring parties to present their legal claims at the appropriate time for adjudication. If the State’s failure to inform the defendant of his Article 36 rights generally excuses the defendant’s failure to comply with relevant procedural rules, then presumably rules such as statutes of limitations and prohibitions against filing successive habeas petitions must also yield in the face of Article 36 claims. This sweeps too broadly, for it reads the “full effect” proviso in a way that leaves little room for Article 36’s clear instruction that Article 36 rights “shall be exercised in conformity with the laws and regulations of the receiving State.” Art. 36(2), 21 U. S. T., at 101.6

6The dissent would read the ICJ’s decisions to require that procedural default rules give way only where “the State is unwilling to provide some other effective remedy, for example (if the lawyer acts incompetently in respect to Convention rights of which the lawyer was aware) an ineffective-assistance-of-counsel claim.” Post, at 25 (opinion of BREYER, J.). But both LaGrand and Avena indicate that the availability of a claim of ineffective assistance of counsel is not an adequate remedy for an Article 36 violation. See LaGrand Case (F. R. G. v. U. S.), 2001 I. C. J. 466, 497, ¶91 (Judgment of June 27) (requiring suspension of state procedural default rule even though “United States courts could and did examine the professional competence of counsel assigned to the indigent LaGrands by reference to United States constitutional standards”); see also Case Concerning Avena and other Mexican Nationals (Mex. v. U. S.), 2004 I. C. J. No. 128, ¶134 (Judgment of Mar. 31).

To the extent the dissent suggests that the ICJ’s decisions could be read to prevent application of procedural default rules where a defendant’s attorney is unaware of Article 36, see post, at 24–25 (opinion of BREYER, J.), this interpretation of the Convention is in sharp conflict with the role of counsel in our system. “Attorney ignorance or inadvertence is not ‘cause’ because the attorney is the petitioner’s agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must ‘bear the risk of attorney error.’” Coleman v. Thompson, 501 U. S. 722, 753 (1991) (quoting Murray v. Carrier, 477 U. S. 478, 488 (1986)). Under our system, an attorney’s lack of knowledge does not excuse the defendant’s default, unless the attorney’s overall representation falls below what is required by the Sixth Amendment. In any event, Bustillo himself does not argue that the applicability of procedural default rules hinges on whether a foreign national’s attorney was aware of Article 36. See Brief for Petitioner in No. 05–51, p. 38 (“[A] lawyer may not, consistent with the purposes of Article 36, unilaterally forfeit a foreign national’s opportunity to communicate with his consulate”). In fact, Bustillo has conceded that his “attorney at trial was aware of his client’s rights under the Vienna Convention.” App. in No. 05–51, p. 203, n. 5.
Opinion of the Court

Much as Sanchez-Llamas cannot show that suppression is an appropriate remedy for Article 36 violations under domestic law principles, so too Bustillo cannot show that normally applicable procedural default rules should be suspended in light of the type of right he claims. In this regard, a comparison of Article 36 and a suspect’s rights under *Miranda* disposes of Bustillo’s claim. Bustillo contends that applying procedural default rules to Article 36 rights denies such rights “full effect” because the violation itself—i.e., the failure to inform defendants of their right to consular notification—prevents them from becoming aware of their Article 36 rights and asserting them at trial. Of course, precisely the same thing is true of rights under *Miranda*. Police are required to advise suspects that they have a right to remain silent and a right to an attorney. See *Miranda*, 384 U.S., at 479; see also *Dickerson*, 530 U.S., at 435. If police do not give such warnings, and counsel fails to object, it is equally true that a suspect may not be “aware he even had such rights until well after his trial had concluded.” Brief for Petitioner in No. 05–51, p. 35. Nevertheless, it is well established that where a defendant fails to raise a *Miranda* claim at trial, procedural default rules may bar him from raising the claim in a subsequent postconviction proceeding. *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977).

Bustillo responds that an Article 36 claim more closely resembles a claim, under *Brady v. Maryland*, 373 U.S. 83 (1963), that the prosecution failed to disclose exculpatory evidence—a type of claim that often can be asserted for the first time only in postconviction proceedings. See *United States v. Dominguez Benitez*, 542 U.S. 74, 83, n. 9 (2004). The analogy is inapt. In the case of a *Brady* claim, it is impossible for the defendant to know as a factual matter that a violation has occurred before the exculpatory evidence is disclosed. By contrast, a defendant is well aware of the fact that he was not informed of his Article 36 rights, even if the legal significance of that fact eludes him.

Finally, relying on *Massaro v. United States*, 538 U.S. 500, Bustillo argues that Article 36 claims “are most appropriately raised post-trial or on collateral review.” Brief for Petitioner in No. 05–51, p. 39. *Massaro* held that claims of ineffective assistance of counsel may be raised for the first time in a proceeding under 28 U. S. C. §2255. That decision, however, involved the question of the proper forum for federal habeas claims. Bustillo, by contrast, asks us to require the *States* to hear Vienna Convention claims raised for the first time in *state* postconviction proceedings. Given that the Convention itself imposes no such requirement, we do not perceive any grounds for us to revise state procedural rules in this fashion. See *Dickerson, supra*, at 438.

We therefore conclude, as we did in *Breard*, that claims under Article 36 of the Vienna Convention may be subjected to the same procedural default rules that apply generally to other federal-law claims.

* * *

Although these cases involve the delicate question of the application of an international treaty, the issues in many ways turn on established principles of domestic law. Our holding in no way disparages the importance of the Vienna Convention. The relief petitioners request is, by any measure, extraordinary. Sanchez-Llamas seeks a suppression remedy for an asserted right with little if any connection to the gathering of evidence; Bustillo requests an exception to procedural rules that is accorded to almost no other right, including many of our most fundamental constitutional protections. It is no slight to the Convention to deny petitioners’ claims under the same principles we would apply to an Act of Congress, or to the Constitution itself.

The judgments of the Supreme Court of Oregon and the Supreme Court of Virginia are affirmed.

*It is so ordered.*
Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

SYLLABUS

MEDELLIN v. TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS


In the Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.), 2004 I. C. J. 12 (Avena), the International Court of Justice (ICJ) held that the United States had violated Article 36(1)(b) of the Vienna Convention on Consular Relations (Vienna Convention or Convention) by failing to inform 51 named Mexican nationals, including petitioner Medellín, of their Vienna Convention rights. The ICJ found that those named individuals were entitled to review and reconsideration of their U. S. state-court convictions and sentences regardless of their failure to comply with generally applicable state rules governing challenges to criminal convictions. In Sanchez-Llamas v. Oregon, 548 U. S. 331—issued after Avena but involving individuals who were not named in the Avena judgment—this Court held, contrary to the ICJ’s determination, that the Convention did not preclude the application of state default rules. The President then issued a memorandum (President’s Memorandum or Memorandum) stating that the United States would “discharge its international obligations” under Avena “by having State courts give effect to the decision.”

Relying on Avena and the President’s Memorandum, Medellín filed a second Texas state-court habeas application challenging his state capital murder conviction and death sentence on the ground that he had not been informed of his Vienna Convention rights. The Texas Court of Criminal Appeals dismissed Medellín’s application as an abuse of the writ, concluding that neither Avena nor the President’s Memorandum was binding federal law that could displace the State’s limitations on filing successive habeas applications.

Held: Neither Avena nor the President’s Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. Pp. 8–37.


(a) While a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be “self-executing” and is ratified on that basis. See, e.g., Foster v. Neilson, 2 Pet. 253, 314. The Avena judgment creates an international law obligation on the part of the United States, but it is not automatically binding domestic law because none of the relevant treaty sources—the Optional Protocol, the U. N. Charter, or the ICJ Statute—creates binding federal law in the absence of implementing legislation, and no such legislation has been enacted.

The most natural reading of the Optional Protocol is that it is a bare grant of jurisdiction. The Protocol says nothing about the effect of an ICJ decision, does not commit signatories to comply therewith, and is silent as to any enforcement mechanism. The obligation to comply with ICJ judgments is derived from Article 94 of the U. N. Charter, which provides that “[e]ach . . . Member . . . undertakes to comply with the [ICJ’s] decision . . . in any case to which it is a party.” The phrase “undertakes to comply” is simply a commitment by member states to take future action through their political branches. That language does not indicate that the Senate, in ratifying the Optional Protocol, intended to vest ICJ decisions with immediate legal effect in domestic courts.

This reading is confirmed by Article 94(2)—the enforcement provision—which provides the sole remedy for noncompliance: referral to the U. N. Security Council by an aggrieved state. The provision of an express diplomatic rather than judicial remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. See Sanchez-Llamas, 548 U. S., at 347. Even this “quintessentially international remed[y],” id., at 355, is not absolute. It requires a Security Council resolution, and the President and Senate were undoubtedly aware that the United States retained the unqualified right to exercise its veto of any such resolution. Medellín’s construction would eliminate the option of noncompliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment.

The ICJ Statute, by limiting disputes to those involving nations, not individuals, and by specifying that ICJ decisions have no binding force except between those nations, provides further evidence that the Avena judgment does not automatically constitute federal law enforceable in U. S. courts. Medellín, an individual, cannot be considered a party to the Avena decision. Finally, the United States’ interpretation of a treaty “is entitled to great weight,” Sumitomo Shoji
Syllabus

America, Inc. v. Avagliano, 457 U. S., at 184–185, and the Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. Pp. 8–17.

(b) The foregoing interpretive approach—parsing a treaty's text to determine if it is self-executing—is hardly novel. This Court has long looked to the language of a treaty to determine whether the President who negotiated it and the Senate that ratified it intended for the treaty to automatically create domestically enforceable federal law. See, e.g., Foster, supra. Pp. 18–20.

(c) The Court's conclusion that Avena does not by itself constitute binding federal law is confirmed by the "postratification understanding" of signatory countries. See Zicherman v. Korean Air Lines Co., 516 U. S. 217, 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his amici have identified a single nation that treats ICJ judgments as binding in domestic courts. The lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of its domestic law strongly suggests that the treaty should not be so viewed in our courts. See Sanchez-Llamas, 548 U. S., at 343–344, and n. 3.

The Court's conclusion is further supported by general principles of interpretation. Given that the forum state's procedural rules govern a treaty's implementation absent a clear and express statement to the contrary, see e.g., id., at 351, one would expect the ratifying parties to the relevant treaties to have clearly stated any intent to give ICJ judgments such effect. There is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports this notion. Moreover, the consequences of Medellín's argument give pause: neither Texas nor this Court may look behind an ICJ decision and quarrel with its reasoning or result, despite this Court's holding in Sanchez-Llamas that "[n]othing in the [ICJ's] structure or purpose . . . suggests that its interpretations were intended to be conclusive on our courts." Id., at 354. Pp. 20–24.

(d) The Court's holding does not call into question the ordinary enforcement of foreign judgments. An agreement to abide by the result of an international adjudication can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. In addition, Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes. Medellín contends that domestic courts generally give effect to foreign judgments, but the judgment Medellín asks us to enforce is hardly typical: It would enjoin the operation of state law and force the State to take action to "review and reconsider[r]" his case. Foreign judgments awarding injunctive relief against private parties, let alone sovereign States, "are not generally entitled to enforcement." Restatement (Third) of Foreign Relations Law of the United States §481, Comment b, p. 595 (1986). Pp. 24–27.

2. The President's Memorandum does not independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in Avena without regard to state procedural default rules. Pp. 27–37.

(a) The President seeks to vindicate plainly compelling interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. But those interests do not allow the Court to set aside first principles. The President's authority to act, as with the exercise of any governmental power, "must stem either from an act of Congress or from the Constitution itself." Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579, 585.

Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." Id., at 635 (Jackson, J., concurring). Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." Ibid. In such a circumstance, Presidential authority can derive support from "congressional inertia, indifference or quiescence." Ibid. Finally, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject." Ibid., at 637–638. Pp. 28–29.

(b) The United States marshals two principal arguments in favor of the President's authority to establish binding rules of decision that preempt contrary state law. The United States argues that the relevant treaties give the President the authority to implement the Avena judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an "independent" international dispute-resolution power. We find these arguments, as well as Medellín's additional argument that the President's Memorandum is a valid exercise of his "Take Care" power, unpersuasive. Pp. 29–37.

(i) The United States maintains that the President's Memo-
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Random is implicitly authorized by the Optional Protocol and the U.N. Charter. But the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress, not the Executive. Foster, 2 Pet., at 315. It is a fundamental constitutional principle that “[t]he power to make the necessary laws is in Congress; the power to execute in the President.” Hamdan v. Rumsfeld, 548 U.S. 557, 591. A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. Accordingly, the President’s Memorandum does not fall within the first category of the Youngstown framework. Indeed, because the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so, the President’s assertion of authority is within Youngstown’s third category, not the first or even the second.

The United States maintains that congressional acquiescence requires that the President’s Memorandum be given effect as domestic law. But such acquiescence is pertinent when the President’s action falls within the second Youngstown category, not the third. In any event, congressional acquiescence does not exist here. Congress’ failure to act following the President’s resolution of prior ICJ controversies does not demonstrate acquiescence because in none of those prior controversies did the President assert the authority to transform an international obligation into domestic law and thereby displace state law. The United States’ reliance on the President’s “related” statutory responsibilities and on his “established role” in litigating foreign policy concerns is also misplaced. The President’s statutory authorization to represent the United States before the U.N., the ICJ, and the U.N. Security Council speaks to his international responsibilities, not to any unilateral authority to create domestic law.

The combination of a non-self-executing treaty and the lack of implementing legislation does not preclude the President from acting to comply with an international treaty obligation by other means, so long as those means are consistent with the Constitution. But the President may not rely upon a non-self-executing treaty to establish binding rules of decision that pre-empt contrary state law. Pp. 30–35.

(ii) The United States also claims that—indeed, the United States’ treaty obligations—the Memorandum is a valid exercise of the President’s foreign affairs authority to resolve claims disputes. See, e.g., American Ins. Assn. v. Garamendi, 539 U.S. 396, 415. This Court’s claims-settlement cases involve a narrow set of circumstances: the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. They are based on the view that “a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned,” can “raise a presumption that the [action] had been [taken] in pursuance of its consent.” Dames & Moore v. Regan, 453 U.S. 654, 668. But “[p]ast practice does not, by itself, create power.” Ibid. The President’s Memorandum—a directive issued to state courts that would compel those courts to reopen final criminal judgments and set aside neutrally applicable state laws—is not supported by a “particularly longstanding practice.” The Executive’s limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far. Pp. 35–37.

(iii) Medellín’s argument that the President’s Memorandum is a valid exercise of his power to “Take Care” that the laws be faithfully executed, U.S. Const., Art. II, §3, fails because the ICJ’s decision in Avena is not domestic law. P. 37.

223 S. W. 3d 315, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined.
CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Court of Justice (ICJ), located in the Hague, is a tribunal established pursuant to the United Nations Charter to adjudicate disputes between member states. In the Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.), 2004 I. C. J. 12 (Judgment of Mar. 31) (Avena), that tribunal considered a claim brought by Mexico against the United States. The ICJ held that, based on violations of the Vienna Convention, 51 named Mexican nationals were entitled to review and reconsideration of their state-court convictions and sentences in the United States. This was so regardless of any forfeiture of the right to raise Vienna Convention claims because of a failure to comply with generally applicable state rules governing challenges to criminal convictions.

In Sanchez-Llamas v. Oregon, 548 U. S. 331 (2006)—issued after Avena but involving individuals who were not named in the Avena judgment—we held that, contrary to the ICJ’s determination, the Vienna Convention did not preclude the application of state default rules. After the Avena decision, President George W. Bush determined, through a Memorandum to the Attorney General (Feb. 28, 2005), App. to Pet. for Cert. 187a (Memorandum or President’s Memorandum), that the United States would “discharge its international obligations” under Avena “by having State courts give effect to the decision.”

Petitioner José Ernesto Medellín, who had been convicted and sentenced in Texas state court for murder, is one of the 51 Mexican nationals named in the Avena decision. Relying on the ICJ’s decision and the President’s Memorandum, Medellín filed an application for a writ of habeas corpus in state court. The Texas Court of Criminal Appeals dismissed Medellín’s application as an abuse of the writ under state law, given Medellín’s failure to raise his Vienna Convention claim in a timely manner under state law. We granted certiorari to decide two questions. First, is the ICJ’s judgment in Avena directly enforceable as domestic law in a state court in the United States? Second, does the President’s Memorandum independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in Avena without regard to state procedural default rules? We conclude that neither Avena nor the President’s Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. We therefore affirm the decision below.

I

A

its purpose is to “contribute to the development of friendly relations among nations.” 21 U. S. T., at 79; Sanchez-Llamas, supra, at 337. Toward that end, Article 36 of the Convention was drafted to “facilitate the exercise of consular functions.” Art. 36(1), 21 U. S. T., at 100. It provides that if a person detained by a foreign country “so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State” of such detention, and “inform the [detainee] of his right” to request assistance from the consul of his own state. Art. 36(1)(b), id., at 101.

The Optional Protocol provides a venue for the resolution of disputes arising out of the interpretation or application of the Vienna Convention. Art. I, 21 U. S. T., at 326. Under the Protocol, such disputes “shall lie within the compulsory jurisdiction of the International Court of Justice” and “may accordingly be brought before the [ICJ] ... by any party to the dispute being a Party to the present Protocol.” Ibid.


Under Article 94(1) of the U. N. Charter, “[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party.” 59 Stat. 1051. The ICJ’s jurisdiction in any particular case, however, is dependent upon the consent of the parties. See Art. 36, 59 Stat. 1060. The ICJ Statute delineates two ways in which a nation may consent to ICJ jurisdiction: It may consent generally to jurisdiction on any question arising under a treaty or general international law, Art.

36(2), ibid., or it may consent specifically to jurisdiction over a particular category of cases or disputes pursuant to a separate treaty, Art. 36(1), ibid. The United States originally consented to the general jurisdiction of the ICJ when it filed a declaration recognizing compulsory jurisdiction under Art. 36(2) in 1946. The United States withdrew from general ICJ jurisdiction in 1985. See U. S. Dept. of State Letter and Statement Concerning Termination of Acceptance of ICJ Compulsory Jurisdiction (Oct. 7, 1985), reprinted in 24 I. L. M. 1742 (1985). By ratifying the Optional Protocol to the Vienna Convention, the United States consented to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. On March 7, 2005, subsequent to the ICJ’s judgment in Avena, the United States gave notice of withdrawal from the Optional Protocol to the Vienna Convention. Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations.

B

Petitioner José Ernesto Medellín, a Mexican national, has lived in the United States since preschool. A member of the “Black and Whites” gang, Medellín was convicted of capital murder and sentenced to death in Texas for the gang rape and brutal murders of two Houston teenagers.

On June 24, 1993, 14-year-old Jennifer Ertman and 16-year-old Elizabeth Pena were walking home when they encountered Medellín and several fellow gang members. Medellín attempted to engage Elizabeth in conversation. When she tried to run, petitioner threw her to the ground. Jennifer was grabbed by other gang members when she, in response to her friend’s cries, ran back to help. The gang members raped both girls for over an hour. Then, to prevent their victims from identifying them, Medellín and his fellow gang members murdered the girls and discarded
their bodies in a wooded area. Medellín was personally responsible for strangling at least one of the girls with her own shoelace.

Medellín was arrested at approximately 4 a.m. on June 29, 1993. A few hours later, between 5:54 and 7:23 a.m., Medellín was given Miranda warnings; he then signed a written waiver and gave a detailed written confession. See App. to Brief for Respondent 32–36. Local law enforcement officers did not, however, inform Medellín of his Vienna Convention right to notify the Mexican consulate of his detention. See Brief for Petitioner 6–7. Medellín was convicted of capital murder and sentenced to death; his conviction and sentence were affirmed on appeal. See Medellín v. State, No. 71,997 (Tex. Crim. App., May 16, 1997), App. to Brief for Respondent 2–31.

Medellín first raised his Vienna Convention claim in his first application for state postconviction relief. The state trial court held that the claim was procedurally defaulted because Medellín had failed to raise it at trial or on direct review. The trial court also rejected the Vienna Convention claim on the merits, finding that Medellín had “fail[ed] to show that any non-notification of the Mexican authorities impacted on the validity of his conviction or punishment.” See Id., at 62. The Texas Court of Criminal Appeals affirmed. See Id., at 64–65.

Medellín then filed a habeas petition in Federal District Court. The District Court denied relief, holding that Medellín's Vienna Convention claim was procedurally defaulted and that Medellín had failed to show prejudice arising from the Vienna Convention violation. See Medellín v. Cockrell, Civ. Action No. H–01–4078 (SD Tex., June 26, 2003), App. to Brief for Respondent 86–92.

While Medellín's application for a certificate of appealability was pending in the Fifth Circuit, the ICJ issued its decision in Avena. The ICJ held that the United States had violated Article 36(1)(b) of the Vienna Convention by failing to inform the 51 named Mexican nationals, including Medellín, of their Vienna Convention rights. 2004 I. C. J., at 53–55. In the ICJ's determination, the United States was obligated “to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals.” See Id., at 72. The ICJ indicated that such review was required without regard to state procedural default rules. See Id., at 56–57.

The Fifth Circuit denied a certificate of appealability. See Medellín v. Dretke, 371 F. 3d 270, 281 (2004). The court concluded that the Vienna Convention did not confer individually enforceable rights. See Id., at 280. The court further ruled that it was in any event bound by this Court's decision in Breard v. Greene, 523 U. S. 371, 375 (1998) (per curiam), which held that Vienna Convention claims are subject to procedural default rules, rather than by the ICJ's contrary decision in Avena. See 371 F. 3d, at 280.

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1 The requirement of Article 36(1)(b) of the Vienna Convention that the detaining state notify the detainee's consulate “without delay” is satisfied, according to the ICJ, where notice is provided within three working days. Avena, 2004 I. C. J. 12, 52, ¶97 (Judgment of Mar. 31). See Sanchez-Llamas v. Oregon, 548 U. S. 331, 362 (2006) (GINSBURG, J., concurring in judgment) (hereinafter Sanchez-Llamas). Here, Medellín confessed within three hours of his arrest—before there could be a violation of his Vienna Convention right to consulate notification. See App. to Brief for Respondent 32–36. In a second state habeas application, Medellín sought to expand his claim of prejudice by contending that the State's noncompliance with the Vienna Convention deprived him of assistance in developing mitigation evidence during the capital phase of his trial. This argument, however, was likely waived: Medellín had the assistance of consulate counsel during the preparation of his first application for state postconviction relief, yet failed to raise this argument at that time. See Application for Writ of Habeas Corpus in Ex parte Medellín, No. 675430–A (Tex. Crim. App.), pp. 25–31. In light of our disposition of this case, we need not consider whether Medellín was prejudiced in any way by the violation of his Vienna Convention rights.
Medellín, relying on the President's Memorandum and the ICJ's decision in \textit{Avena}, filed a second application for habeas relief in state court. \textit{Ex parte Medellín}, 223 S. W. 3d 315, 322--323 (Tex. Crim. App. 2006). Because the state-court proceedings might have provided Medellín with the review and reconsideration he requested, and because his claim for federal relief might otherwise have been barred, we dismissed his petition for certiorari as improvidently granted. \textit{Medellín I}, supra, at 664.

The Texas Court of Criminal Appeals subsequently dismissed Medellín's second state habeas application as an abuse of the writ. 223 S. W. 3d, at 352. In the court's view, neither the \textit{Avena} decision nor the President's Memorandum was "binding federal law" that could displace the State's limitations on the filing of successive habeas applications. \textit{Ibid.} We again granted certiorari. 550 U. S. ___ (2007).

\section*{II}

Medellín first contends that the ICJ's judgment in \textit{Avena} constitutes a "binding" obligation on the state and federal courts of the United States. He argues that "by virtue of the Supremacy Clause, the treaties requiring compliance with the \textit{Avena} judgment are already the 'Law of the Land' by which all state and federal courts in this country are 'bound.'" Reply Brief for Petitioner 1. Accordingly, Medellín argues, \textit{Avena} is a binding federal rule of decision that pre-empts contrary state limitations on successive habeas petitions.

No one disputes that the \textit{Avena} decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna Convention disputes—constitutes an \textit{international} law obligation on the part of the United States. But not all international law obligations automatically constitute binding federal law enforceable in United States courts. The question we confront here is whether the \textit{Avena} judgment has automatic \textit{domestic} legal effect such that the judgment of its own force applies in state and federal courts.

This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law. The distinction was well explained by Chief Justice Marshall's opinion in \textit{Foster v. Neilson}, 2 Pet. 253, 315 (1829), overruled on other grounds, \textit{United States v. Percheman}, 7 Pet. 51 (1833), which held that a treaty is "equivalent to an act of the legislature," and hence self-executing, when it "operates of itself without the aid of any legislative provision." \textit{Foster, supra}, at 314. When, in contrast, "[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect." \textit{Whitney v. Robertson}, 124 U. S. 190, 194 (1888). In sum, while treaties "may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the
treaty itself conveys an intention that it be 'self-executing' and is ratified on these terms.” *Igartúa-De La Rosa v. United States*, 417 F. 3d 145, 150 (CA1 2005) (en banc) (Boudin, C. J.).

A treaty is, of course, “primarily a compact between independent nations.” *Head Money Cases*, 112 U. S. 580, 598 (1884). It ordinarily “depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.” *Ibid.*; see also The Federalist No. 33, p. 207 (J. Cooke ed. 1961) (A. Hamilton) (comparing laws that individuals are “bound to observe” as “the supreme law of the land” with “a mere treaty, dependent on the good faith of the parties”). If these [interests] fail, its infraction becomes the subject of international negotiations and reclamations . . . . It is obvious that with all this the judicial courts have nothing to do and can give no redress.” *Head Money Cases*, *supra*, at 598. Only “[i]f the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, [will] they have the force and effect of a legislative enactment.” *Whitney*, *supra*, at 194.

2 The label “self-executing” has on occasion been used to convey different meanings. What we mean by “self-executing” is that the treaty has automatic domestic effect as federal law upon ratification. Conversely, a “non-self-executing” treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.

3 Even when treaties are self-executing in the sense that they create federal law, the background presumption is that “[i]nternational agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts.” 2 Restatement (Third) of Foreign Relations Law of the United States §907, Comment a, p. 395 (1986) (hereinafter Restatement). Accordingly, a number of the Courts of Appeals have presumed that treaties do not create privately enforceable rights in the absence of express language to the contrary. See, e.g., *United States v. Emuegbunam*, 268 F. 3d 377, 389 (CA6 2001); *United States v. Jimenez-
As a signatory to the Optional Protocol, the United States agreed to submit disputes arising out of the Vienna Convention to the ICJ. The Protocol provides: "Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice." Art. I, 21 U.S. T., at 326. Of course, submitting to jurisdiction and agreeing to be bound are two different things. A party could, for example, agree to compulsory nonbinding arbitration. Such an agreement would require the party to appear before the arbitral tribunal without obligating the party to treat the tribunal's decision as binding. See, e.g., North American Free Trade Agreement, U.S.-Can.-Mex., Art. 2018, Dec. 17, 1992, 32 I. L. M. 605, 697 (1993) (requiring a party to the agreement to arbitrate disputes which normally shall conform to the determination reached in the final report of the arbitral panel). The most natural reading of the Optional Protocol is as a bare grant of jurisdiction. It provides only that disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the [ICJ]. And it does not itself commit signatories to comply with an ICJ decision. The Protocol is similarly silent as to any enforcement mechanism. The obligation on the part of signatory nations to comply with ICJ judgments derives not from the Optional Protocol, but rather from Article 94 of the United Nations Charter—the provision that specifically addresses the effect of ICJ decisions. Article 94(1) provides that each Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party. The Executive Branch contends that the phrase "undertakes to comply" is not an acknowledgement that an ICJ decision will have immediate legal effect in the courts of U.N. members, but rather a commitment on the part of U.N. Members to take certain action. See, e.g., Committee of United States Citizens Living in Nicaragua v. Reagan, 859 F. 2d 929, 938 (CADC 1988) (quoting Digg v. Richardson, 555 F. 2d 848, 851 (CADC 1977)), internal quotation marks omitted). See also Foster, 2 Pet., at 314, 315 (holding a treaty non-self-executing because its text—"all . . . grants of land . . . shall be ratified and confirmed"—did not "act directly on the grants", but rather "pledged the faith of the United States to pass acts which shall ratify and confirm them"). In other words, the U.N. Charter reads like "a compact between independent nations" that "depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.", Head Money Cases, 112 U. S., at 598. We do not read "undertakes" to mean that "the United States . . . shall be at liberty to make respecting the matter, such laws as they think proper." Post, at 17–18 (Breyer, J., dissenting) (quoting Todok v. Union State Bank of Harvard, 281 U. S. 449, 453, 454 (1930), holding that a treaty with Norway did not operate to override the law of
The remainder of Article 94 confirms that the U. N. Charter does not contemplate the automatic enforceability of ICJ decisions in domestic courts. Article 94(2)—the enforcement provision—provides the sole remedy for noncompliance: referral to the United Nations Security Council by an aggrieved state. See, e.g., The Charter of the United Nations for the Maintenance of International Peace and Security: Hearings before the Senate Committee on Foreign Relations, 79th Cong., 1st Sess., 124–125 (1945) (If a state fails to perform its obligations under a judgment of the [ICJ], the other party may have recourse to the Security Council); id., at 286 (statement of Leo Paslovsky, Special Assistant to the Secretary of State for International Organizations and Security Affairs) ("When the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal. It is as a political dispute that the matter is referred to the Security Council."); A Resolution Proposing Acceptance of Compulsory Jurisdiction of International Court of Justice: Hearings on S. Res. 196 before the Subcommittee on International Jurisdiction of the Senate Committee on Foreign Relations, 79th Cong., 2d Sess., 142 (1946) (statement of Charles Fahey, State Dept. Legal Advisor) (while parties that accept ICJ jurisdiction have a moral obligation to comply with ICJ decisions, Article 94(2) provides the exclusive means of enforcement). If ICJ judgments were instead regarded as automatically enforceable domestic law, they would be immediately and directly binding on state and federal courts pursuant to the Supremacy Clause. There would be nothing to veto. In light of the U. N. Charter's remedial scheme, there is no reason to believe that the President and Senate, by exercising their respective powers under the Constitution and the U. N. Charter, would have consented to such a result.

In sum, Medellín's view that ICJ decisions are automatically enforceable as domestic law is fatally underminded by the U. N. Charter, which contains the sole provision for enforcement: referral to the Security Council.
mined by the enforcement structure established by Article 94. His construction would eliminate the option of non-compliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment. Those sensitive foreign policy decisions would instead be transferred to state and federal courts charged with applying an ICJ judgment directly as domestic law. And those courts would not be empowered to decide whether to comply with the judgment—again, always regarded as an option by the political branches—any more than courts may consider whether to comply with any other species of domestic law. This result would be particularly anomalous in light of the principle that “[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—‘the political’—Departments.” Oetjen v. Central Leather Co., 246 U. S. 297, 302 (1918).

The ICJ Statute, incorporated into the U. N. Charter, provides further evidence that the ICJ’s judgment in Avena does not automatically constitute federal law judicially enforceable in United States courts. Art. 59, 59 Stat. 1062. To begin with, the ICJ’s “principal purpose” is said to be to “arbitrate particular disputes between national governments.” Sanchez-Llamas, supra, at 355 (citing 59 Stat. 1055). Accordingly, the ICJ can hear disputes only between nations, not individuals. Art. 34(1), 59 Stat. 1059 (“Only states [i.e., countries] may be parties in cases before the [ICJ]”). More important, Article 59 of the statute provides that “[t]he decision of the [ICJ] has no binding force except between the parties and in respect of that particular case.” Id., at 1062 (emphasis added). The dissent does not explain how Medellín, an individual, can be a party to the ICJ proceeding.

Medellín argues that because the Avena case involves him, it is clear that he—and the 50 other Mexican nationals named in the Avena decision—should be regarded as parties to the Avena judgment. Brief for Petitioner 21–22. But cases before the ICJ are often precipitated by disputes involving particular persons or entities, disputes that a nation elects to take up as its own. See, e.g., Case Concerning the Barcelona Traction, Light & Power Co. (Belg. v. Spain), 1970 I. C. J. 3 (Judgment of Feb. 5) (claim brought by Belgium on behalf of Belgian nationals and shareholders); Case Concerning the Protection of French Nationals and Protected Persons in Egypt (Fr. v. Egypt), 1950 I. C. J. 59 (Order of Mar. 29) (claim brought by France on behalf of French nationals and protected persons in Egypt); Anglo-Iranian Oil Co. Case (U. K. v. Iran), 1952 I. C. J. 93, 112 (Judgment of July 22) (claim brought by the United Kingdom on behalf of the Anglo-Iranian Oil Company). That has never been understood to alter the express and established rules that only nation-states may be parties before the ICJ, Art. 34, 59 Stat. 1059, and—contrary to the position of the dissent, post, at 23—that ICJ judgments are binding only between those parties, Art. 59, id., at 1062.8

8The dissent concludes that the ICJ judgment is binding federal law based in large part on its belief that the Vienna Convention overrides contrary state procedural rules. See post, at 19–20, 20–21, 23. But not even Medellín relies on the Convention. See Reply Brief for Petitioner 5 (disclaiming reliance). For good reason: Such reliance is foreclosed by the decision of this Court in Sanchez-Llamas, 548 U. S., at 351 (holding that the Convention does not preclude the application of state procedural bars); see also id., at 363 (GINSBURG, J., concurring in judgment). There is no basis for relitigating the issue. Further, to rely on the Convention would eide the distinction between a treaty—negotiated by the President and signed by Congress—and a judgment rendered pursuant to those treaties.

7Medellín alters this language in his brief to provide that the ICJ Statute makes the Avena judgment binding “in respect of [his] particular case.” Brief for Petitioner 22 (internal quotation marks omitted). Medellín does not and cannot have a case before the ICJ under the terms of the ICJ Statute.
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It is, moreover, well settled that the United States’ interpretation of a treaty “is entitled to great weight.” Sumitomo Shoji America, Inc. v. Avagliano, 457 U. S. 176, 184–185 (1982); see also El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U. S. 155, 168 (1999). The Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. See Brief for United States as Amicus Curiae 4, 27–29.

The pertinent international agreements, therefore, do not provide for implementation of ICJ judgments through direct enforcement in domestic courts, and “where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own.” Sanchez-Llamas, 548 U. S., at 347.

In interpreting our treaty obligations, we also consider the views of the ICJ itself, “giv[ing] respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret [the treaty].” Breard v. Greene, 523 U. S. 371, 375 (1998) (per curiam); see Sanchez-Llamas, supra, at 355–356. It is not clear whether that principle would apply when the question is the binding force of ICJ judgments themselves, rather than the substantive scope of a treaty the ICJ must interpret in resolving disputes. Cf. Phillips Petroleum Co. v. Shutts, 472 U. S. 797, 805 (1985) (“A court adjudicating a dispute may not be able to predetermine the res judicata effect of its own judgment”); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4405, p. 82 (2d ed. 2002) (“The first court does not get to dictate to other courts the preclusion consequences of its own judgment”). In any event, nothing suggests that the ICJ views its judgments as automatically enforceable in the domestic courts of signatory nations. The Avena judgment itself directs the United States to provide review and reconsideration of the affected convictions “by means of its own choosing.” 2004 I. C. J., at 72 (emphasis added). This language, as well as the ICJ’s mere suggestion that the “judicial process” is best suited to provide such review, id., at 65–66, confirm that domestic enforceability in court is not part and parcel of an ICJ judgment.

B

The dissent faults our analysis because it “looks for the wrong thing (explicit textual expression about self-execution) using the wrong standard (clarity) in the wrong place (the treaty language).” Post, at 26. Given our obligation to interpret treaty provisions to determine whether they are self-executing, we have to confess that we do think it rather important to look to the treaty language to see what it has to say about the issue. That is after all what the Senate looks to in deciding whether to approve the treaty.

The interpretive approach employed by the Court today—resorting to the text—is hardly novel. In two early cases involving an 1819 land-grant treaty between Spain and the United States, Chief Justice Marshall found the language of the treaty dispositive. In Foster, after distinguishing between self-executing treaties (those “equivalent to an act of the legislature”) and non-self-executing treaties (those “the legislature must execute”), Chief Justice Marshall held that the 1819 treaty was non-self-executing. 2 Pet., at 314. Four years later, the Supreme Court considered another claim under the same treaty, but concluded that the treaty was self-executing. See Percheman, 7 Pet., at 87. The reason was not because the treaty was sometimes self-executing and sometimes not, but because “the language of” the Spanish translation (brought to the Court’s attention for the first time) indicated the parties’ intent to ratify and confirm the land-grant “by force of the instrument itself.” Id., at 89.

As against this time-honored textual approach, the dissent proposes a multifactor, judgment-by-judgment analysis that would “jettison[ ] relative predictability for the open-ended rough-and-tumble of factors.” Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U. S. 527, 547 (1995). The dissent’s novel approach to deciding which (or, more accurately, when) treaties give rise to
directly enforceable federal law is arrestingly indeterminate. Treaty language is barely probative. Post, at 12–13 ("[T]he absence or presence of language in a treaty about a provision's self-execution proves nothing at all"). Determining whether treaties themselves create federal law is sometimes committed to the political branches and sometimes to the judiciary. Post, at 13. Of those committed to the judiciary, the courts pick and choose which shall be binding United States law—trumping not only state but other federal law as well—and which shall not. Post, at 13–27. They do this on the basis of a multifactor, “context-specific” inquiry. Post, at 13. Even then, the same treaty sometimes gives rise to United States law and sometimes does not, again depending on an ad hoc judicial assessment. Post, at 13–27.

Our Framers established a careful set of procedures that must be followed before federal law can be created under the Constitution—vesting that decision in the political branches, subject to checks and balances. U. S. Const., Art. I, §7. They also recognized that treaties could create federal law, but again through the political branches, with the President making the treaty and the Senate approving it. Art. II, §2. The dissent's understanding of the treaty route, depending on an ad hoc judgment of the judiciary without looking to the treaty language—the very language negotiated by the President and approved by the Senate—cannot readily be ascribed to those same Framers.

The dissent's approach risks the United States' involvement in international agreements. It is hard to believe that the United States would enter into treaties that are sometimes enforceable and sometimes not. Such a treaty would be the equivalent of writing a blank check to the judiciary. Senators could never be quite sure what the treaties on which they were voting meant. Only a judge could say for sure and only at some future date. This uncertainty could hobble the United States' efforts to negotiate and sign international agreements.

In this case, the dissent—for a grab bag of no less than seven reasons—would tell us that this particular ICJ judgment is federal law. Post, at 13–27. That is no sort of guidance. Nor is it any answer to say that the federal courts will diligently police international agreements and enforce the decisions of international tribunals only when they should be enforced. Ibid. The point of a non-self-executing treaty is that it "addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court." Foster, supra, at 314 (emphasis added); Whitney, 124 U. S., at 195. See also Foster, supra, at 307 ("The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided"). The dissent's contrary approach would assign to the courts—not the political branches—the primary role in deciding when and how international agreements will be enforced. To read a treaty so that it sometimes has the effect of domestic law and sometimes does not is tantamount to vesting with the judiciary the power not only to interpret but also to create the law.

C

Our conclusion that Avena does not by itself constitute binding federal law is confirmed by the "postratification understanding" of signatory nations. See Zicherman, 516 U. S., at 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his amici have identified a single nation that treats ICJ judgments as binding in domestic courts.10

10 The best that the ICJ experts as amici curiae can come up with is the contention that local Moroccan courts have referred to ICJ judgments as "dispositive." Brief for ICJ Experts as Amici Curiae 20, n. 31. Even the ICJ experts do not cite a case so holding, and Moroccan
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mining that the Vienna Convention did not require certain relief in United States courts in *Sanchez-Llamas*, we found it pertinent that the requested relief would not be available under the treaty in any other signatory country. See 548 U. S., at 343–344, and n. 3. So too here the lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of its domestic law strongly suggests that the treaty should not be so viewed in our courts.

Our conclusion is further supported by general principles of interpretation. To begin with, we reiterated in *Sanchez-Llamas* what we held in *Breard*, that “absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State.” 548 U. S., at 351 (quoting *Breard*, 523 U. S., at 375). Given that ICJ judgments may interfere with state procedural rules, one would expect the ratifying parties to the relevant treaties to have clearly stated their intent to give those judgments domestic effect, if they had so intended. Here there is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports the notion that ICJ judgments displace state procedural rules.

Moreover, the consequences of Medellín’s argument give pause. An ICJ judgment, the argument goes, is not only binding domestic law but is also unassailable. As a result, neither Texas nor this Court may look behind a judgment and quarrel with its reasoning or result. (We already know, from *Sanchez-Llamas*, that this Court disagrees with both the reasoning and result in *Avena*.) Medellín’s interpretation would allow ICJ judgments to override otherwise binding state law; there is nothing in his logic that would exempt contrary federal law from the same fate. See, e.g., *Cook v. United States*, 288 U. S. 102, 119 (1933) (later-in-time self-executing treaty supersedes a federal statute if there is a conflict). And there is nothing to prevent the ICJ from ordering state courts to annul criminal convictions and sentences, for any reason deemed sufficient by the ICJ. Indeed, that is precisely the relief Mexico requested. *Avena*, 2004 I. C. J., at 58–59.

Even the dissent flinches at reading the relevant treaties to give rise to self-executing ICJ judgments in all cases. It admits that “Congress is unlikely to authorize automatic judicial enforceability of all ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches.” Post, at 24. Our point precisely. But the lesson to draw from that insight is hardly that the judiciary should decide which judgments are politically sensitive and which are not.

In short, and as we observed in *Sanchez-Llamas*, “nothing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts.” 548 U. S., at 354. Given that holding, it is difficult to see how that same structure and purpose can establish, as Medellín argues, that judgments of the ICJ nonetheless were intended to be conclusive on our courts. A judgment is binding only if there is a rule of law that makes it so. And the question whether ICJ judgments can bind domestic courts depends upon the same analysis undertaken in *Sanchez-Llamas* and set forth above.

Our prior decisions identified by the dissent as holding a number of treaties to be self-executing, see *post*, at 8–9,
Appendix A, stand only for the unremarkable proposition that some international agreements are self-executing and others are not. It is well settled that the “interpretation of [a treaty] . . . must, of course, begin with the language of the Treaty itself.” Sumitomo Shoji America, Inc., 457 U. S., at 180. As a result, we have held treaties to be self-executing when the textual provisions indicate that the President and Senate intended for the agreement to have domestic effect.

Medellín and the dissent cite Comegys v. Vasse, 1 Pet. 193 (1828), for the proposition that the judgments of international tribunals are automatically binding on domestic courts. See post, at 9; Reply Brief for Petitioner 2; Brief for Petitioner 19–20. That case, of course, involved a different treaty than the ones at issue here; it stands only for the modest principle that the terms of a treaty control the outcome of a case. We do not suggest that treaties can never afford binding domestic effect to international tribunal judgments—only that the U. N. Charter, the Optional Protocol, and the ICJ Statute do not do so. And whether the treaties underlying a judgment are self-executing so that the judgment is directly enforceable as domestic law in our courts is, of course, a matter for this Court to decide. See Sanchez-Llamas, supra, at 353–354.

The other case Medellín cites for the proposition that the judgments of international courts are binding, La Abra Silver Mining Co. v. United States, 175 U. S. 423 (1899), and the cases he cites for the proposition that this Court has routinely enforced treaties under which foreign nationals have asserted rights, similarly stand only for the principle that the terms of a treaty govern its enforcement. See Reply Brief for Petitioner 4, 5, n. 2. In each case, this Court first interpreted the treaty prior to finding it domestically enforceable. See, e.g., United States v. Rauscher, 119 U. S. 407, 422–423 (1886) (holding that the treaty required extradition only for specified offenses); Hopkirk v. Bell, 3 Cranch 454, 458 (1806) (holding that the treaty of peace between Great Britain and the United States prevented the operation of a state statute of limitations on British debts).

Our holding does not call into question the ordinary enforcement of foreign judgments or international arbitral agreements. Indeed, we agree with Medellín that, as a general matter, “an agreement to abide by the result” of an international adjudication—or what he really means, an agreement to give the result of such adjudication domestic legal effect—can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. See Brief for Petitioner 20. The point is that the particular treaty obligations on which Medellín relies do not of their own force create domestic law.

The dissent worries that our decision casts doubt on some 70-odd treaties under which the United States has agreed to submit disputes to the ICJ according to “roughly similar” provisions. See post, at 4, 16–17. Again, under our established precedent, some treaties are self-executing and some are not, depending on the treaty. That the judgment of an international tribunal might not automatically become domestic law hardly means the underlying treaty is “useless.” See post, at 17; cf. post, at 11 (describing the British system in which treaties “virtually always require[ ] parliamentary legislation”). Such judgments would still constitute international obligations, the proper subject of political and diplomatic negotiations. See Head Money Cases, 112 U. S., at 598. And Congress could elect to give them wholesale effect (rather than the judgment-by-judgment approach hypothesized by the dissent, post, at 24) through implementing legislation, as it regularly has. See, e.g., Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, div. G, §2242, 112 Stat. 2681–822, note following 8 U. S. C. §1231 (directing the “appropriate agencies” to “prescribe regulations to implement the obligations of the United States under Article 3” of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment);
Further, that an ICJ judgment may not be automatically enforceable in domestic courts does not mean the particular underlying treaty is not. Indeed, we have held that a number of the "Friendship, Commerce, and Navigation" Treaties cited by the dissent, see post, Appendix B, are self-executing—based on "the language of the Te

Further, Medellín frames his argument as though giving the Avena judgment binding effect in domestic courts simply conforms to the proposition that domestic courts generally give effect to foreign judgments. But Medellín does not ask us to enforce a foreign-court judgment setting a typical commercial or property dispute. See, e.g., Hilton v. Guyot, 159 U. S. 113 (1895); United States v. Arredondo, 6 Pet. 691 (1832); see also Uniform Foreign-Money Judgments Recognition Act §1(2), 13 U. L. A., p. 44 (2002) (foreign judgment means any judgment of a foreign state granting or denying recovery of a sum of money). Rather, Medellín argues that the Avena judgment has the effect of enjoining the operation of state law. What is more, on Medellín's view, the judgment would force the State to take action to "review and reconsider."
his case. The general rule, however, is that judgments of foreign courts awarding injunctive relief, even as to private parties, let alone sovereign States, “are not generally entitled to enforcement.” See 2 Restatement §481, Comment b, at 595.

In sum, while the ICJ’s judgment in Avena creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law that pre-empts state restrictions on the filing of successive habeas petitions. As we noted in Sanchez-Llamas, a contrary conclusion would be extraordinary, given that basic rights guaranteed by our own Constitution do not have the effect of displacing state procedural rules. See 548 U. S., at 360. Nothing in the text, background, negotiating and drafting history, or practice among signatory nations suggests that the President or Senate intended the improbable result of giving the judgments of an international tribunal a higher status than that enjoyed by “many of our most fundamental constitutional protections.” Ibid.

III

Medellín next argues that the ICJ’s judgment in Avena is binding on state courts by virtue of the President’s February 28, 2005 Memorandum. The United States contends that while the Avena judgment does not of its own force require domestic courts to set aside ordinary rules of procedural default, that judgment became the law of the land with precisely that effect pursuant to the President’s Memorandum and his power “to establish binding rules of decision that preempt contrary state law.” Brief for United States as Amicus Curiae 5. Accordingly, we must decide whether the President’s declaration alters our conclusion that the Avena judgment is not a rule of domestic law binding in state and federal courts.13

A

The United States maintains that the President’s constitutional role “uniquely qualifies” him to resolve the sensitive foreign policy decisions that bear on compliance with an ICJ decision and “to do so expeditiously.” Brief for United States as Amicus Curiae 11, 12. We do not question these propositions. See, e.g., First Nat. City Bank v. Banco Nacional de Cuba, 406 U. S. 759, 767 (1972) (plurality opinion) (The President has “the lead role . . . in foreign policy”); American Ins. Assn. v. Garamendi, 539 U. S. 396, 414 (2003) (Article II of the Constitution places with the President the “vast share of responsibility for the conduct of our foreign relations” (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579, 610–611 (1952) (Frankfurter, J., concurring)). In this case, the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. These interests are plainly compelling.

Such considerations, however, do not allow us to set aside first principles. The President’s authority to act, as with the exercise of any governmental power, “must stem either from an act of Congress or from the Constitution itself.” Youngstown, supra, at 585; Dames & Moore v. Regan, 453 U. S. 654, 668 (1981).

13The dissent refrains from deciding the issue, but finds it “difficult to believe that in the exercise of his Article II powers pursuant to a ratified treaty, the President can never take action that would result in setting aside state law.” Post, at 29. We agree. The questions here are the far more limited ones of whether he may unilaterally create federal law by giving effect to the judgment of this international tribunal pursuant to this non-self-executing treaty, and, if not, whether he may rely on other authority under the Constitution to support the action taken in this particular case. Those are the only questions we decide.
Justice Jackson’s familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, “[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” *Youngstown*, 343 U. S., at 635 (Jackson, J., concurring). Second, “[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.” *Id.*, at 637. In this circumstance, Presidential authority can derive support from “congressional inertia, indifference or quiescence.” *Ibid.* Finally, “[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb,” and the Court can sustain his actions “only by disabling the Congress from acting upon the subject.” *Id.*, at 637–638.

The United States marshals two principal arguments in favor of the President’s authority “to establish binding rules of decision that preempt contrary state law.” Brief for United States as Amicus Curiae 5. The Solicitor General first argues that the relevant treaties give the President the authority to implement the *Avena* judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an “independent” international dispute-resolution power wholly apart from the asserted authority based on the pertinent treaties. Medellín adds the additional argument that the President’s Memorandum is a valid exercise of his power to take care that the laws be faithfully executed.

The United States maintains that the President’s Memorandum is authorized by the Optional Protocol and the U. N. Charter. Brief for United States as Amicus Curiae 9. That is, because the relevant treaties “create an obligation to comply with *Avena*,” they “implicitly give the President authority to implement that treaty-based obligation.” *Id.*, at 11 (emphasis added). As a result, the President’s Memorandum is well grounded in the first category of the *Youngstown* framework.

We disagree. The President has an array of political and diplomatic means available to enforce international obligations, but unilaterally converting a non-self-executing treaty into a self-executing one is not among them. The responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress. *Foster*, 2 Pet., at 315; *Whitney*, 124 U. S., at 194; *Igartúa-De La Rosa*, 417 F. 3d, at 150. As this Court has explained, when treaty stipulations are “not self-executing they can only be enforced pursuant to legislation to carry them into effect.” *Whitney*, *supra*, at 194. Moreover, “[u]ntil such act shall be passed, the Court is not at liberty to disregard the existing laws on the subject.” *Foster*, *supra*, at 315.

The requirement that Congress, rather than the President, implement a non-self-executing treaty derives from the text of the Constitution, which divides the treaty-making power between the President and the Senate. The Constitution vests the President with the authority to “make” a treaty. Art. II, §2. If the Executive determines that a treaty should have domestic effect of its own force, that determination may be implemented “in mak[ing]” the treaty, by ensuring that it contains language plainly providing for domestic enforceability. If the treaty is to be self-executing in this respect, the Senate must consent to the treaty by the requisite two-thirds vote, *ibid.*, consis-
tent with all other constitutional restraints.

Once a treaty is ratified without provisions clearly according it domestic effect, however, whether the treaty will ever have such effect is governed by the fundamental constitutional principle that “[t]he power to make the necessary laws is in Congress; the power to execute in the President.” *Hamdan v. Rumsfeld*, 548 U. S. 557, 591 (2006) (quoting *Ex parte Milligan*, 4 Wall. 2, 139 (1866) (opinion of Chase, C. J.)); see U. S. Const., Art. I, §1 (“All legislative Powers herein granted shall be vested in a Congress of the United States”). As already noted, the terms of a non-self-executing treaty can become domestic law only in the same way as any other law—through passage of legislation by both Houses of Congress, combined with either the President’s signature or a congressional override of a Presidential veto. See Art. I, §7. Indeed, “the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker.” *Youngstown*, 343 U. S., at 587.

A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. We therefore conclude, given the absence of congressional legislation, that the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so. When the President asserts the power to “enforce” a non-self-executing treaty by unilaterally creating domestic law, he acts in conflict with the implicit understanding of the ratifying Senate. His assertion of authority, insofar as it is based on the pertinent non-self-executing treaties, is therefore within Justice Jackson’s third category, not the first or even the second. See id., at 637–638.

Each of the two means described above for giving domestic effect to an international treaty obligation under the Constitution—for making law—requires joint action by the Executive and Legislative Branches: The Senate can ratify a self-executing treaty “made” by the Executive, or, if the ratified treaty is not self-executing, Congress can enact implementing legislation approved by the President. It should not be surprising that our Constitution does not contemplate vesting such power in the Executive alone. As Madison explained in The Federalist No. 47, under our constitutional system of checks and balances, “[t]he magistrate in whom the whole executive power resides cannot of himself make a law.” J. Cooke ed., p. 326 (1961). That would, however, seem an apt description of the asserted executive authority unilaterally to give the effect of domestic law to obligations under a non-self-executing treaty.

The United States nonetheless maintains that the President’s Memorandum should be given effect as domestic law because “this case involves a valid Presidential action in the context of Congressional ‘acquiescence.’” Brief for United States as Amicus Curiae 11, n. 2. Under the *Youngstown* tripartite framework, congressional acquiescence is pertinent when the President’s action falls within the second category—that is, when he “acts in absence of either a congressional grant or denial of authority.” 343 U. S., at 637 (Jackson, J., concurring). Here,
however, as we have explained, the President’s effort to accord domestic effect to the Avena judgment does not meet that prerequisite. In any event, even if we were persuaded that congressional acquiescence could support the President’s asserted authority to create domestic law pursuant to a non-self-executing treaty, such acquiescence does not exist here. The United States first locates congressional acquiescence in Congress’s failure to act following the President’s resolution of prior ICJ controversies. A review of the Executive’s actions in those prior cases, however, cannot support the claim that Congress acquiesced in this particular exercise of Presidential authority, for none of them remotely involved transforming an international obligation into domestic law and thereby displacing state law.

The United States also directs us to the President’s “related” statutory responsibilities and to his “established role” in litigating foreign policy concerns as support for the President’s asserted authority to give the ICJ’s decision in Avena the force of domestic law. Congress has indeed authorized the President to represent the United States before the United Nations, the ICJ, and the Security Council, 22 U. S. C. §287, but the authority of the President to represent the President’s international responsibilities, not any unilateral authority to create domestic law, is at issue here. See Youngstown, supra, at 637 (Jackson, J., concurring). At bottom, none of the sources of authority identified by the President’s claim that Congress has acquiesced in his asserted power to establish a non-self-executing treaty and the lack of implementing legislation precludes the President’s authority to override state law. None of this is to say, however, that the combination of a non-self-executing treaty and the lack of implementing legislation precludes the President’s authority to override state law. None of this is to say, however, that the combination of a non-self-executing treaty and the lack of implementing legislation precludes the President’s authority to override state law.
executing treaty by giving it domestic effect. That is, the non-self-executing character of a treaty constrains the President’s ability to comply with treaty commitments by unilaterally making the treaty binding on domestic courts. The President may comply with the treaty’s obligations by some other means, so long as they are consistent with the Constitution. But he may not rely upon a non-self-executing treaty to “establish binding rules of decision that preempt contrary state law.”

2

We thus turn to the United States’ claim that—

independent of the United States’ treaty obligations—the Memorandum is a valid exercise of the President’s foreign affairs authority to resolve claims disputes with foreign nations. Id., at 12–16. The United States relies on a series of cases in which this Court has upheld the authority of the President to settle foreign claims pursuant to an executive agreement. See Garamendi, 539 U. S., at 415; Dames & Moore, 453 U. S., at 679–680; United States v. Pink, 315 U. S. 203, 229 (1942); United States v. Belmont, 301 U. S. 324, 330 (1937). In these cases this Court has explained that, if pervasive enough, a history of congressional acquiescence can be treated as a “gloss on ‘Executive Power’ vested in the President by §1 of Art. II.” Dames & Moore, supra, at 686 (some internal quotation marks omitted). Even still, the limitations on this source of executive power are clearly set forth and the Court has been careful to note that “[p]ast practice does not, by itself, create power.” Dames & Moore, supra, at 686.

The President’s Memorandum is not supported by a “particularly longstanding practice” of congressional acquiescence, see Garamendi, supra, at 415, but rather is what the United States itself has described as “unprecedented action,” Brief for United States as Amicus Curiae in Sanchez-Llamas, O. T. 2005, Nos. 05–51 and 04–10566, pp. 29–30. Indeed, the Government has not identified a single instance in which the President has attempted (or Congress has acquiesced in) a Presidential directive issued to state courts, much less one that reaches deep into the heart of the State’s police powers and compels state courts to reopen final criminal judgments and set aside neutrally circumstances: the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. See, e.g., Belmont, supra, at 327. They are based on the view that “a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned,” can “raise a presumption that the [action] had been [taken] in pursuance of its consent.” Dames & Moore, supra, at 686 (some internal quotation marks omitted). As this Court explained in Garamendi,
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Medellín argues that the President’s Memorandum is a valid exercise of his “Take Care” power. Brief for Petitioner 28. The United States, however, does not rely upon the President’s responsibility to “take Care that the Laws be faithfully executed.” U. S. Const., Art. II, §3. We think this a wise concession. This authority allows the President to execute the laws, not make them. For the reasons we have stated, the *Avena* judgment is not domestic law; accordingly, the President cannot rely on his Take Care powers here.

The judgment of the Texas Court of Criminal Appeals is affirmed.

*It is so ordered.*