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UNITED NATIONS JURIDICAL YEARBOOK

2003

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter III. General review of the legal activities of the United Nations and related intergovernmental organizations



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Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. DISARMAMENT AND RELATED MATTERS¹

(a) Nuclear disarmament and non-proliferation issues

Despite the submission of a proposal on the programme of work by five former Presidents of the Conference of Disarmament,² no agreement was reached on the Conference's overall programme of work. Thus, no subsidiary bodies were established to consider items on its agenda, including nuclear disarmament. The issue of nuclear disarmament was addressed by delegations at plenary meetings.

On 10 January 2003, the Democratic People's Republic of Korea announced its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968,³ which was the first such withdrawal since the NPT's entry into force in 1970. At the second Session of the Preparatory Committee for the 2005 NPT Review Conference, held in Geneva from 28 April to 9 May 2003, the Committee devoted most of its time to a substantive structured review of the status and operation of the NPT under the agenda item entitled, "Preparatory work for the review of the operation and status of the Treaty in accordance with article VIII, paragraph 3, of the Treaty, in particular, consideration of principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, including specific matters of substance related to the implementation of the Treaty and Decisions 1 and 2, as well as the resolution on the Middle East adopted in 1995, and the outcome of the 2000 Review Conference, including developments affecting the operation and purpose of the Treaty."

Efforts by the International Atomic Energy Agency (IAEA) to implement a strengthened safeguards system continued during the year and by the end of 2003, the number of States yet to bring into force their comprehensive safeguards agreements, in accordance with their obligations under the NPT, decreased from 48 to 45. The number of States which had brought into force additional protocols to their safeguards agreements increased from 28 to 38. Furthermore, it was also reported by the Director General of IAEA to the 47th General Conference that a legal framework had been prepared to allow independent verification of nuclear material released from the military programmes of the Russian Federation and the United States and to ensure that sensitive information relating to the design of nuclear

¹ For detailed information, see *The United Nations Disarmament Yearbook*, vol. 28:2003 (United Nations publication, Sales No. E.04.IX.1).

² CD/1693 and Rev.1, (23 January 2003).

³ United Nations *Treaty Series*, vol. 729, p. 161.

weapons would not be divulged. The framework was to be used as a basis for the negotiation of agreements between the IAEA and each of the two States.

The third Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty, 1996, was convened in Vienna from 3 to 5 September 2003, during which it adopted a Final Declaration and Measures to Promote the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty.⁴ The Final Declaration stressed the importance of a universal and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty as a major instrument in the field of nuclear disarmament and non-proliferation; stated that ratifying States would consider appointing a Special Representative to assist the coordinating State in the performance of its function to promote its entry into force; and recommended that States consider establishing a trust fund, financed through voluntary contributions, to support an outreach programme for promoting the Treaty.

The first Review meeting of the Contracting parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997,⁵ was held in November 2003, in Vienna. An issue of general concern was the comparatively small number of Contracting parties which numbered 33 at the end of 2003.⁶

Regarding the Convention on the Physical Protection of Nuclear Material, 1979,⁷ the open-ended group of legal and technical experts met to prepare a draft amendment to the Convention and submitted its final report to the Director General of IAEA. The report was circulated to all States parties for consideration as to whether to initiate the procedure for the convening of an amendment conference in accordance with article 20 of the Convention. At the 47th General Conference of the IAEA, a group of States parties announced that they would submit a proposed amendment to the depositary of the Convention for circulation and request all States to support the holding of a diplomatic conference to consider it. By the end of 2003, no such proposal had been received by the depositary.

Also in 2003, the 47th General Conference of the IAEA endorsed the Board of Governor's approval of the strengthened revised text of the Code of Conduct on the Safety and Security of Radioactive Sources,⁸ while recognizing that it was not a legally binding instrument. Subsequently, further work was carried out on developing practical guidelines for its compliance, including specific guidelines on the import and export of radioactive sources.

At the bilateral level, the Treaty on Strategic Offensive Reductions (SORT) between the Russian Federation and the United States entered into force on 1 June 2003.⁹ In accordance with the provisions of the Treaty, each party undertook to reduce and limit strategic nuclear warheads by 31 December 2012 to between 1700 and 2200. The Treaty would remain in force until December 2012 and may be extended or superseded by subsequent agreement.

Consideration by the General Assembly

On 8 December 2003 the General Assembly adopted the following resolutions in the area of nuclear disarmament and non-proliferation: resolution 58/71, adopted by recorded

⁴ CTBT-ART.XIV/2003/5.

⁵ United Nations *Treaty Series*, vol. 2153, p. 303.

⁶ For detailed information, see IAEA JC/RM.1/06/Final version.

⁷ United Nations *Treaty Series*, vol. 1456, p. 101.

⁸ The IAEA published the Code of Conduct in 2001 under the symbol IAEA/CODEOC/2001. For detailed information, see GOV/2000/34-GC(44/7) and GOV/2003/49-GC(47)/9.

⁹ For the text of the Treaty, see <http://www.state.gov>.

vote of 173 in favor to 1 with 4 abstentions, entitled “Comprehensive Nuclear-Test-Ban Treaty”, in which the General Assembly welcomed the Final Declaration of the third Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty, held at Vienna from 3 to 5 September 2003, and stressed the importance and urgency of signature and ratification to achieve the earliest entry into force of the Treaty; resolution 58/68, adopted by recorded vote of 162 in favor to 4 with 10 abstentions, entitled “The risk of nuclear proliferation in the Middle East”, in which the General Assembly reaffirmed the importance of Israel’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons and placement of all its nuclear facilities under comprehensive International Atomic Energy Agency safeguards; resolution 58/64, entitled “Convention on the Prohibition of the Use of Nuclear Weapons”; resolution 58/59, adopted by recorded vote of 164 in favor to 2 with 14 abstentions, entitled “A path to the total elimination of nuclear weapons”, in which the General Assembly established an *ad hoc* committee in the Conference on Disarmament as early as possible during its 2004 session to negotiate a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear devices; the General Assembly also included the principle of irreversibility to be applied to nuclear disarmament, nuclear and other related arms controls and reduction measures; resolution 58/57, entitled “The Conference on Disarmament decision (CD/1547) of 11 August 1998 to establish, under item 1 of its agenda entitled ‘Cessation of the nuclear arms race and nuclear disarmament’, an *ad hoc* committee to negotiate, on the basis of the report of the Special Coordinator (CD/1299) and the mandate contained therein, a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices”; resolution 58/56, adopted by recorded vote of 112 in favor to 45 with 20 abstentions, entitled “Nuclear disarmament”, in which the General Assembly was mindful of paragraph 74 and other relevant recommendations in the Final Document of the Thirteenth Conference of Heads of States or Government of Non-Aligned Countries, held at Kuala Lumpur from 20 to 25 February 2003,¹⁰ called upon the Conference of Disarmament to establish, as soon as possible and as the highest priority, an *ad hoc* committee on nuclear disarmament and to commence negotiations on a phased programme for the complete elimination of nuclear weapons with a specified framework of time; resolution 58/51, entitled “Towards a nuclear-weapon-free world: a new agenda”; resolution 58/50, entitled “Reduction of non-strategic nuclear weapons”; resolution 58/49, entitled “Nuclear-weapon-free southern hemisphere and adjacent areas”; resolution 58/47, entitled “Reducing nuclear danger”; resolution 58/46, entitled “Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”; resolution 58/43, entitled “Promotion of multilateralism in the area of disarmament and non-proliferation”; resolution 58/40, entitled “Prohibition of the dumping of radioactive waste”; and resolution 58/35, adopted by a recorded vote of 119 in favor to none with 58 abstentions, entitled “Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons”, in which the General Assembly noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, although the difficulties with regard to evolving a common approach acceptable to all was pointed out.

¹⁰ A/57/759-S/2003/332, annex I.

(b) The Biological and Chemical Conventions

During the year under review, calls to further strengthen the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC), 1972,¹¹ and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), 1992,¹² continued, as did efforts by States parties to implement national measures in response.

In order to prepare for the First Annual Meeting of States Parties to the BWC, a Meeting of Experts was held in Geneva from 18 to 29 August 2003. The Meeting of Experts considered the adoption of necessary national measures to implement the prohibitions set forth in the BWC, including the enactment of penal legislation and national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins.¹³ The First Annual Meeting of States Parties to the BWC was held in Geneva from 10 to 14 November 2003.¹⁴

During 2003, four additional States became parties to the BWC, bringing the total number of parties to 151.¹⁵

From 28 April to 9 May 2003, the First Special Session of the Conference of the States Parties to Review the Operation of the CWC was convened in The Hague. The Conference reviewed the operation of the CWC since its entry into force in 1997, and offered guidelines for effective future implementation.¹⁶ The Conference also adopted a Political Declaration¹⁷ in which it reaffirmed, *inter alia*, the commitment of the States parties to comply with the obligations under the provisions of the Convention and declared that its universal, full and effective implementation would exclude completely the possibility of the use of chemical weapons. Furthermore, the Eighth Session of the Conference of States Parties to the CWC was held in The Hague from 20 to 24 October 2003, during which it adopted a Plan of Action Regarding the Implementation of Article VII Obligations¹⁸ (national implementation measures) to foster the full implementation of the CWC and to implement the recommendations made in the final document of the First Review Conference.¹⁹

During 2003, ten additional States became parties to the CWC, bringing the total number of parties to 158.²⁰

On 22 May 2003, the Security Council adopted resolution 1483, reaffirming the importance of the disarmament of weapons of mass destruction in Iraq. The resolution invited the United Kingdom and the United States, which had begun their own inspections

¹¹ United Nations *Treaty Series*, vol. 1015, p. 163.

¹² United Nations *Treaty Series*, vol. 1975, p. 3.

¹³ For the report of the Meeting of Experts, see BWC/MSP.2003, Parts I and II.

¹⁴ For the report of the Annual Meeting, see BWC/MSP/2003/4, vol. I and II.

¹⁵ Antigua and Barbuda, Palau, Timor Leste and the Sudan.

¹⁶ See Report of the First Special Session of the Conference of the States Parties to Review the Operation of the CWC, (RC-1/5, 9 May 2003) available from www.opcw.org/docs.

¹⁷ See RC-1/3, 9 May 2003. See also Appendix III of *The United Nations Disarmament Yearbook*, vol. 28:2003 (United Nations publication, Sales No. E.04.IX.1).

¹⁸ C-8/DEC.16, 24 October 2003.

¹⁹ CCW/CONF.I/16.

²⁰ For a complete list of signatories and States parties to CWC, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2003* (ST/LEG/SER.E/22).

in Iraq after the United Nations Monitoring, Verification and Inspection Commission's (UNMOVIC) withdrawal, to keep the Council informed of any discoveries relating to such weapon programmes. The resolution also underlined the Council's intention to revisit the mandates of UNMOVIC and IAEA to conduct inspections in Iraq. As at the end of 2003, the Council had not done so and UNMOVIC continued to operate under the assertion that the Security Council had not rescinded its mandate.

Consideration by the General Assembly

On 8 December 2003, the General Assembly adopted, without a vote, resolution 58/72, entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction", in which it welcomed the reaffirmation made in the Final Declaration of the Fourth Review Conference²¹ (1996) that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention. The Assembly further reaffirmed its call upon all signatory States that had not yet ratified the Convention to do so without delay; called upon those States that had not signed the Convention to become parties thereto at an early date; and called upon all States parties to participate in the exchange of information and data agreed to in the Final Declaration of the Third Review Conference²² (1991).

On the same date, the General Assembly also adopted, without a vote, resolution 58/52, entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", in which it emphasized the necessity of universal adherence to the Convention; urged all States parties to the Convention to meet in full and on time their obligations under the Convention and to support the Organization for the Prohibition of Chemical Weapons (OPCW) in its implementation activities; and welcomed the cooperation between the United Nations and OPCW within the framework of the Relationship Agreement between the United Nations and the Organization,²³ in accordance with the provisions of the Convention.

(c) Conventional weapons issues

In the area of small arms and light weapons, the Group of Governmental Experts (GGE) on 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 (CCW), 1980,²⁴ completed its negotiations of a new Protocol on Explosive Remnants of War, which was adopted by the Meeting of the States parties to the CCW on 28 November 2003, and annexed to the CCW as Protocol V.²⁵ The Meeting of States parties also decided that the GGE should continue in 2004 to consider, *inter alia*, the implementation of existing principles of international humanitarian law and to further study possible preventive measures aimed at improving the design of certain types

²¹ BWC/CONF.IV/9, part II.

²² BWC/CONF.III/23, part II.

²³ See General Assembly resolution 55/283 of 7 September 2001.

²⁴ United Nations *Treaty Series*, vol. 1342, p. 137.

²⁵ Doc.CCW/MSP/2003/2.

of munitions, including sub-munitions. During the year, the GGE further concluded that it was both feasible and desirable to develop an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons and recommended that the General Assembly take a decision on the negotiation of such an instrument.²⁶

During 2003, there were also some developments in the area of mines. The Fifth Annual Meeting²⁷ of States parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997,²⁸ was held in Bangkok, from 15 to 19 September 2003. The general status and operation of the Convention was reviewed and it was noted that during 2003, 11 States had become parties to the Convention, bringing the total number of parties to 136. No requests had been made for a deadline extension for completing destruction of anti-personnel mines, as provided for under article 5 of the Convention, nor for clarification of compliance as provided for under article 8. In accordance with article 12 of the Convention, the Fifth Annual Meeting decided that the Convention's first review conference would be held in Nairobi from 29 November to 3 December 2004 and that preparatory meetings would be convened in Geneva on 13 February and from 28 to 29 June 2004. Furthermore, the Fifth Annual Conference of the States parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996,²⁹ annexed to the CCW, was held in Geneva on 26 November 2003 and reviewed the status and operation of the Protocol II, as amended, and appealed to all States that had not yet done so to take all measures to accede to it as soon as possible.³⁰

The ninth Plenary meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies³¹ was held in Vienna, from 10 to 12 December 2003, during which it carried out an assessment of the functioning of the Arrangement. Furthermore, important steps were also taken to enhance export controls on conventional arms and dual-use goods and technologies, with special emphasis on strengthening the capabilities of member governments to combat the threat of terrorism. The Plenary approved a number of major initiatives, including tightening controls over Man Portable Air Defence Systems (MANPADS); enhancing transparency of small arms and light weapons transfers; establishing elements for national legislation on arms brokering; and imposing export controls on certain unlisted items when necessary to support United Nations arms embargoes.

Consideration by the General Assembly

During its fifty-eighth session, the General Assembly adopted eight resolutions and one decision dealing with the subject of conventional weapons. Seven resolutions were adopted on 8 December 2003 and one resolution was adopted on 23 December 2003.

The General Assembly adopted the two following resolutions in the area of transparency: resolution 58/28, entitled "Objective information on military matters, including

²⁶ A/58/138.

²⁷ BWC/CONF.V.

²⁸ United Nations *Treaty Series*, vol. 2056, p. 211.

²⁹ United Nations *Treaty Series*, vol. 2048, p. 93.

³⁰ CCW/AP.II/CONF.5/2, annex III.

³¹ For detailed information, see www.wassenaar.org.

transparency of military expenditures” and resolution 58/54, entitled “Transparency in armaments”. It further adopted two resolutions and one decision relating to the illicit trade in small arms and light weapons: resolution 58/55, entitled “Promotion at the regional level in the Organization for Security and Cooperation in Europe of the United Nations Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All its Aspects”, resolution 58/58, entitled “Assistance to States for curbing the illicit traffic in small arms and collecting them”, and resolution 58/241 of 23 December 2003, entitled “The illicit trade in small arms and light weapons in all its aspects”.

Also on 8 December 2003, the General Assembly adopted, without a vote, resolution 58/42, entitled “National legislation on transfer of arms, military equipment and dual-use goods and technology”, in which it, *inter alia*, stressed the importance for Member States to have effective legislation to control the transfer and movement of arms, military equipment and dual-use goods and technology into or out of their own territories. The Assembly further invited Member States that were in a position to do so, to enact or improve such legislation and to inform the Secretary-General of such legislation on a voluntary basis. Furthermore, by resolution 58/69, entitled “Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to be Excessively Injurious or to have Indiscriminate Effects”, adopted without a vote, the General Assembly called upon all States that had not yet done so to take all measures to become parties, as soon as possible, to the Convention and the Protocols thereto, as amended, as well as the amendment of article I, extending the scope of the Convention and the Protocols thereto to include armed conflicts of a non-international character. It further expressed support for the work of the Group of Governmental Experts and encouraged the Group to submit a draft instrument to States parties for consideration at their November meeting on explosive remnants of war as well as to report on its work on mines other than anti-personnel mines and on compliance.

In the area of anti-personnel mines, the General Assembly adopted resolution 58/53, by a recorded vote of 153 to none, with 23 abstentions, entitled “Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction”. In the resolution, the General Assembly, *inter alia*, urged all States parties to provide the Secretary-General with complete and timely information as required under article 7 of the Convention, in order to promote transparency and compliance with the Convention; requested that the Secretary-General undertake necessary preparations to convene the Convention’s First Review Conference in Nairobi in 2004; and urged participation at the highest possible level in a high-level segment at the end of the Review Conference.

Finally, also on 8 December 2003, the General Assembly adopted decision 58/519, entitled “Consolidation of peace through practical disarmament measures”.

(d) Regional disarmament

During 2003, the United Nations, in cooperation with regional and sub-regional organizations, intensified its efforts to curb proliferation of conventional arms, in particular through the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Significant efforts were also undertaken in relation to the regional nuclear-weapon-free zones.

1. Africa

During 2003, the United Nations Regional Centre for Peace and Disarmament in Africa continued, in cooperation with regional and sub-regional organizations and Member States, to promote the implementation of multilateral legal instruments in the area of disarmament as well as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects.

2. Americas

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) continued to undertake a wide range of activities in the area of disarmament and non-proliferation in close cooperation with States in the region, United Nations agencies, international organizations, and non-governmental organizations. It was actively involved in the strengthening of the Nuclear-Weapon-Free Zone created by the Treaty of Tlateloco, 1967, and promoted the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997.³² Furthermore, the Department of Disarmament Affairs of the United Nations and the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean signed a Memorandum of Understanding, in April 2003, aimed at enhancing their cooperation in the area of disarmament and non-proliferation.

3. Asia and the Pacific

In 2003, the activities of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific focused on issues relating to nuclear-weapon-free zones and, in this context, organized several regional conferences and seminars and provided support to the five Central Asian States³³ in their efforts to conclude a Central Asian Nuclear-Weapon-Free Zone treaty.

4. Europe

On 11 and 12 March, the Department of Disarmament Affairs organized, in partnership with Organization for Security and Co-operation in Europe (OSCE) and with the cooperation of the Government of Slovenia, the Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in South Eastern Europe, in Slovenia, during which participants shared information on measures taken by States in the sub-region, including legislative measures.

Consideration by the General Assembly

On 8 December 2003, the General Assembly adopted the following resolutions regarding regional disarmament: resolution 58/63, adopted without a vote, entitled "United Nations regional centres for peace and disarmament", in which the General Assembly recalled the

³² United Nations *Treaty Series*, vol. 2056, p. 211.

³³ Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

reports of the Secretary-General on the United Nations Regional Center for Peace and Disarmament in Africa,³⁴ United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific,³⁵ and the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean;³⁶ resolution 58/62, entitled “United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific”; resolution 58/61, entitled “United Nations Regional Centre for Peace and Disarmament in Africa”; resolution 58/60, entitled “United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean”; resolution 58/38, entitled “Regional disarmament”; resolution 58/43, entitled “Confidence-building measures in the regional and subregional context”; resolution 58/34, entitled “Establishment of a nuclear-weapon-free zone in the Middle East”; resolution 58/31, entitled “Consolidation of the regime established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)” and resolution 58/30, entitled “African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)”.

(e) Terrorism and disarmament

On 20 January 2003, the Security Council held a high-level meeting on combating terrorism and adopted resolution 1456 containing a declaration whereby the Council, *inter alia*, underlined the importance of fully complying with existing legal obligations in the field of disarmament, arms limitations and non-proliferation and, where necessary, strengthening international instruments in this field.

Aimed at filling the gaps left by the existing 12 universal counter-terrorism treaties, the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (on terrorism) met from 31 March to 3 April 2003 to continue its efforts to conclude, *inter alia*, a draft international convention for the suppression of acts of nuclear terrorism.³⁷ The work continued during the fifty-eighth session of the General Assembly, in the framework of a Working Group of the Sixth Committee.³⁸ By resolution 58/81 of 9 December 2003, entitled “Measures to eliminate international terrorism”, adopted without a vote, the General Assembly decided that the Ad Hoc Committee should continue its efforts to resolve the outstanding issues related to the draft convention and requested it to report to the General Assembly at its fifty-ninth session on progress made in the implementation of its mandate.

Pursuant to General Assembly resolution 57/83 of 22 November 2002, the Secretary-General submitted a report³⁹ to the General Assembly at its fifty-eighth session, containing views of Member States and information received from international organizations on “Measures to prevent terrorists from acquiring weapons of mass destruction”. On 8 December 2003, the General Assembly adopted resolution 58/48, without a vote, on the same subject and, taking note of the report of the Secretary-General, urged Member States to take and strengthen national measures, as appropriate, to prevent terrorists from

³⁴ A/58/139.

³⁵ A/58/190.

³⁶ A/58/122.

³⁷ For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37 (A/58/37)*.

³⁸ For the report of the Working Group, see A/C.6/58/L.10.

³⁹ A/58/208 and Add.1.

acquiring such weapons. It also requested the Secretary-General to compile a report on measures already taken by international organizations on issues relating to the linkage between the fight against terrorism and the proliferation of weapons of mass destruction, to seek the views of Member States on additional relevant measures for tackling the global threat posed by the acquisition by terrorists of weapons of mass destruction, and to report to the General Assembly at its fifty-ninth session.

(f) Outer space and disarmament

In 2003, despite efforts undertaken by various Member States to harmonize views on a mandate for an ad hoc committee on the prevention of an arms race in outer space, the Conference on Disarmament did not reach consensus on its formulation. Furthermore, the Conference was not able to agree on its programme of work and, therefore, no substantive work on the topic was carried out.

On 8 December 2003, the General Assembly adopted, with a recorded vote of 174 to none, with four abstentions, resolution 58/36 entitled "Prevention of an Arms Race in Outer Space", in which it recognized that negotiations for the conclusion of an international agreement or agreements to prevent an arms race in outer space remained a priority task of the Ad Hoc Committee and that concrete proposals on confidence-building measures could form an integral part of such agreements. It further reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral.

(g) Human rights, human security and disarmament

The 55th Session of the Sub-Commission on the Promotion and Protection of Human Rights continued to consider the question relating to the threat that conventional and non-conventional weapons posed to human rights. Its discussion focused on two working papers entitled "Human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering"⁴⁰ and "Prevention of human rights violations committed with small arms and light weapons".⁴¹ By decision 2003/105 of 13 August 2003, entitled "Sub-Commission on the Promotion and Protection of Human Rights: The prevention of human rights violations committed with small arms and light weapons", the Sub-Commission decided to request the Secretary-General to transmit a questionnaire elaborated by the Special Rapporteur on this topic to governments, national human rights institutions and non-governmental organizations, in order to solicit information required in connection with the Special Rapporteur's report, in particular on the national laws and training programmes used to implement the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁴²

⁴⁰ E/CN.4/Sub.2/2003/35.

⁴¹ E/CN.4/Sub.2/2003/29.

⁴² For the text of the Basic Principles, see the website of the Office of the High Commissioner for Human Rights, <http://www.unhchr.ch>.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(a) Membership of the United Nations

As at the end of 2003, the number of Member States remained at 191.

(b) Legal aspects of peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-second session at the United Nations Office at Vienna from 24 March to 4 April 2003.⁴³ During the session, Algeria was welcomed as a new member of the Committee and its Subcommittees.

In connection with the agenda item on the status and application of the five United Nations treaties on outer space, the Legal Subcommittee noted the status of the said five treaties⁴⁴ and reconvened its Working Group on this topic.⁴⁵ The terms of reference of the Working Group included the status of treaties, review of their implementation and obstacles to their universal acceptance, as well as promotion of space law. The Working Group would also review the application and implementation of the concept of the “launching State”. Furthermore, the Legal Subcommittee agreed that the merits and substance of the proposed General Assembly resolution on the application of the legal concept of the “launching State”⁴⁶ should be further considered by the Committee at its forty-sixth session (from 11 to 20 June 2003).

Various international organizations reported to the Legal Subcommittee on their activities relating to space law, including the European Centre for Space Law, the European Organization for the Exploitation of Meteorological Satellites, the International Astronautical Federation, the International Institute of Space Law, the International Law Association and Intersputnik. It was also informed about the activities of the International Centre for Space Law in Kyiv. Moreover, the Legal Subcommittee had before it the report of the Group of Experts on Ethics of Outer Space,⁴⁷ which had been requested, at its forty-fourth session in 2001, to identify which aspects of the report of the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) might need to be studied by the Committee and to draft a report in consultation with other international organizations and in close liaison with COMEST. The Legal Subcommittee noted that it was the primary international forum for the development of international space law and that the entire

⁴³ For the report of the Legal Subcommittee, see A/AC.105/805.

⁴⁴ The treaties include: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 1967 (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1968 (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects, 1972 (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space, 1975 (General Assembly resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (General Assembly resolution 34/68, annex).

⁴⁵ For the report of the Working Group, see A/AC.105/805, annex I.

⁴⁶ A/AC.105/C.2/L.242.

⁴⁷ For the report of the Group of Experts on the Ethics of Outer Space see A/AC.105/C.2/L.240/Rev.1.

body of space law developed by it was founded on ethical principles. It noted that the Committee might wish to consider the report at its forty-sixth session.

Regarding the agenda item entitled “Matters relating to: (a) the definition and delimitation of outer space; and (b) the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union”, the Legal Subcommittee had before it, *inter alia*, a note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States”.⁴⁸ The Legal Subcommittee re-established its Working Group under this agenda item to consider only matters relating to the definition and delimitation of outer space.⁴⁹

With regard to the review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, the Legal Subcommittee noted that, in view of the work being conducted by the Scientific and Technical Subcommittee on this topic, opening a discussion on revision of the Principles was not warranted.

Regarding the agenda item on the examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment,⁵⁰ the Legal Subcommittee considered two sub-items: (a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol; and (b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space. The Legal Subcommittee had before it a report of the Secretariat entitled “Convention on International Interests in Mobile Equipment (opened for signature in Cape Town on 16 November 2001)⁵¹ and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as Supervisory Authority under the protocol”⁵². The Legal Subcommittee took note of the report of the Working Group established under this agenda item.⁵³

Two new items entitled “Practice of States and international organizations in registering space objects” and “Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)” were proposed by the Legal Subcommittee for inclusion in its agenda for its forty-third session. It was further agreed that a Working Group would be established to consider the former of these items in 2005 and 2006.

The Committee on Peaceful Uses of Outer Space, at its forty-sixth session, held at the United Nations Office at Vienna from 11 to 20 June 2003, took note of the Legal Subcommittee’s report and a number of views were expressed concerning its work.⁵⁴

⁴⁸ A/AC.105/635 and Add.1-8.

⁴⁹ For the report of the Working Group, see A/AC.105/805, annex II.

⁵⁰ The International Institute for the Unification of Private Law (UNIDROIT) is depositary for the Convention. For the text of the Convention, see <http://www.unidroit.org>.

⁵¹ DCME Doc. No. 74 (ICAO).

⁵² A/AC.105/C.2/L.238.

⁵³ For the report of the Working Group, see A/AC.105/805, annex III.

⁵⁴ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 20 (A/58/20)*.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted, without a vote, resolution 58/89 of 9 December 2003, entitled “International cooperation in the peaceful uses of outer space”, in which it, *inter alia*, endorsed the report of the Committee on the Peaceful Uses of Outer Space⁵⁵ as well as the recommendation of the Committee regarding the Legal Subcommittee. It also agreed that the report of the Group of Experts on the Ethics of Outer Space⁵⁶ should be transmitted to UNESCO with the request that it keep the Committee and its subcommittees informed about its activities relating to outer space and endorsed the decision of the Committee to grant permanent observer status to the Regional Centre for Remote Sensing of the North African States and the International Institute for Applied Systems Analysis. Also on the recommendation of the Fourth Committee, the General Assembly adopted, without a vote, resolution 58/90 of 9 December 2003, entitled “Review of the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space”, in which it requested the Committee to submit its report on the review of the implementation of the recommendations of UNISPACE III to the General Assembly at its fifty-ninth session.

(c) United Nations peacekeepers

Consideration by the General Assembly

At its fifty-seventh session, the General Assembly adopted resolution 57/336 on 18 June 2003, without a vote, entitled “Comprehensive review of the whole question of peacekeeping operations in all their aspects”. The resolution noted the widespread interest in contributing to the work of the Special Committee on Peacekeeping Operations and welcomed the report of the Special Committee.⁵⁷

(d) Peacekeeping operations and other United Nations missions

United Nations operations or missions established in 2003

1. Côte d’Ivoire

The United Nations Mission in Côte d’Ivoire (MINUCI) was established for an initial period of six months by Security Council resolution 1479 adopted on 13 May 2003. According to paragraph 2 of the resolution, the mandate of MINUCI is to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement, and including a military component, by complementing the operations of the French troops and the Economic Community of West African States (ECOWAS) forces.

By resolution 1514 adopted on 13 November 2003, the Security Council decided to extend the mandate of MINUCI until 4 February 2004.

⁵⁵ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 20 (A/58/20).*

⁵⁶ For the report of the Group of Experts on the Ethics of Outer Space, see A/AC.105/C.2/L.240/Rev.a.

⁵⁷ A/57/767.

2. Democratic Republic of the Congo

During 2003, the mandate of the United Nations organization Mission in the Democratic Republic of the Congo (MONUC), which was established by Security Council resolution 1279 (1999), was modified by the Security Council. By its resolution 1493 adopted on 28 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, decided to extend the mandate of MONUC and authorized it:

– to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Programme, pending the establishment of a national DDR programme in coordination with the United Nations Development Programme and other agencies concerned;

– to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities, (a) to protect United Nations personnel, facilities, installations and equipment; (b) to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or in the process of the disarmament, demobilization, repatriation, reintegration or resettlement (DDRRR); (c) to protect civilians and humanitarian workers under imminent threat of physical violence; (d) and to contribute to the improvement of the security conditions in which humanitarian assistance is provided;

– to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu.

In the same resolution, the Security Council also (a) authorized increasing the military strength of MONUC to 10,800 personnel; and (b) encouraged MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance, during the transition period, for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, throughout the territory of the Democratic Republic of the Congo.

By its resolution 1489 of 16 June 2003 and resolution 1493 of 28 July 2003, the Security Council decided to extend the mandate of MONUC until 30 July 2003 and 30 July 2004, respectively.

3. Liberia

The United Nations Mission in Liberia (UNMIL) was established for an initial period of 12 months by Security Council resolution 1509 adopted on 19 September 2003. In paragraph 1 of the resolution, the Secretary-General was requested to transfer authority from the ECOWAS-led ECOMIL forces to UNMIL on 1 October 2003. The Council, acting under Chapter VII of the Charter of the United Nations, decided in paragraph 3 of the resolution that UNMIL would have the following mandate:

– to support the implementation of the Liberian ceasefire agreement by (a) observing and monitoring the implementation of the ceasefire agreement and investigating violations of the ceasefire; (b) establishing and maintaining continuous liaison with the field headquarters of all the parties' military forces; (c) assisting in the development of cantonment sites and providing security at these sites; (d) observing and monitoring

disengagement and cantonment of military forces of all the parties; (e) supporting the work of the Joint Monitoring Committee (JMC); (f) developing, as soon as possible, preferably within 30 days of the adoption of the resolution, in cooperation with the JMC, relevant international financial institutions, international development organizations, and donor nations, an action plan for the overall implementation of a disarmament, demobilization, reintegration, and repatriation (DDRR) programme for all armed parties; with particular attention to the special needs of child combatants and women; and addressing the inclusion of non-Liberian combatants; (g) carrying out voluntary disarmament and collecting and destroying weapons and ammunition as part of an organized DDRR programme; (h) liaising with the JMC and advising on the implementation of its functions under the Comprehensive Peace Agreement and the ceasefire agreement; (i) providing security at key government installations, in particular ports, airports, and other vital infrastructure;

– to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel and, without prejudice to the efforts of the government, to protect civilians under imminent threat of physical violence, within its capabilities;

– to support humanitarian and human rights assistance by (a) facilitating the provision of humanitarian assistance, including by helping to establish the necessary security conditions; (b) contributing towards international efforts to protect and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees and internally displaced persons, women, children, and demobilized child soldiers, within UNMIL's capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations, governmental organizations, and non-governmental organizations; (c) ensuring an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection, and monitoring activities;

– to support security reform by (a) assisting the transitional government of Liberia in monitoring and restructuring the police force of Liberia, consistent with democratic policing, developing a civilian police training programme, and otherwise assisting in the training of civilian police, in cooperation with ECOWAS, international organizations, and interested States; (b) assisting the transitional government in the formation of a new and restructured Liberian military in cooperation with ECOWAS, international organizations and interested States;

– and to support the implementation of the peace process by (a) assisting the transitional Government, in conjunction with ECOWAS and other international partners, in re-establishment of national authority throughout the country, including the establishment of a functioning administrative structure at both the national and local levels; (b) assisting the transitional government in conjunction with ECOWAS and other international partners in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions; (c) assisting the transitional government in restoring proper administration of natural resources; (d) assisting the transitional government, in conjunction with ECOWAS and other international partners, in preparing for national elections scheduled for no later than the end of 2005.

Finally, in paragraph 7 of the resolution, the Liberian Government was requested to conclude a status-of-force agreement with the Secretary-General within 30 days of adoption of the resolution, and the Security Council noted that pending the conclusion

of such an agreement the model status-of-force agreement dated 9 October 1990⁵⁸ would apply provisionally.

*Changes in the mandate and/or extensions of time limits of ongoing
United Nations operations or missions in 2003*

1. Cyprus

By resolution 1486 adopted on 11 June 2003 and resolution 1517 adopted on 24 November 2003, the Security Council decided to extend until 15 December 2003 and 15 June 2004, respectively, the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) which was established by Security Council resolution 186 (1964).

2. Georgia

By resolution 1462 adopted on 30 January 2003 and resolution 1494 adopted on 30 July 2003, the Security Council decided to extend until 31 July 2003 and 31 January 2004, respectively, the United Nations Observer Mission in Georgia (UNOMIG) which was established by Security Council resolution 858 (1993).

3. Lebanon

By resolution 1461 adopted on 30 January 2003 and resolution 1496 adopted on 31 July 2003, the Security Council decided to extend until 31 July 2003 and 31 January 2004, respectively, the mandate of the United Nations Interim Force in Lebanon (UNIFIL), which was established by Security Council resolutions 425 and 426 (1979).

4. Sierra Leone

By resolution 1470 adopted on 28 March 2003 and resolution 1508 adopted on 19 September 2003, the Security Council decided to extend until 30 September 2003 and 30 March 2004, respectively, the mandate of the United Nations Mission in Sierra Leone (UNAMSIL)⁵⁹ which was established by Security Council resolution 1270 (1999).

5. Situation between Ethiopia and Eritrea

By resolution 1466 adopted on 14 March 2003 and resolution 1507 adopted on 12 September 2003, the Security Council decided to extend until 15 September 2003 and 15 March 2004, respectively, the mandate of the United Nations Mission in Ethiopia and Eritrea (UNMEE) which was established by Security Council resolution 1312 (2000).

6. Situation between Iraq and Kuwait

By resolution 1490, adopted on 3 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, decided to extend for a final period until 6 October 2003

⁵⁸ A/45/594.

⁵⁹ See also resolution 1492 adopted by the Security Council on 18 July 2003 and in which the Council approved the recommendation by the Secretary-General, that the drawdown of UNAMSIL should proceed according to the "modified status quo" option towards withdrawal by December 2004.

the United Nations Iraq-Kuwait Observation Mission (UNIKOM) which was established under Chapter VII of the United Nations Charter by Security Council resolution 689 (1991).

7. Syria and Israel

By resolution 1488 adopted on 26 June 2003 and resolution 1520 adopted on 22 December 2003, the Security Council decided to extend until 31 December 2003 and 30 June 2004, respectively, the United Nations Disengagement Observer Force (UNDOF) which was established by Security Council resolution 350 (1974).

8. Timor-Leste

By resolution 1480 adopted on 19 May 2003, the Security Council decided to extend until 20 May 2004 the mandate of the United Nations Mission of Support in East Timor (UNMISSET) which was established by Security Council resolution 1410 (2002).

9. Western Sahara

By resolution 1463 adopted on 30 January 2003, resolution 1469 adopted on 25 March 2003, resolution 1485 adopted on 30 May 2003, resolution 1495 adopted on 31 July 2003 and resolution 1513 adopted on 28 October 2003, the Security Council decided to extend until 31 March 2003, 31 May 2003, 31 July 2003, 31 October 2003 and 31 January 2004, respectively, the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) which was established by Security Council resolution 690 (1991).

Other ongoing United Nations peacekeeping missions

Two other United Nations peacekeeping missions were operating in 2003. The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by resolution 1244 (1999) and the United Nations Truce Supervision Organization (UNTSO) was established by resolution 50 (1948), in which the Security Council called for a cessation of hostilities in Palestine and decided that the truce should be supervised by the United Nations Mediator, with a group of military observers ; the first group of military observers which arrived in the region in June 1948 has become known as the UNTSO.⁶⁰

Political and peacebuilding missions

The following political and peacebuilding missions were operating in 2003: Office of the United Nations Special Coordinator for the Middle East (UNSCO) since 1 October 1999; United Nations Political Office for Somalia (UNPOS) since 15 April 1995, United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) since 3 March 1999; United Nations Peacebuilding Office in the Central African Republic (BONUCA) since 15 February 2000; United Nations Tajikistan Office of Peacebuilding (UNTOP) since 1 June 2000; Office of the Special Representative of the Secretary-General for the Great

⁶⁰ For the first explicit reference to UNTSO in a Security Council resolution, see Security Council resolution 73 (1949), para. 5.

Lakes Region, since 19 December 1997; and the Office of the Special Representative of the Secretary-General for West Africa, since 29 November 2001.

The United Nations Assistance Mission for Iraq (UNAMI) was established for an initial period of twelve months by Security Council resolution 1500, adopted on 14 August 2003. According to paragraph 2 of the resolution, the mandate of UNAMI is to support the Secretary-General in the fulfilment of his mandate under resolution 1483 (2003) in accordance with the structure and responsibilities set out in his report of 15 July 2003.⁶¹ In resolution 1483 (2003), the Secretary-General was requested to take a number of measures, namely:

– to appoint a Special Representative for Iraq whose independent responsibilities would involve reporting regularly to the Council on his activities under the resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through: (a) coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations; (b) promoting the safe, orderly, and voluntary return of refugees and displaced persons; (c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative government of Iraq; (d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations; (e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions; (f) encouraging international efforts to contribute to basic civilian administration functions; (g) promoting the protection of human rights; (h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and (i) encouraging international efforts to promote legal and judicial reform;

– to continue, in coordination with the Authority, the exercise of his responsibilities under Security Council resolution 1472 adopted on 28 March 2003 and resolution 1476 adopted on 24 April 2003, for a period of six months following the adoption of the resolution, and terminate within this time period, in the most cost effective manner, the ongoing operations of the “Oil-for-Food” Programme (the Programme), both at headquarters level and in the field, transferring responsibility for the administration of any remaining activity under the Programme to the Authority, including by taking certain measures set out in the resolution.

By resolution 1471 adopted on 28 March 2003, the Security Council decided to extend until 28 March 2004 the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) which was established by Security Council resolution 1401 (2002).

⁶¹ S/2003/715.

(e) Action by Member States authorized by the United Nations Security Council

Action authorized in 2003

1. Côte d'Ivoire

In its resolution 1464 adopted on 4 February 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized Member States participating in the Economic Community of West African States (ECOWAS) forces in accordance with Chapter VIII together with the French forces supporting them to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure, without prejudice to the responsibilities of the Government of National Reconciliation, the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them, for a period of six months after which the Council would assess the situation and decide whether to renew the authorization. The Security Council also requested ECOWAS, through the command of its force, and France to report to the Council periodically, through the Secretary-General, on all aspects of the implementation of their respective mandates.

In its resolution 1498 adopted on 4 August 2003, the Security Council decided to renew for a period of six months the authorization given to Member States participating in the ECOWAS forces together with French forces supporting them.

2. Liberia

In its resolution 1497 adopted on 1 August 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized Member States to establish a Multinational Force in Liberia to support the implementation of the ceasefire agreement of 17 June 2003, including establishing conditions for initial stages of disarmament, demobilization and reintegration activities, to help establish and maintain security in the period after the departure of the current President and the installation of a successor authority, taking into account the agreements to be reached by the Liberian parties, and to secure the environment for the delivery of humanitarian assistance, and to prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force. The Security Council authorized the Member States participating in the Multinational Force to take all necessary measures to fulfil its mandate. Finally, the Council requested the Secretary-General through his Special Representative to report to the Council periodically on the situation in Liberia in relation to the implementation of the resolution, including information on implementation by the Multinational Force of its mandate.

3. Situation between Iraq and Kuwait

In its resolution 1511 adopted on 16 October 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized a multinational force under unified command to take all necessary measures, first, to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme for the drafting of a new constitution for Iraq and for the holding of democratic elections under that constitution, and secondly, to

contribute to the security of the United Nations Assistance Mission for Iraq (UNAMI), the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure. The Security Council also decided that the Council would review the requirements and mission of the multinational force not later than one year from the date of the resolution, and that in any case the mandate of the force would expire upon the completion of the political process as described in paragraphs 4 through 7 and 10 of the resolution. The Council requested that the United States, on behalf of the multinational force, report to the Security Council on the efforts and progress of this force as appropriate and not less than every six months.

4. Democratic Republic of the Congo

In its resolution 1484 adopted on 30 May 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the deployment of an Interim Emergency Multinational Force until 1 September 2003 in Bunia in close coordination with MONUC, in particular its contingent currently deployed in the town, to contribute to the stabilization of the security conditions and the improvement of the humanitarian situation in Bunia, to ensure the protection of the airport, the internally displaced persons in the camps in Bunia and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town. The Security Council also stressed that this Interim Emergency Multinational Force was to be deployed on a strictly temporary basis to allow the Secretary-General to reinforce MONUC's presence in Bunia. The Security Council authorized the Member States participating in the Interim Emergency Multinational Force in Bunia to take all necessary measures to fulfil its mandate and, further, requested the leadership of the Interim Emergency Multinational Force in Bunia to report regularly to the Council through the Secretary-General, on the implementation of its mandate.

In its resolution 1501 adopted on 26 August 2003, the Security Council extended the mandate of the Interim Emergency Multinational Force. In the resolution, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the multinational force, within the limits of the means at the disposal of those elements of the Force which would not yet have left Bunia before 1 September 2003, to provide assistance to the MONUC contingent deployed in the town and its immediate surroundings, if MONUC requested them to do so and if exceptional circumstances demanded it, during the period of the Force's disengagement which should last until 15 September 2003 at the latest.

Changes in authorization and/or extensions of time limits in 2003

1. Afghanistan

During 2003, the Security Council extended the mandate of the International Security Assistance Force previously deployed in Afghanistan in accordance with Security Council resolution 1386 (2001).

In its resolution 1510 adopted on 13 October 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the expansion of the mandate of the International Security Assistance Force to allow it, as resources permit, to support the Afghan Transitional Authority and its successors in the maintenance of security in areas of Afghanistan outside of Kabul and its environs, so that the Afghan Authorities as well as

the personnel of the United Nations and other international civilian personnel engaged, in particular, in reconstruction and humanitarian efforts, could operate in a secure environment, and to provide security assistance for the performance of other tasks in support of the Bonn Agreement. The Council authorized the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil its mandate and requested the leadership of the International Security Assistance Force to provide quarterly reports on the implementation of its mandate to the Security Council through the Secretary-General. Further, the Council, decided to extend for a period of 12 months the authorization of the International Security Assistance Force, as defined in Security Council resolution 1386 (2001) and in the resolution.

2. Bosnia and Herzegovina

In its resolution 1491 adopted on 11 July 2003, the Security Council, acting under Chapter VII of the United Nations Charter, authorized the Member States to continue for a further planned period of 12 months the multinational stabilization force (SFOR) as established in accordance with its resolution 1088 (1996).⁶²

(f) Security Council Committees

Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

According to the annual report of the Committee,⁶³ among the Committee's notable achievements in 2003 was the issuance of a reformatted version of its consolidated list of individuals and entities maintained pursuant to paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002). The Committee approved the names of 77 individuals and 7 entities for addition to the list.

Counter-Terrorism Committee

The Counter-Terrorism Committee, established pursuant to Security Council resolution 1373 (2001), continued during 2003 to review reports from Member States on the implementation of relevant measures to suppress and prevent terrorism.

Security Council Committee established pursuant to resolution 1518 (2003) (concerning Iraq)

On 24 November 2003, the Security Council adopted resolution 1518 and, acting under Chapter VII of the Charter, decided, *inter alia*, to establish, with immediate effect, a Committee of the Security Council, consisting of all members of the Council, to continue to identify pursuant to paragraph 19 of resolution 1483 (2003) individuals and entities referred to in paragraph 19 of that resolution, including by updating the list of individuals and entities that have already been identified by the Committee established pursuant to paragraph 6 of resolution 661 (1990). By paragraph 19 of resolution 1483 (2003), the

⁶² See para. 18.

⁶³ S/2004/281.

Security Council decided to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) after the period specified therein and, further, decided that the Committee shall identify individuals and entities referred to in paragraph 23 of the resolution. In paragraph 23 of resolution 1483 (2003), the Security Council decided that all Member States in which there are (a) funds or other financial assets or other economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of the resolution, or (b) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq.

*Security Council Committee established pursuant to
resolution 1521 (2003) concerning Liberia*

On 22 December 2003, the Security Council, acting under Chapter VII of the Charter, decided, *inter alia*, to establish a Committee of the Security Council, consisting of all members of the Council, to undertake the following tasks: (a) to monitor the implementation of the measures in paragraphs 2, 4, 6 and 10 of the resolution, taking into consideration the reports of the expert panel established by paragraph 22 of the resolution; (b) to seek from all States, particularly those in the subregion, information about the actions taken by them to implement effectively those measures; (c) to consider and decide upon requests for the exemptions set out in paragraphs 2 (e), 2 (f) and 4 (c) of the resolution; (d) to designate the individuals subject to the measures imposed by paragraph 4 of the resolution and to update this list regularly; (e) to make relevant information publicly available through appropriate media, including the list referred to in subparagraph (d) above; (f) to consider and take appropriate action, within the framework of the resolution, on pending issues or concerns brought to its attention concerning the measures imposed by resolutions 1343 (2001), 1408 (2002) and 1478 (2003) while those resolutions were in force; and (g) to report to the Council with its observations and recommendations;

In paragraph 2 of the resolution, the Council, *inter alia*, decided that all States shall (a) take the necessary measures to prevent the sale or supply to Liberia, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territories; and (b) take the necessary measures to prevent any provision to Liberia by their nationals or from their territories of technical training or assistance related to the provision, manufacture, maintenance or use of the items in subparagraph (a). In paragraph 2, the Council also clarified the application of subparagraphs (a) and (b) in certain instances and, further, decided that the measures imposed in those subparagraphs shall not apply to certain supplies.

In paragraph 4 of the resolution, the Council, *inter alia*, decided that all States shall take the necessary measures to prevent the entry into or transit through their territories of all such individuals, as designated by the Committee, who constitute a threat to the peace process in Liberia, or who are engaged in activities aimed at undermining peace and stability in Liberia and the subregion, including those senior members of former President Charles Taylor's Government and their spouses and members of Liberia's former armed forces who retain links to former President Charles Taylor, those individuals determined by the Committee to be in violation of paragraph 2 of the resolution, and any other individuals, or individuals associated with entities, providing financial or military support to armed rebel groups in Liberia or in countries in the region, provided that nothing in the paragraph shall oblige a State to refuse entry into its territory to its own nationals. In paragraph 4 (b) the Council, further, decided that the measures shall continue to apply to the individuals already designated pursuant to paragraph 7 (a) of resolution 1343 (2001), pending the designation of individuals by the Committee as required by and in accordance with paragraph 4 (a) above. The Council further decided in paragraph 4 (c) that the measures imposed by paragraph 4 (a) shall not apply where the Committee determines that such travel is justified on the grounds of humanitarian need, including religious obligation, or where the Committee concludes that an exemption would otherwise further the objectives of the Council's resolutions.

The Council decided, in paragraph 6 of the resolution, that all States shall take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia to their territory, whether or not such diamonds originated in Liberia.

The Council decided, in paragraph 10 of the resolution, that all States shall take the necessary measures to prevent the import into their territories of all round logs and timber products originating in Liberia.

3. ENVIRONMENTAL, ECONOMIC, SOCIAL, CULTURAL, HUMAN RIGHTS, HUMANITARIAN AND OTHER RELATED QUESTIONS

(a) Environmental questions

Twenty-second session of the Governing Council of the United Nations Environment Programme

The Governing Council of the United Nations Environment Programme (UNEP) held its twenty-second session at UNEP headquarters in Nairobi, from 3 to 7 February 2003. A number of decisions were adopted during this session.⁶⁴ Some of them refer to international law, either to international environmental conventions or to international environmental law in general.

1. Decisions related to international environmental conventions

In its decision 22/2, entitled "Regional seas programmes", the Governing Council in Part III requested the Executive Director to encourage and support regional seas conventions, such as the Convention on the Protection of the Marine Environment and the

⁶⁴ For the text of the decisions adopted during this session, see A/58/25.

Coastal Region of the Mediterranean, 1995,⁶⁵ and called upon littoral states of shared inland waters to collectively establish legal instruments for the protection of the environment of the respective areas as soon as possible. In Part B of the same decision, the Executive Director was also requested to facilitate the finalization of the host country agreements for the co-hosted regional coordinating unit with Japan and the Republic of Korea.

The Governing Council decided in its decision 22/17, Part II, C, entitled “Status of international conventions and protocols in the field of the environment”, to invite States that had not yet done so to consider signing, ratifying or acceding to conventions and protocols in the field of environment, to proceed with their implementation and to provide the secretariat of UNEP with information on new conventions and protocols in the field of the environment as well as information on any changes to the status of the existing conventions and protocols in the field of environment.

2. Decisions related to international environmental law in general

In its decision 22/2, Part V, entitled “Marine safety and protection of the marine environment from accidental pollution”, the Governing Council invited the International Maritime Organization to actively review international regulations regarding single tankers, especially those involved in the transport of heavy fuel oil.

In decision 22/17, Part II, A, entitled “Follow-up to the Global Judges Symposium focusing on capacity-building in the area of environmental law”, the Executive Director was called on to support the improvement of the capacity of peoples involved in the process of promoting, implementing, developing and enforcing environmental law at the national and local levels such as judges, prosecutors and legislators. In a following decision (22/17, Part II, B), entitled “Enhancing the application of principle 10 of the Rio Declaration on Environment and Development”, the Executive Director was requested to intensify efforts in the provision of access to information regarding, *inter alia*, legislation and regulations in the area of sustainable development.

Status of international instruments and consideration by the General Assembly

1. The United Nations Framework Convention on Climate Change, 1992,⁶⁶ and the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol), 1997⁶⁷

During 2003, six States ratified the Kyoto Protocol and 13 acceded to it, bringing the number of parties to 120.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/243, entitled “Protection of global climate for present and future generations of mankind”; in this resolution, the Assembly, *inter alia*, called upon States to work cooperatively towards achieving the ultimate objective of the United Nations

⁶⁵ United Nations *Treaty Series*, vol. 27, p. 45. The convention, originally entitled “Convention for the Protection of the Mediterranean Sea against Pollution”, was adopted on 16 February 1976, entered into force on 12 February 1978 and was revised in Barcelona, on 10 June 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

⁶⁶ United Nations *Treaty Series*, vol. 1771, p. 107.

⁶⁷ Decision I/CP.3 of the Conference of the States Parties to the Convention at its third session.

Framework Convention on Climate Change and noted the preparation undertaken for the implementation of the flexible mechanism established by the Kyoto Protocol.

2. The Convention on Biological Diversity, 1992,⁶⁸ and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Cartagena Protocol), 2000⁶⁹

During 2003, one State ratified the Convention on Biological Diversity, bringing the number of parties to 188. During the same year, 20 States ratified the Cartagena Protocol, 12 States acceded to it and one State approved it, bringing the number of parties to 79 and leading to its entry into force on 11 September 2003.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted, without a vote, resolution 58/212, entitled “Convention on Biological Diversity”; in this resolution, the Assembly, having taken note of the report submitted to it by the Secretary General,⁷⁰ welcomed the entry into force of the Cartagena Protocol, urged parties to the Convention on Biological Diversity to facilitate the transfer of technology for the effective implementation of the Convention and invited States to consider ratifying or acceding to the International Treaty on Plant Genetic Resources for Food and Agriculture, 2001.⁷¹

3. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994⁷²

During 2003, five States acceded to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, bringing the number of parties to 191.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/242, entitled “Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa”; in this resolution, the Assembly, *inter alia*, took note of the report submitted to it by the Secretary General⁷³ and urged the international community to take effective measures for the implementation of the United Nations Convention through bilateral and multilateral cooperation programmes. On the same day, the General Assembly adopted without a vote resolution 58/211, entitled “International Year of Deserts and Desertification, 2006”, in which, following the recommendation of the Governing Council of UNEP, the Assembly decided to declare 2006 the International Year of Deserts and Desertification.

4. Other international conventions

(i) *Conventions entering into force in 2003*

The Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 1998,⁷⁴ entered into force on 23 October 2003.

⁶⁸ United Nations *Treaty Series*, vol. 1760, p. 79.

⁶⁹ C.N.251.2000.TREATIES-1 of 27 April 2000.

⁷⁰ A/58/191.

⁷¹ Text adopted by the Food and Agriculture Organization (FAO) Conference, at its thirty-first Session, through resolution 3/2001.

⁷² United Nations *Treaty Series*, vol. 1954, p. 3.

⁷³ A/58/158.

⁷⁴ ECOSOC doc. EB.AIR/1998/2.

During 2003, two States ratified this Protocol; one accepted it and one approved it, bringing the number of parties to 18.

The Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals, 1998,⁷⁵ entered into force on 29 December 2003. In 2003, four States ratified the Protocol, one State acceded to it and one State accepted it, bringing the number of parties to 20.

(ii) *Change related to the number of parties to other conventions*

During 2003:

- two States acceded to the Vienna Convention for the Protection of the Ozone Layer, 1985,⁷⁶ and the Montreal Protocol on Substances that Deplete the Ozone Layer, (the Montreal Protocol) 1987,⁷⁷ bringing the number of parties to 187 and 186, respectively;

- six States became parties to the Amendment to the Montreal Protocol, 1990,⁷⁸ 14 States became parties to the Amendment to the Montreal Protocol, 1992,⁷⁹ 23 States became parties to the Amendment to the Montreal Protocol, 1997,⁸⁰ and 18 States became parties to the Amendment to the Montreal Protocol, 1999,⁸¹ bringing the number of parties to 170, 158, 112 and 63, respectively;

- two States acceded to the Protocol to the Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe, 1979,⁸² bringing the number of parties to 41;

- one State ratified, one State acceded to and one State accepted the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone, 1999,⁸³ bringing the number of parties to seven;

- five States acceded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989,⁸⁴ bringing the number of parties to 158;

- three States ratified, four States accepted and one State approved the Amendment to the Basel Convention, 1995,⁸⁵ bringing the number of parties to 43;

- one State acceded to the “Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, 1999,⁸⁶ bringing the number of parties to one;

⁷⁵ ECOSOC doc. EB.AIR/1998/1.

⁷⁶ United Nations *Treaty Series*, vol. 1513, p. 293.

⁷⁷ United Nations *Treaty Series*, vol. 1522, p. 3.

⁷⁸ UNEP/OzL.Pro.2/3, Annex II.

⁷⁹ UNEP/OzL.Pro.4/15, Annex III.

⁸⁰ UNEP/OzL.Pro.9/12, Annex IV.

⁸¹ C.N.1231.TREATIES-1 of 28 January 2000.

⁸² United Nations *Treaty Series*, vol. 1491, p. 167.

⁸³ ECOSOC doc. EB.AIR/1999/1.

⁸⁴ United Nations *Treaty Series*, vol. 1673, p. 57.

⁸⁵ UNEP/CHW.3/35.

⁸⁶ UNEP/CHW.1/WG/1/9/2.

– one State ratified the Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context, 2001,⁸⁷ bringing the number of parties to two;

– one State ratified and one State acceded to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992,⁸⁸ bringing the number of parties to 35;

– two States ratified and one State acceded to the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999,⁸⁹ bringing the number of parties to ten;

– one State ratified, three States acceded and one State approved the Convention on the Transboundary Effects of Industrial Accidents, 1992,⁹⁰ bringing the number of parties to 31;

– five States ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998,⁹¹ bringing the number of parties to 28;

– ten States ratified and six States acceded to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998,⁹² bringing the number of parties to 54;

– 15 States ratified and three States acceded to the Stockholm Convention on Persistent Organic Pollutants, 2001,⁹³ bringing the number of parties to 42.

Other consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote three resolutions concerning environmental issues.

In its resolution 58/209 adopted on 23 December 2003 and entitled “Report of the Governing Council of the United Nations Environment Programme on its twenty-second session”, the Assembly took note of the report of the Governing Council of the UNEP on its twenty-second session.⁹⁴ On the same day, the General Assembly also adopted resolution 58/216 on “Sustainable development in mountain regions” and resolution 58/217, entitled “International Decade for Action, ‘Water for Life’, 2005–2015”. In the latter resolution, the General Assembly proclaimed the period from 2005 to 2015 the International Decade for Action, “Water for Life”, to commence on World Water Day, 22 March 2005.

⁸⁷ C.N.44.2002.TREATIES-1 of 25 January 2002.

⁸⁸ United Nations *Treaty Series*, vol. 1936, p. 269.

⁸⁹ ECOSOC doc. M.p/WAT/AC.1/1991/1 of 24 March 1999.

⁹⁰ United Nations *Treaty Series*, vol. 2105, p. 457.

⁹¹ United Nations *Treaty Series*, vol. 2161, p. 447.

⁹² UNEP/FAO/PIC/CONF/5.

⁹³ C.N.531.2001.TREATIES-96 of 19 June 2001.

⁹⁴ A/58/25.

(b) Economic questions

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted a significant number of resolutions addressing economic issues. Among the resolutions, the following were adopted covering topics identified below:

– the economic field in general: resolution 58/129 adopted without a vote on 19 December 2003, entitled “Towards global partnership”,⁹⁵ in which the Assembly stressed, first that the principles and approaches that govern global partnerships should be built on the firm foundation of the United Nations purposes and principles as set out in the United Nations Charter, and secondly that partnership should be consistent with national laws; and resolution 58/198 adopted on 23 December 2003 by recorded vote of 125 in favour to 1, with 37 abstentions, on “Unilateral economic measures as a means of political and economic coercion against developing countries”,⁹⁶ in which the Assembly urged the international community to adopt measures to eliminate the use of unilateral coercive economic measures against developing countries that are not authorized by relevant organs of the United Nations or are inconsistent with the principles of international law as set forth in the United Nations Charter and that contravene the basic principles of the multilateral trading system;

– the field of international trade: resolution 58/197 adopted without a vote on 23 December 2003, entitled “International trade and development”,⁹⁷ in which the Assembly recognized the crucial role of the expeditious implementation of the World Trade Organization agreements, in particular the Agreement on Textiles and Clothing; and resolution 58/204 entitled “Commodities”.⁹⁸

(c) Social questions

Population issues

1. Thirty-sixth session of the Commission on Population and Development

The Commission on Population and Development held its thirty-sixth session in New York from 31 March to 4 April 2003.⁹⁹ The Commission’s work focused on the relationships between population, education and development. In order to facilitate the Commission’s discussions, the Secretary General submitted to it a report on the topic, in which education as a human right was emphasized.¹⁰⁰

⁹⁵ See, for the report of the Secretary-General, A/58/227.

⁹⁶ See, for the report of the Secretary-General, A/58/301.

⁹⁷ See, for the report of the Secretary-General, A/58/414.

⁹⁸ See, for the report of the Secretary-General of the United Nations Conference on Trade and Development, A/57/381, annex.

⁹⁹ See E/2003/25.

¹⁰⁰ E/CN.9/2003/3.

2. Regular and annual sessions of the Executive Board of the United Nations Development Programme/United Nations Population Fund

The Executive Board of the United Nations Development Programme/United Nations Population Fund (UNDP/UNFPA) held two regular sessions in New York, from 20 to 23 January 2003 and from 8 to 12 September 2003 and one annual session in New York, from 6 to 19 June 2003.¹⁰¹ Activities were devoted, *inter alia*, to gender issues. Structural and cultural differences were addressed in the context of a rights-based approach to development. The Fund worked to further the Secretary-General's human rights plan of action, entitled "Strengthening human rights-related United Nations action at country level: National protection systems and country teams". The Fund also encouraged the development and enforcement of laws prohibiting all forms of gender-based violence.

3. Status of international instruments and consideration by the General Assembly

*The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*¹⁰²

During 2003, three States ratified and two States acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

At its fifty-eighth session, on 23 December 2003, the General Assembly adopted without a vote resolution 58/208, entitled "International migration and development", in which, after having recalled the Convention, the Assembly took note of the report of the Secretary-General on the matter.¹⁰³

Social development issues

1. Forty-first session of the Commission for Social Development

The Commission for Social Development held its forty-first session in New York on 27 February 2002 and from 10 to 21 February 2003.¹⁰⁴ It made recommendations to the Economic and Social Council, including a recommendation on the drafting of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities.

2. Status of international instruments and consideration by the General Assembly

Project of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities

During 2003, the Ad Hoc Committee established by General Assembly resolution 56/168 in 2001 to consider proposals for a comprehensive and integral international

¹⁰¹ See E/2003/35.

¹⁰² United Nations *Treaty Series*, vol. 2220, p. 3.

¹⁰³ A/58/98.

¹⁰⁴ See E/2003/26.

convention to promote and protect the rights of persons with disabilities held its second session in New York from 16 to 27 June 2003. In its report,¹⁰⁵ the Committee recommended to the General Assembly that a convention be elaborated and that negotiations thereon be conducted in the Committee.

At its fifty-eighth session, the General Assembly adopted without a vote two resolutions referring to, *inter alia*, a convention on protection and promotion of the rights and dignity of persons with disabilities. The first resolution, resolution 58/132, was adopted on 22 December 2003 and entitled "Implementation of the World Programme of Action concerning Disabled Persons", while the second resolution, resolution 58/246, was adopted on 23 December 2003 and entitled "Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities". The Assembly welcomed the report of the Ad Hoc Committee in resolution 58/246 and invited States in resolution 58/132 to continue to participate actively in the negotiations within the Committee and, more generally, urged governments to address the situation of persons with disabilities with respect to all actions taken to implement existing human rights treaties to which they are parties. In the latter resolution, the Assembly also took note of the report of the Secretary-General on the implementation of the World Programme of Action concerning Disabled Persons,¹⁰⁶ in which the Secretary-General identified the development of international agreements on employment indicators as a priority.

Sporting issues

Consideration by the General Assembly

On 3 November 2003, the General Assembly adopted without a vote two resolutions with respect to sport issues: resolution 58/5 on "Sport as a means to promote education, health, development and peace", and resolution 58/6 entitled "Building a peaceful and better world through sport and the Olympic ideal". In the former, the Assembly invited governments to accelerate the elaboration of an international anti-doping convention in all sports activities.

(d) Cultural questions

Thirty-second session of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The General Conference of UNESCO held its thirty-second session in Paris from 29 September to 17 October 2003. On the last day of the session, the Conference adopted the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.¹⁰⁷

The Security Council, in resolution 1483, adopted on 22 May 2003 on the situation between Iraq and Kuwait, acting under Chapter VII of the Charter of the United Nations, called upon UNESCO, and other international organizations, as appropriate, to assist in the implementation of its decision contained in paragraph 7 of the resolution; this decision required all Member States to take appropriate steps to facilitate the safe return to Iraqi

¹⁰⁵ See A/58/118 and Corr.1.

¹⁰⁶ A/58/61.

¹⁰⁷ MISC/2003/CLT/CH/14.

institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed.

Twelfth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its restitution in Case of Illicit Appropriation

The Committee held its twelfth session in Paris from 25 to 28 March 2003.¹⁰⁸ In the recommendation No. 4 of its report,¹⁰⁹ it invited States, *inter alia*, to ensure that police and customs and border services receive special training with regard to the illicit trafficking of cultural property so as best, where applicable, to implement the relevant UNESCO Conventions (the First Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1954,¹¹⁰ and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970¹¹¹) the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995,¹¹² and other relevant international instruments.

Status of international instruments and consideration by the General Assembly

1. The Convention for the Safeguarding of the Intangible Cultural Heritage, 2003,¹¹³ and the Convention for the Protection of the World Cultural and Natural Heritage, 1972¹¹⁴

During 2003, one State ratified and one State accepted the Convention for the Protection of the World Cultural and Natural Heritage, bringing the number of parties to 177.

In resolution 58/124 adopted without a vote on 17 December 2003, entitled “United Nations Year for Cultural Heritage, 2002”, the General Assembly took note of the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage by the General Conference of UNESCO at its thirty-second session on 17 October 2003. In the same resolution, the Assembly also welcomed the ratifications of the Convention for the Protection of the World Cultural and Natural Heritage, 1972.

2. Other International Conventions

During 2003:

– five States acceded to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954,¹¹⁵ and to the Second Protocol to the Convention for

¹⁰⁸ A/58/314.

¹⁰⁹ *Ibid.*, at p. 15.

¹¹⁰ United Nations *Treaty Series*, vol. 249, p. 358.

¹¹¹ United Nations *Treaty Series*, vol. 823, p. 231.

¹¹² *ILM*, vol. 34, at p. 1322.

¹¹³ MISC/2003/CLT/CH/14.

¹¹⁴ United Nations *Treaty Series*, vol. 1037, p. 151.

¹¹⁵ United Nations *Treaty Series*, vol. 249, p. 240.

the Protection of Cultural Property in the Event of Armed Conflict, 1999,¹¹⁶ bringing the number of parties to 109 and 20 States, respectively;

- one State ratified and another acceded to the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954,¹¹⁷ bringing the number of parties to 88;

- three States ratified and three States accepted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970,¹¹⁸ bringing the number of parties to 103;

- two States ratified the Convention on the Protection of the Underwater Cultural Heritage, 2001,¹¹⁹ bringing the number of parties to two;

- three States became parties to the Convention on Stolen or Illegally Exported Cultural Objects of the International Institute for the Unification of Private Law, 1995,¹²⁰ bringing the number of parties to 21.

Other consideration by the General Assembly

At its fifty-eighth session, on 3 December 2003, the General Assembly adopted without a vote resolution 58/17, entitled “Return or restitution of cultural property to the countries of origin”, in which the Assembly urged States to introduce effective national and international measures to prevent and combat illicit trafficking in cultural property, including special training for police, customs and border services. At the same session, on 19 December 2003, the General Assembly adopted resolution 58/128, entitled “Promotion of religious and cultural understanding, harmony and cooperation”. In this resolution, the Assembly urged States to enact or rescind legislation, where necessary, to prohibit any discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

Consideration by the Economic and Social Council

On 22 July 2003, the Economic and Social Council adopted without a vote resolution 2003/29, entitled “Prevention of crimes that infringe on the cultural heritage of people in the form of movable property”. In this resolution, the Economic and Social Council encouraged Member States to consider, where appropriate and in accordance with national law, when concluding relevant agreements with other States, the Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of People in the Form of Movable Property.¹²¹

¹¹⁶ United Nations *Treaty Series*, vol. 2253, p. 172.

¹¹⁷ United Nations *Treaty Series*, vol. 249, p. 358.

¹¹⁸ United Nations *Treaty Series*, vol. 823, p. 231.

¹¹⁹ *ILM*, vol. 41, at p. 40.

¹²⁰ *ILM*, vol. 34, at p. 1322.

¹²¹ The Model Treaty was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana on September 1990.

(e) Human rights and humanitarian questions

Human rights and humanitarian issues in general

1. Fifty-ninth session of the Commission on Human Rights

The Commission on Human Rights held its fifty-ninth session from 17 March to 24 April 2003, in Geneva. During this session, the Commission adopted a significant number of resolutions.¹²² The following resolutions did not directly lead to any action by the General Assembly but contain points of legal interest:

– resolution 2003/4, entitled “Combating defamation of religions”, in which the Commission urged all States, within their national framework, in conformity with international human rights instruments, to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief;

– resolution 2003/19 on “The right to education”, in which the Commission urged all States to take all necessary legislative measures to prohibit explicitly discrimination in education on the basis of race, colour, descent, national, ethnic or social origin, sex, language, religion, political or other opinion, property, disability, birth or other status which has the purpose or effect of nullifying or impairing equality of treatment in education; in this resolution, the Commission also called upon all States to take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, and to take measures to incorporate in their legislation appropriate sanctions for violations and the provision of redress and rehabilitation;

– resolution 2003/20 on “Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”, in which the Commission urged all States to take appropriate legislative measures, in line with their international obligations, to prevent the illegal international trafficking in toxic and hazardous products and wastes, the transfer of toxic and hazardous products and wastes through fraudulent waste-recycling programmes, and the transfer of pollution industries, industrial activities and technologies, which generate hazardous wastes, from developed to developing countries;

– resolution 2003/22, entitled “Women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing”, in which the Commission reaffirmed women’s rights to an adequate standard of living, including adequate housing, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, 1966,¹²³ and urged governments to comply fully with their international and regional obligations and commitments concerning land tenure and the equal rights of women to own property and to an adequate standard of living, including adequate housing. In the same resolution, the Commission also affirmed that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of a woman’s human right to protection

¹²² For the text of these resolutions, see E/2003/23.

¹²³ United Nations *Treaty Series*, vol. 993, p. 3.

against discrimination; finally, the Commission urged States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right of inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information;

– resolution 2003/26 on “Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities”, in which the Commission reiterated, first that everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, and secondly that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author; the Commission also reaffirmed that all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development;

– resolution 2003/34 on “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”, in which the Commission called upon the international community to give due attention to the right to a remedy and, in particular, in appropriate cases, to receive restitution, compensation and rehabilitation, for victims of grave violations of international human rights law and humanitarian international law;

– resolution 2003/36 on “Interdependence between democracy and human rights”, in which the Commission declared that the essential elements of democracy include respect for human rights and fundamental freedoms including, *inter alia*, freedom of association and freedom of expression and opinion, and also include access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media;

– resolution 2003/38, entitled “Question of enforced or involuntary disappearances”, in which the Commission reminded States first that, as proclaimed in article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance, no State shall practice, permit or tolerate enforced disappearances, secondly that all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penal law and thirdly that, as proclaimed in article 11 of the Declaration, all persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured; the Commission also invited States to take legislative steps to prevent enforced or involuntary disappearances;

– resolution 2003/39 on “Integrity of the judicial system”, in which the Commission listed a number of rights that everyone is entitled to claim under any judicial system, such as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law;

– resolution 2003/42 on “The right to freedom of opinion and expression”, in which the Commission called upon States to respect all human rights and fundamental freedoms and called on all parties to armed conflict to respect international humanitarian law, including

their obligations under the Geneva Conventions of 12 August 1949 for the protection of victims of war and the two Additional Protocols thereto of 8 June 1977, whose provisions extend protection to journalists in situations of armed conflict; in the same resolution, the Commission encouraged States to review their procedures and legislation to ensure that any limitations on the right to freedom of expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals; finally, the Commission urged States to refrain from imposing restrictions which are not consistent with the provisions of article 19, paragraph 3, of the International Covenant on Civil and Political Rights, 1966;¹²⁴

– resolution 2003/53 entitled “Extrajudicial, summary or arbitrary executions”, in which the Commission reiterated the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions; the Commission also reaffirmed the obligation of States to ensure the protection of the inherent right to life of all persons under their jurisdiction and called upon States to investigate promptly and thoroughly all cases of killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel; finally, the Commission urged States in which the death penalty has not been abolished to comply with their obligations as assumed under relevant provisions of international human rights instruments, including in particular articles 6, 7 and 14 of the International Covenant on Civil and Political Rights, 1966,¹²⁵ and articles 37 and 40 of the Convention on the Rights of the Child, 1989;¹²⁶

– resolution 2003/66 on the “Convention on the Prevention and Punishment of the Crime of Genocide”, in which the Commission invited States that had not yet ratified or acceded to the Convention to do so and, where necessary to enact national legislation in conformity with the provisions of the Convention;

– resolution 2003/67 on “The question of the death penalty”, in which the Commission called upon States that no longer applied the death penalty but maintained the penalty under their legislation to abolish it and, urged all States that still applied the death penalty to respect a number of conditions, such as not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgment rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

– resolution 2003/71 entitled “Human rights and the environment as part of sustainable development”, in which the Commission reaffirmed that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of

¹²⁴ United Nations *Treaty Series*, vol. 999, p. 171.

¹²⁵ *Ibid.*

¹²⁶ United Nations *Treaty Series*, vol. 1577, p. 3.

human rights and fundamental freedoms and called upon States to take all necessary and appropriate measures to protect the exercise of everyone's human rights when promoting environmental protection and sustainable development;

– resolution 2003/72 on “Impunity”, in which the Commission emphasized the importance of taking all necessary and possible steps to hold accountable perpetrators, including their accomplices, of violations of international human rights and humanitarian law and recognized that amnesties should not be granted to those who commit violations of international humanitarian and human rights law that constitute serious crimes and urged States to take action in accordance with their obligations under international law; in the resolution, the Commission also recognized that, for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations were essential steps towards rehabilitation and reconciliation, and urged States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations could be investigated and made public and to encourage victims to participate in such a process; finally, the Commission reaffirmed that crimes such as genocide, crimes against humanity, war crimes and torture are violations of international law and that perpetrators of such crimes should be prosecuted or extradited by States, and urged all States to take effective measures to implement their obligations to prosecute or extradite perpetrators of such crimes.

2. Fifty-fifth session of the Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission on the Promotion and Protection of Human Rights held its fifty-fifth session in Geneva from 28 July to 15 August 2003. During this session, the Sub-Commission adopted a significant number of resolutions.¹²⁷ Some of them contain legal matters which were not directly addressed by the General Assembly or by the Commission:

– resolution 2003/2 on “Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights”, in which the Sub-Commission urged States to introduce national mechanisms to prevent and combat corruption through the establishment of specific anti-corruption legislation;

– resolution 2003/3, entitled “Report of the Working Group on Contemporary Forms of Slavery”, in which the Sub-Commission urged States to review, enact or amend legislation to outlaw all forms of discrimination based on descent and invited States to review and, where necessary, to reform legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys; in this resolution, the Sub-Commission also called upon States to recognize that human trafficking is a gross violation of human rights and fundamental freedoms and, hence, to criminalize it in all its forms and to condemn and penalize traffickers and intermediaries and urged them to ensure that their policies and laws do not legitimize prostitution as the victims' choice of work, or promote the legalization or regulation of prostitution; the Sub-Commission also addressed in the same resolution the child labour issue and, in this respect, urged States (*a*) to ensure that the worst forms of child labour are prohibited and that the penalties are commensurate with the crimes committed and that this legislation

¹²⁷ For the text of these resolutions, see E/CN.4/Sub.2/2003/43.

is properly enforced, (b) while attempting ultimately to eliminate child labour and child domestic labour by, *inter alia*, enacting and implementing laws on compulsory and free primary education, to adopt and enforce measures and regulations to eliminate all discrimination against girls in education, skills development and training and to protect child workers, in particular child domestic workers, and ensure that they are not exploited and (c) to introduce comprehensive legislation to prohibit bonded labour in all its forms, as a matter of urgency, including provisions for the punishment of any future employers of bonded labourers; this legislation should include measures of compensation for having been subjected to bonded labour and debt bondage, rehabilitation assistance including, at a minimum and where applicable, the grant of enough land to sustain a single family throughout the year, and legal provisions to protect the ownership and occupation of such land by former bonded labourers; finally, the Sub-Commission invited States to introduce consolidated legislation on forced labour in general and recommended that governments, as a matter of priority, review, amend and enforce existing laws or enact new laws, to prevent the misuse of the Internet for trafficking, for the purposes of prostitution, pornography and the sexual exploitation of women and children;

– resolution 2003/10, entitled “International Criminal Court”, in which the Sub-Commission regretted that the immunity allowed to nationals of States parties or not parties to the Rome Statute who participate in operations established or authorized by the Security Council for the maintenance or restoration of international peace and security, under the terms of Council resolution 1422 (2002) of 12 July 2002, had been extended by resolution 1487 (2003) of 12 June 2003, at the risk of perpetuating a temporary derogation by misconstruing article 16 of the Rome Statute;

– resolution 2003/11, entitled “Transfers of persons with particular reference to the death penalty”, in which the Sub-Commission urged all States (a) not to transfer persons to the jurisdiction of States which still use the death penalty unless there is a guarantee that the death penalty will be neither sought nor applied in the particular case, (b) not to transfer persons to the jurisdiction of States where the person transferred may be held without trial or subject to an unfair trial, (c) to ensure that no person is transferred to the jurisdiction of another State outside the context of extradition, (d) to ensure that all persons have the effective possibility of challenging any proposed transfer to the jurisdiction of another State before its courts; in the same resolution, the Sub-Commission also reminded all States which refuse to transfer a person to the authorities of another State on one of the grounds indicated above that, where a person is suspected of having committed an international crime, that is to say, an offence in relation to which any State may exercise jurisdiction, they must ensure that (a) their national courts have the jurisdiction to try such suspects; (b) international crimes are treated as crimes in national law; (c) they do in fact prosecute such suspects, to which end any other State must provide such cooperation as is necessary and compatible with human rights law; and (d) the sentences imposed on those convicted are commensurate with the gravity of the offence; it was moreover added that nothing in the resolution precluded the possibility of transfer to the jurisdiction of the International Criminal Court;

– resolution 2003/17 on “Prohibition of forced evictions”, in which the Sub-Commission reaffirmed that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person,

the right to security of tenure and the right to equality of treatment; in the resolution, the Sub-Commission also urged governments to undertake immediately measures, at all levels, aimed at eliminating the practice of forced evictions by, *inter alia*, repealing existing plans involving forced evictions as well as any legislation allowing for forced evictions and by adopting and implementing legislation ensuring the right to security of tenure for all residents;

– resolution 2003/19, entitled “Optional protocol to the International Covenant on Economic, Social and Cultural Rights”, in which the Sub-Commission urged the open-ended working group of the Commission to draft an optional protocol to the International Covenant on Economic, Social and Cultural Rights that is comprehensive in scope and that provides that communications may be initiated by individual and collective victims as well as by individuals and groups empowered to initiate complaints on behalf of individual and collective victims; further, the instrument should be conceptualized as both a complaint mechanism and an inquiry procedure and preclude State party reservations;

– resolution 2003/21 on “The right of non-citizens”, in which the Sub-Commission affirmed that international human rights law requires, in principle, the equal treatment of citizens and non-citizens and that States should ensure that all exceptions to this principle in their national legislation are consistent with international human rights standards;

– resolution 2003/22, entitled “Discrimination based on work and descent”, in which the Sub-Commission reaffirmed that discrimination based on work and descent is a form of discrimination prohibited by international human rights law;

– resolution 2003/26, entitled “Systematic rape, sexual slavery and slavery-like practices”, in which the Sub-Commission considered that the latest verdicts of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone acknowledging that rape and, more recently, sexual enslavement are crimes against humanity, and the special recognition in the Rome Statute of the International Criminal Court that sexual violence and sexual slavery committed in the context of either an internal or an international armed conflict may constitute crimes against humanity, war crimes and genocide falling within the jurisdiction of the Court, represent a significant step in the protection of women’s human rights as they challenge widespread acceptance that torture, rape and violence against women are an integral part of war and conflict and hold the perpetrators of such crimes accountable; in the same resolution, the Sub-Commission also reiterated that States should provide effective criminal penalties and compensation for unremedied violations in order to end the cycle of impunity with regard to sexual violence committed during armed conflicts.

3. Status of international instruments and consideration by the General Assembly

- (i) *The International Covenant on Civil and Political Rights, 1966,¹²⁸ the Optional Protocols thereto (the Optional Protocol to the International Covenant on Civil and Political Rights, 1966,¹²⁹ and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989¹³⁰) and the International Covenant on Economic, Social and Cultural Rights, 1966¹³¹*

During 2003, two States ratified the Covenant on Civil and Political Rights and the Optional Protocol thereto, and two States acceded to the Second Optional Protocol thereto, bringing the number of parties to 151, 104 and 51, respectively. During the same year, two States ratified the Covenant on Economic, Social and Political Rights, bringing the number of parties to 148.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/165, entitled “International Covenants on Human Rights”. In this resolution, having taken note of the report of the Secretary-General on the matter,¹³² the Assembly, *inter alia*, welcomed the annual reports of the Human Rights Committee submitted to it at its fifty-seventh¹³³ and fifty-eighth¹³⁴ sessions and strongly appealed to all States that had not yet done so to become parties to the two Covenants and the Protocols thereto. The Assembly also stressed the importance of avoiding the erosion of human rights by derogations, underlined the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the Covenant on Civil and Political Rights, and encouraged States parties to consider limiting the extent of any reservation lodged in respect of the Covenants, to formulate any reservations as precisely and narrowly as possible and to ensure that no reservation is incompatible with the object and purpose of the relevant treaty. Finally, the Assembly emphasized that States must ensure that any measures to combat terrorism comply with their obligations under relevant international law, including their obligations under the Covenants.

- (ii) *The International Convention on the Elimination of All Forms of Racial Discrimination, 1966¹³⁵*

During 2003, one State ratified and one State acceded to the Convention on the Elimination of All Forms of Racial Discrimination, bringing the number of parties to 169.

At its fifty-eighth session, on 22 December, the General Assembly adopted, by recorded vote of 174 in favour to 2, with 2 abstentions, resolution 58/160, entitled “Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action”. In the resolution, the Assembly, *inter alia*, welcomed the emphasis placed by the Committee on the Elimination of Racial Discrimination on the importance

¹²⁸ United Nations *Treaty Series*, vol. 999, p. 171.

¹²⁹ *Ibid.*

¹³⁰ United Nations *Treaty Series*, vol. 1642, p. 414.

¹³¹ United Nations *Treaty Series*, vol. 993, p. 3.

¹³² A/58/307.

¹³³ A/57/40.

¹³⁴ A/58/40.

¹³⁵ United Nations *Treaty Series*, vol. 660, p. 195.

of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the measures recommended to strengthen the implementation of the Convention as well as the functioning of the Committee¹³⁶ and also took note of the recommendations contained in the interim report of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;¹³⁷ in the same resolution, the Assembly acknowledged that no derogation from the prohibition of racial discrimination, genocide, the crime of apartheid or slavery was permitted, as defined in the obligations under the relevant human rights instruments.

- (iii) *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*,¹³⁸ and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002*¹³⁹

During 2003, two States acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and two States ratified and one State acceded to the Optional Protocol thereto, bringing the number of parties to 134 and 3, respectively.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/164 on “Torture and other cruel, inhuman or degrading treatment or punishment”. In the resolution, the Assembly, *inter alia*, welcomed the report of the Committee against Torture¹⁴⁰ and took note of the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture.¹⁴¹ The Assembly also stressed that, under article 4 of the Convention, torture must be made an offence under domestic criminal law, and emphasized that acts of torture are serious violations of international humanitarian law and that the perpetrators are liable to prosecution and punishment. Finally, the Assembly underlined the obligations of States parties under article 10 of the Convention to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

- (iv) *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*¹⁴²

During 2003, three States ratified and one State acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote resolution 58/166 on “International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families”. In the resolution, the Assembly, *inter alia*, took note of the report of the Secretary-General on the status of the Convention,¹⁴³

¹³⁶ A/57/18.

¹³⁷ A/58/313.

¹³⁸ United Nations *Treaty Series*, vol. 1465, p. 85.

¹³⁹ General Assembly resolution 57/199, annex.

¹⁴⁰ A/58/44.

¹⁴¹ A/58/120.

¹⁴² United Nations *Treaty Series*, vol. 2220, p. 3.

¹⁴³ A/58/221.

acknowledged with appreciation its entry into force and called upon all Member States that had not yet done so to consider urgently signing and ratifying or acceding to it. On the same day, the General Assembly also adopted without a vote resolution 58/190, entitled “Protection of migrants”, in which all Members States were requested (a), in conformity with national legislation and applicable international legal instruments to which they were party, firmly to prosecute violations of labour law with regard to the conditions of work of migrant workers; (b) to enact domestic criminal legislation to combat the international trafficking of migrants; (c) when enacting national security legislation measures, to observe national legislation and applicable international legal instruments to which they are party, in order to respect the human rights of migrants; in the resolution, the Assembly also underlined the duty of States parties to the Vienna Convention on Consular Relations, 1963,¹⁴⁴ to ensure full respect of the rights of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right.

(v) *Other international conventions*

During 2003, one State acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948,¹⁴⁵ bringing the number of parties to 135.

In 2003, two States acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968,¹⁴⁶ bringing the number of parties to 48.

(vi) *Other consideration by the General Assembly*

On 22 December 2003, the General Assembly adopted a number of other resolutions addressing human rights issues and containing points of legal interest. In addition to the resolutions adopted with respect to particular regions of the world,¹⁴⁷ the Assembly adopted the following resolutions:

– resolution 58/162, adopted by recorded vote of 125 in favour to 6, with 29 abstentions, entitled “Use of mercenaries as a means of violating human rights and implementing the exercise of the right of peoples to self-determination”; in the resolution, the Assembly, *inter alia*, welcomed the entry into force of the Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989,¹⁴⁸ and called upon all States to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right of peoples to self-determination, to destabilize or overthrow the government of any State or to dismember

¹⁴⁴ United Nations *Treaty Series*, vol. 596, p. 261.

¹⁴⁵ United Nations *Treaty Series*, vol. 78, p. 277.

¹⁴⁶ United Nations *Treaty Series*, vol. 754, p. 73.

¹⁴⁷ See resolution 58/191 on the “Situation of human rights in Cambodia”, resolution 58/176 on the “Subregional Centre for Human Rights and Democracy in Central Africa”, resolution 58/163 on “The right of the Palestinian people to self-determination”, resolution 58/196 on the “Situation of human rights in the Democratic Republic of the Congo”, resolution 58/195 on the “Situation of human rights in the Islamic Republic of Iran”, resolution 58/247 on the “Situation of human rights in Myanmar” and resolution 58/194 on the “Situation of human rights in Turkmenistan”.

¹⁴⁸ United Nations *Treaty Series*, vol. 2163, p. 75.

or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination;

– resolution 58/167, adopted without a vote on “Human rights and cultural diversity”, in which the Assembly, *inter alia*, urged States to ensure that their legal systems reflect multicultural diversity within their societies.

– resolution 58/168, adopted without a vote, entitled “Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity”; in the resolution, the Assembly, *inter alia*, reiterated that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people had the right freely to determine, without external reference, their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right within the provisions of the Charter, including respect for territorial integrity; the Assembly also invited Members to consider adopting, as appropriate, within the framework of their respective legal systems and in accordance with their obligations under international law, especially the Charter and international human rights instruments, the measures that they may deem appropriate to achieve further progress in international cooperation in promoting and encouraging respect for human rights and fundamental freedoms;

– resolution 58/171, adopted by recorded vote of 125 in favour to 53, entitled “Human rights and unilateral coercive measures”; in the resolution, the Assembly, *inter alia*, urged all States to refrain from adopting or implementing any unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with extraterritorial effect, which create obstacles to trade relations among States, those that impede the full achievement of economic and social development by the population of the affected countries, and those that hinder their well-being and that create obstacles to the full enjoyment of their human rights;

– resolution 58/172, adopted by recorded vote of 173 in favour to 3, with 5 abstentions, on “The right to development”, in which the Assembly, *inter alia*, stressed the importance of a genuine political commitment on the part of all governments through a firm legal framework as far as corruption is concerned and urged States to sign and ratify the United Nations Convention against Corruption as soon as possible;

– resolution 58/173, adopted by recorded vote of 174 in favour to 2, with 4 abstentions, on “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health”; in the resolution, the Assembly, *inter alia*, urged States to take steps in order to achieve the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical mental health, including, in particular, the adoption of legislative measures; in this respect, the Assembly invited States to consider signing and ratifying the World Health Organization Framework Convention on Tobacco Control;¹⁴⁹

– resolution 58/178, adopted without a vote, entitled “Declaration on the Right and Responsibility of Individuals, Group and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”; in the resolution, the Assembly, *inter alia*, urged States to ensure that any measures to combat terrorism and preserve national security comply with their obligations under international law, in

¹⁴⁹ See, WHO HD 9130.6 and resolution WHA 26.1.

particular under international human rights law, and did not hinder the work and safety of human rights defenders;

– resolution 58/182, adopted without a vote on the “Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”; in the resolution, the Assembly, *inter alia*, took note of the report of the Secretary-General on the matter¹⁵⁰ and reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law;

– resolution 58/183, adopted without a vote, entitled “Human rights in the administration of justice”; in the resolution, the Assembly, *inter alia*, affirmed that States must ensure that any measures taken to combat terrorism, including in the administration of justice, comply with their obligations under international law, in particular international human rights, refugee and humanitarian law;

– resolution 58/184, adopted by recorded vote of 179 in favour to none, with 1 abstention, on the “Elimination of all forms of religious intolerance”; in the resolution, the Assembly, *inter alia*, urged States to ensure that their constitutional and legal system provided effective guarantees of freedom of thought, conscience, religion or belief, including the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief was violated; the Assembly also called upon States to ensure, in particular, that no one within their jurisdiction was, because of their religion or belief, deprived of the right to life, liberty and security of person, the right to freedom of expression, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the right not to be arbitrarily arrested or detained, and to protect their physical integrity and bring to justice all perpetrators of violations of these rights; finally, the Assembly urged States to recognize the right of all persons to worship or assemble in connection with a religion or belief and emphasized that restrictions on the freedom to manifest religion or belief were permitted only if those limitations were prescribed by law, were necessary to protect public safety, order, health or morale, or the fundamental rights and freedoms of others, and were applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;

– resolution 58/186, adopted by recorded vote of 176 in favour to 1, with 2 abstentions, on “The right to food”; in the resolution, the Assembly, *inter alia*, reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger;

– resolution 58/187, adopted by recorded vote of 181 in favour to none, with 1 abstention, entitled “Protection of human rights and the fundamental freedoms while countering terrorism”; in the resolution, the Assembly took note of the report of the Secretary-General on this issue,¹⁵¹ encouraged States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights and reaffirmed that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law;

– resolution 58/188, adopted by recorded vote of 106 in favour to 55, with 19 abstentions, entitled “Respect for the purposes and principles contained in the Charter of the United

¹⁵⁰ A/58/255.

¹⁵¹ E/CN.4/2003/120.

Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character”; in the resolution, the Assembly, *inter alia*, stressed the vital role of the work of the United Nations and regional arrangements in promoting and encouraging respect for human rights and fundamental freedoms, as well as in solving international problems of a humanitarian character, and affirmed that all States, in these activities, must fully comply with the principles set forth in Article 2 of the Charter, in particular respecting the sovereign equality of all States and refraining from the threat or use of force against the territorial integrity or political independence of any State, or acting in any manner inconsistent with the purpose of the United Nations;

– resolution 58/189, adopted by recorded vote of 111 in favour to 10, with 55 abstentions, entitled “Respect for the principles of national sovereignty and diversity of democratic systems in electoral processes as an important element for the promotion and protection of human rights”; in the resolution, the Assembly, *inter alia*, affirmed, first that all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development, secondly that every State has the duty to respect that right, in accordance with the provisions of the Charter, and finally that peoples have the right to determine methods and to establish institutions regarding electoral processes;

At its fifty-eighth session, on 22 December 2003, the General Assembly also adopted the following resolutions in the field of human rights: resolution 58/158 entitled “International Decade of the World’s Indigenous People”;¹⁵² resolution 58/159 on “The incompatibility between democracy and racism”; resolution 58/161 on “Universal realization of the right of peoples to self-determination”; resolution 58/170 entitled “Enhancement of international cooperation in the field of human rights”; resolution 58/174 on “Human rights and terrorism”; resolution 58/175 entitled “National institutions for the promotion and protection of human rights”;¹⁵³ resolution 58/180 on “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization”;¹⁵⁴ resolution 58/181 entitled “United Nations Decade for Human Rights Education, 1995–2004”;¹⁵⁵ resolution 58/192 entitled “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all” and resolution 58/193 on “Globalization and its impact on the full enjoyment of all human rights”.

Humanitarian assistance

Consideration by the General Assembly

In addition to the numerous resolutions adopted in relation with humanitarian assistance to particular countries,¹⁵⁶ the General Assembly adopted several resolutions on the issue of humanitarian assistance in general, which contain matters of legal interest:

¹⁵² See, for the report of the Secretary-General, A/58/289.

¹⁵³ See, for the report of the Secretary-General, A/58/261.

¹⁵⁴ See, for the report of the Secretary-General, A/58/212.

¹⁵⁵ See, for the report of the Secretary-General, A/58/318.

¹⁵⁶ See resolution 58/115 on the “Assistance for humanitarian relief and the economic and social rehabilitation of Somalia”, resolution 58/26 on the “Emergency humanitarian assistance to Malawi”, resolution 58/27 B on the “Emergency international assistance for peace, normalcy and reconstruction

– resolution 58/25, adopted without a vote on 5 December 2003, entitled “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”; in the resolution, the Assembly, *inter alia*, called upon States to adopt, where required, and to continue to implement effectively necessary legislative and other appropriate measures to mitigate the effects of natural disasters;

– resolution 58/114, adopted without a vote on 17 December 2003, entitled “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”; in the resolution, having taken note of the report of the Secretary-General,¹⁵⁷ the Assembly, *inter alia*, strongly condemned all forms of violence to which humanitarian personnel and United Nations and its associated personnel were increasingly subjected, as well as any act or failure to act, contrary to international law, which obstructed or prevented humanitarian personnel and United Nations and its associated personnel from discharging their humanitarian functions; in the same resolution, the Assembly also reaffirmed the obligation of all States and parties to an armed conflict to protect civilians in armed conflicts in accordance with international humanitarian law, and invited States to promote a culture of protection, taking into account the particular needs of women, children, older persons and persons with disabilities;

– resolution 58/127, adopted without a vote on 19 December 2003, entitled “Assistance in mine action”; in the resolution, the Assembly, *inter alia*, took note of the report of the Secretary-General on the subject¹⁵⁸ and invited States to explore the possibility of strengthening internationally negotiated and non-discriminatory legal instruments that address landmines and other unexploded ordnance, as well as their victims.

Women’s issues

1. Twenty-eighth and twenty-ninth session of the Committee on the Elimination of Discrimination against Women

The Committee held its twenty-eighth and twenty-ninth sessions in New York from 13 to 31 January 2003 and from 30 June to 18 July 2003, respectively.¹⁵⁹ According to a March 2003 report,¹⁶⁰ the activities of the Committee were largely devoted to reviewing reports of States on measures they had taken to implement the Convention on the Elimination of All Forms of Discrimination against Women, 1979.¹⁶¹

of war-stricken Afghanistan”, resolution 58/233 on the “New Partnership for Africa’s Development: progress in implementation and international support”, resolution 58/123 on the “Special assistance for the economic recovery and reconstruction of the Democratic Republic of the Congo”, resolution 58/116 on the “Economic assistance for the reconstruction and development of Djibouti”, resolution 58/117 on the “International assistance to and cooperation with the Alliance for the Sustainable Development of Central Africa”, resolution 58/120 on the “Special Emergency economic assistance for the recovery and the development of the Comoros” and resolution 58/121 on the “Assistance for humanitarian relief, rehabilitation and development for Timor-Leste”.

¹⁵⁷ A/58/89.

¹⁵⁸ A/58/260.

¹⁵⁹ A/58/38.

¹⁶⁰ *Ibid.*

¹⁶¹ United Nations *Treaty Series*, vol. 1249, p. 13.

2. The United Nations Development Fund for Women

According to the report of the Secretary-General,¹⁶² the activities of the United Nations Development Fund for Women in 2003 consisted of, *inter alia*, expanding the capacity for effective implementation at the national level of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

3. Status of international instruments and consideration by the General Assembly

- (i) *The Convention on the Elimination of All Forms of Discrimination against Women, 1979*,¹⁶³ and *the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999*¹⁶⁴

During 2003, three States ratified and two States acceded to the Convention on the Elimination of All Forms of Discrimination against Women, bringing the number of parties to 175; six States ratified and four States acceded to the Optional Protocol thereto, bringing the number of parties to 59.

At its fifty-eighth session, on 22 December, the General Assembly adopted without a vote three resolutions, all referring to the above mentioned Convention, resolution 58/145, resolution 58/147 and resolution 58/148, entitled respectively “Convention on the Elimination of All Forms of Discrimination against Women”, “Elimination of domestic violence against women” and “Follow up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly”. In resolution 58/147, the Assembly focused on violence against women as a human rights issue. The Assembly stressed in this resolution that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims, and also stressed that not to do so violated and impaired or nullified the enjoyment of their human rights and fundamental freedoms; in addition, the Assembly reaffirmed the commitment to handle criminal matters relating to all forms of domestic violence and called upon States, *inter alia*, (a) to adopt, strengthen and implement legislation that prohibits domestic violence, prescribes punitive measures and establishes adequate legal protection against domestic violence and periodically to review, evaluate and revise these laws and regulations so as to ensure their effectiveness in eliminating domestic violence; (b) to make domestic sexual violence a criminal offence and to ensure proper investigation and prosecution of perpetrators; (c) to adopt and/or strengthen policies and legislation in order to strengthen preventive measures, protect the human rights of victims, ensure proper investigation and prosecution of perpetrators and provide legal and social assistance to victims of domestic violence; (d) to take measures to ensure the protection of women subjected to violence, access to just and effective remedies, *inter alia*, through compensation and indemnification and healing of victims, and the rehabilitation of perpetrators.

¹⁶² A/59/135.

¹⁶³ United Nations *Treaty Series*, vol. 1249, p. 13.

¹⁶⁴ United Nations *Treaty Series*, vol. 2131, p. 83.

- (ii) *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990*¹⁶⁵

During 2003, three States ratified and two States acceded to the Convention, bringing the number of parties to 24 and leading to its entry into force on 1 July 2003.

In resolution 58/143, adopted without a vote on 22 December 2003 and entitled “Violence against women migrant workers”, the General Assembly, after taking note of the report of the Secretary-General,¹⁶⁶ acknowledged the entry into force of the Convention and called upon States, *inter alia*, to sign and ratify it and to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers.

4. Other consideration by the General Assembly

At its fifty eighth-session, the General Assembly adopted without a vote, on 22 December 2003, resolution 58/146, entitled “Improvement of the situation of women in rural areas” and, on 23 December 2003, resolution 58/206, entitled “Women in development”.

In resolution 58/146, the Assembly took note of the report of the Secretary-General¹⁶⁷ and invited members States, *inter alia*, to design and revise laws to ensure that, where private ownership of land and property exists, rural women are accorded full and equal rights to own land and other property.

In resolution 58/206, after having taken note of the report of the Secretary-General on the matter,¹⁶⁸ the Assembly urged States, *inter alia*, (a) to promote and protect the rights of women workers, to take action to remove legal barriers to gender equality at work; (b) to design and revise laws that ensure that women are accorded full and equal rights to own land and other property, including through inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital and appropriate technologies and access to markets and information; (c) to promote, through legislation, family-friendly and gender sensitive work environments, the facilitation of breastfeeding for working mothers and the provision of the necessary care for working women’s children and other dependants and (d) to create and maintain a non-discriminatory and gender-sensitive legal environment by reviewing legislation, with a view to striving to remove discriminatory provisions as soon as possible, preferably by 2005, and eliminating legislative gaps that leave women and girls without protection of their rights and without effective recourse against gender-based discrimination.

Children, youth and ageing persons’ issues

1. Status of international instruments and consideration by the General Assembly

The Convention on the Rights of the Child, 1989.¹⁶⁹ and the two Optional Protocols thereto, the Optional Protocol on the involvement of children in armed conflict, 2000,¹⁷⁰

¹⁶⁵ United Nations *Treaty Series*, vol. 2220, p. 3.

¹⁶⁶ A/58/161.

¹⁶⁷ A/58/167 and Add.1.

¹⁶⁸ A/58/135.

¹⁶⁹ United Nations *Treaty Series*, vol. 1577, p. 3.

¹⁷⁰ *Ibid.*

and the Optional Protocol on the sale of children, child prostitution and child pornography, 2000.¹⁷¹

During 2003, one State acceded to the Convention on the Rights of the Child, bringing the number of parties to 192; 18 States ratified and three States acceded to the first Optional Protocol, and 15 States ratified and eight States acceded to the second Optional Protocol, bringing the number of parties to 67 and 69, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote resolution 58/156 on “The girl child”, in which the Assembly stressed the need for full and urgent implementation of the rights of the girl child as guaranteed to her under all human rights instruments, including the above mentioned Convention and the Protocols thereto. The Assembly also called upon States (a) to institute legal reforms to ensure the full and equal enjoyment by the girl child of all human rights and fundamental freedoms and to take effective action against violations of those rights and freedoms; (b) to enact and strictly enforce laws to ensure marriage is entered into only with the free and full consent of the intending spouses, to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and to raise the minimum age for marriage where necessary; and (c) to enact and enforce legislation to protect girls from all forms of violence and exploitation.

During the same session, on 22 December 2003, the General Assembly adopted another resolution on the “Rights of child” which referred to the above mentioned international instruments. Resolution 58/157, was adopted by recorded vote of 179 in favour to 1, and focused on particular issues: first, on the implementation of the Convention on the Rights of the Child and the Optional Protocols thereto; secondly, on promoting and protecting the rights of children and non-discrimination against children; thirdly, on prevention and eradication of the sale of children, child prostitution and child pornography and, fourthly, on children in armed conflict.

Regarding the first issue, the General Assembly expressed its concern about the great number of reservations to the Convention, and urged Member States to withdraw reservations incompatible with the object and purpose of the Convention and to consider reviewing other reservations with a view to withdrawal. In addition, the Assembly called upon Member States that had not yet done so to sign, ratify or accede to the international instruments protecting the rights of children and to take all appropriate measures for the implementation of these rights by, *inter alia*, putting in place effective national legislation and ensuring adequate and systematic training in the rights of the child for professional groups working with and for children, including specialized judges, law enforcement officials and lawyers.

Regarding the second issue, the General Assembly called upon Member States to ensure the protection of the rights of children in relation to a series of matters, such as identity, family relations and birth registration, poverty, health, education, freedom from violence, non-discrimination, the girl child, children with disabilities, migrant children, children working and/or living on the street, refugee and internally displaced children, children alleged to have infringed or recognized as having infringed penal law, recovery and social reintegration and child labour. In this respect, the Assembly urged all States that had not yet done so to consider ratifying the Conventions adopted by the International Labour Organization, namely the Convention concerning Minimum Age for Admission

¹⁷¹ United Nations *Treaty Series*, vol. 1577, p. 3.

to Employment, 1973,¹⁷² and the Convention concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour, 1999.¹⁷³

2. Other consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote on 22 December 2003 resolution 58/133, entitled “Policies and programmes involving youth” in which, after taking note of the report of the Secretary-General¹⁷⁴, the Assembly reaffirmed the obligations of States to promote and protect human rights and fundamental freedoms and their full enjoyment by young people.

Health issues

Consideration by the General Assembly

During 2003, the General Assembly adopted a number of resolutions concerning health. In resolution 58/179, adopted on 22 December 2003 by recorded vote of 181 in favour to 1, entitled “Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria”, the Assembly reaffirmed that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health was a human right; the Assembly also called upon States to adopt and implement legislation, in accordance with applicable international law, including international agreements acceded to, to safeguard access to preventive, curative or palliative pharmaceutical products or medical technologies free from any limitations by third parties.

Refugees and displaced persons’ issues

1. The Office of the United Nations High Commissioner for Refugees (UNHCR)

In a report on “Strengthening the capacity of the Office of the UN High Commissioner for Refugees to carry out its mandate”,¹⁷⁵ the High Commissioner listed among the actions to be taken by the General Assembly, the accession by States to the Convention relating to the Status of Refugees, 1951,¹⁷⁶ the Protocol to the Convention relating to the Status of Refugees, 1967,¹⁷⁷ the Convention relating to the status of Stateless Persons, 1954,¹⁷⁸ and the Convention on the Reduction of Statelessness, 1961,¹⁷⁹ and the implementation of the Agenda for Protection.

Moreover, in the annual report submitted to the General Assembly,¹⁸⁰ the High Commissioner informed the General Assembly that the “Convention Plus” programme had been launched. The purpose of this initiative was the development of special agreements or arrangements to facilitate progress towards durable solutions with respect to the protection of refugees.

¹⁷² United Nations *Treaty Series*, vol. 1015, p. 297.

¹⁷³ United Nations *Treaty Series*, vol. 2133, p. 161.

¹⁷⁴ E/CN.5/2003/4.

¹⁷⁵ A/58/410.

¹⁷⁶ United Nations *Treaty Series*, vol. 189, p. 137.

¹⁷⁷ United Nations *Treaty Series*, vol. 606, p. 267.

¹⁷⁸ United Nations *Treaty Series*, vol. 360, p. 117.

¹⁷⁹ United Nations *Treaty Series*, vol. 989, p. 175.

¹⁸⁰ A/58/12.

2. The fifty-fourth session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees

The Executive Committee of the Programme of the UNHCR held its fifty-fourth session in Geneva from 29 September to 3 October 2003. Many decisions were taken by the Committee at the end of the session involving legal considerations.¹⁸¹

On the issue of “International Protection” (decision B), the Committee recognized that such protection is both a legal concept and at the same time an action-oriented function.

On the question of “The return of persons found not to be in need of international protection” (decision C), the Committee (a) recalled the obligation of States to receive back their own nationals, as well as the right of States, under international law, to expel aliens while respecting obligations under international refugees and human rights law; (b) recalled also that the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000,¹⁸² set out the obligation of States parties to facilitate and accept, without undue or unreasonable delay, the return of a person who had been smuggled and who was its national or who had the right of permanent residence in its territory at the time of the return; (c) reaffirmed the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back their nationals; (d) recalled further that Annex 9 to the Convention on International Civil Aviation, 1944,¹⁸³ required that States, when requested to provide travel documents to facilitate the return of its nationals, respond within a reasonable period of time, and no more than 30 days after such request was made; (e) urged States to adopt measures leading to the grant of legal status to stateless persons; (f) recommended that UNCHR complement the efforts of States in the return of persons found not to be in need of international protection by, *inter alia*, continuing its dialogue with States to review their citizenship legislation.

On the issue of “Protection Safeguards in Interception Measures” (decision D), the Committee, *inter alia*, (a) recalled the emerging legal framework for combating criminal and organized smuggling and trafficking of persons, in particular the Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000,¹⁸⁴ which, *inter alia*, contemplates the interception of vessels enjoying freedom of navigation in accordance with international law, on the basis of consultations between the flag State and the intercepting State in accordance with international maritime law, provided that there are reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea; (b) recalled also the duty of States and shipmasters to ensure the safety of life at sea and to come to the aid of those in distress or in danger of being lost at sea, as contained in numerous instruments of the codified system of international maritime law; (c) recognized that States had international obligations regarding the security of civilian air transportation and that persons whose identities are unknown represent a potential threat to the security of air transportation as contained in numerous instruments of the codified system on international aviation law; (d) recommended, as far as interception measures were concerned, that State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and to protect the right of life and the right not to be

¹⁸¹ For the text of the decisions, see A/58/12/Add.1.

¹⁸² A/55/383.

¹⁸³ United Nations *Treaty Series*, vol. 15, p. 295.

¹⁸⁴ United Nations *Treaty Series*, vol. 189, p. 137.

subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted; that interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country; that intercepted asylum-seekers and refugees should not become liable to criminal prosecution under the Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000, by reason of having been the object of conduct set forth in article 6 of the Protocol, nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of article 31 of the Convention relating to the Status of Refugees, 1951,¹⁸⁵ are met.

On the question of protection from sexual abuse and exploitation (decision E), the Committee urged States, *inter alia*, to respect and ensure the right of all individuals within their territory and subject to their jurisdiction, to security of person, by enforcing relevant national laws, consistent with international law.

3. Status of international instruments and consideration by the General Assembly

The Convention relating to the Status of Refugees, 1951,¹⁸⁶ the Protocol to the Convention relating to the Status of Refugees, 1967,¹⁸⁷ the Convention relating to the status of Stateless Persons, 1954,¹⁸⁸ and the Convention on the Reduction of Statelessness, 1961.¹⁸⁹

During 2003, one State acceded to the Convention relating to the Status of Refugees and two States acceded to the Protocol thereto, bringing the number of parties to 142 and 141, respectively; one State acceded to both the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, bringing the number of parties to 55 and 27, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote resolution 58/151, entitled “Office of the UNHCR”. On the same day, the General Assembly also adopted without a vote resolution 58/169 on “Human rights and mass exodus”, in which the Assembly took note of the report of the Secretary-General on the subject.¹⁹⁰

4. Other consideration by the General Assembly

In addition to the resolutions adopted in relation to particular regional areas,¹⁹¹ the General Assembly adopted at its fifty-eighth session, on 22 December 2003, resolution 58/153 entitled “Implementing actions proposed by the UN High Commissioner for

¹⁸⁵ United Nations *Treaty Series*, vol. 189, p. 137.

¹⁸⁶ United Nations *Treaty Series*, vol. 189, p. 137.

¹⁸⁷ United Nations *Treaty Series*, vol. 606, p. 267.

¹⁸⁸ United Nations *Treaty Series*, vol. 360, p. 117.

¹⁸⁹ United Nations *Treaty Series*, vol. 989, p. 175.

¹⁹⁰ A/58/186.

¹⁹¹ Regarding Africa, see resolution 58/149 on “Assistance to refugees, returnees and displaced persons in Africa” and resolution 57/306 on “Investigation into sexual exploitation of refugees by aid workers in West Africa”; regarding the Countries of the Commonwealth of Independent States and the Neighboring States, see resolution 58/154 on “Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and the Neighboring States”.

Refugees to strengthen the capacity of his Office to carry out its mandate” and resolution 58/177 on “Protection of and assistance to internally displaced persons”. In these resolutions, the Assembly took note respectively of the report of the High Commissioner¹⁹² and of the report of the Representative of the Secretary-General.¹⁹³

(f) International drug control

Forty-sixth session of the Commission on Narcotic Drugs

The Commission held its forty-sixth session in Vienna from 8 to 17 March 2003.¹⁹⁴ Among the numerous resolutions adopted by the Commission during this session,¹⁹⁵ were resolution 46/1, entitled “Renewing emphasis on demand reduction prevention and treatment efforts in compliance with the international drug control treaties” and resolution 46/4, entitled “Supporting the international drug control system through joint action”, in which the Commission highlighted the importance of effective drug control legislation to reduce drug trafficking and illicit use of drugs and urged States parties to take all measures to safeguard the integrity of the international drug control treaties, in particular to ensure the full implementation of those provisions which oblige States parties to limit the use of narcotics drugs and psychotropic substances exclusively to medical and scientific purposes. The Commission also called upon States in resolution 46/1 to ensure that national laws, particularly those regarding possession and use of drugs, were in conformity with the international drug control treaties and were actively implemented.

Seventy-sixth, seventy-seventh and seventy-eighth sessions of the International Narcotics Control Board (INCB)

The INCB held its seventy-sixth, seventy-seventh and seventy-eighth sessions, all in Vienna, from 3 to 7 February, from 26 May to 6 June and from 29 October to 14 November 2003, respectively.¹⁹⁶ The work of the Control Board was entirely devoted to reviewing the implementation of the international drug treaties.

Status of international instruments and consideration by the General Assembly

The Convention on Psychotropic Substances, 1971,¹⁹⁷ the Protocol amending the Single Convention on Narcotic Drugs, 1972,¹⁹⁸ the Single Convention on Narcotic Drugs as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1975,¹⁹⁹ and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.²⁰⁰

¹⁹² A/58/410.

¹⁹³ A/58/393.

¹⁹⁴ See E/2003/28/Rev.1, E/CN.7/2003/19/Rev.1.

¹⁹⁵ *Ibid.*

¹⁹⁶ See E/INCB/2003/1.

¹⁹⁷ United Nations *Treaty Series*, vol. 1019, p. 175.

¹⁹⁸ United Nations *Treaty Series*, vol. 976, p. 3.

¹⁹⁹ United Nations *Treaty Series*, vol. 976, p. 105.

²⁰⁰ ECOSOC doc. E/CONF.82/15, Corr.1 and Corr.2.

During 2003, two States acceded to the Convention on Psychotropic Substances, one State acceded to the Protocol amending the Single Convention on Narcotic Drugs, two States ratified the Single Convention on Narcotic Drugs as amended by the latter Protocol and one State acceded to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, bringing the number of parties to 174, 121, 175 and 168, respectively.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted resolution 58/141 entitled “International cooperation against the world drug problem”, in which the Assembly addressed different aspects of the world drug problem. The Assembly reaffirmed that combating drug abuse must be carried out with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect.

(g) Crime prevention issues

*Twelfth session of the Commission on Crime Prevention
and Criminal Justice*

The Commission on Crime Prevention and Criminal Justice held its twelfth session in Vienna from 13 to 22 May 2003.²⁰¹ At this session, the Commission considered a report from the Centre for International Crime Prevention,²⁰² in which it was stated that one of the core priorities of the Centre was the promotion of the ratification process of the United Nations Convention against Transnational Organized Crime, 2000,²⁰³ and the three supplementing Protocols thereto, as well as the provision of assistance to States seeking to ratify them. It was also reported that efforts were developed towards the completion of the negotiation of the draft United Nations Convention against Corruption.

*Fifth, sixth and seventh sessions of the Ad Hoc Committee for the Negotiation of a
Convention against Corruption*

In 2003, the Ad Hoc Committee established by General Assembly resolution 55/61 held three sessions in Vienna, respectively from 10 to 21 March, from 21 July to 8 August and from 29 September to 1 October 2003.²⁰⁴ During the last session, on 1 October 2003, it approved the draft United Nations Convention against Corruption²⁰⁵ and decided to submit it to the General Assembly.

²⁰¹ See E/2003/30.

²⁰² See E/CN.15/2003/2, p. 4, para. 6.

²⁰³ A/55/383.

²⁰⁴ See the October report of the Ad Hoc Committee (A/58/422).

²⁰⁵ *Ibid*, at p. 18, para. 103.

*Status of international instruments and consideration
by the General Assembly*

1. The United Nations Convention against Transnational Organized Crime, 2000,²⁰⁶ and the three Protocols supplementing the United Convention against Transnational Organized Crime (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,²⁰⁷ the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000,²⁰⁸ and the Protocol against the Illicit Manufacturing in Firearm, Their Parts and Components and Ammunition, 2000²⁰⁹)

During 2003, 28 States ratified and three States acceded to the United Nations Convention against Transnational Organized Crime, bringing the number of parties to 59 and leading to its entry into force on 29 September 2003; 21 States ratified and three States acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, bringing the number of parties to 45 and leading to its entry into force on 23 December 2003; 18 States ratified and two States acceded to the Protocol against Smuggling of Migrants by Land, Sea and Air, bringing the number of parties to 40; finally, five States ratified and four States acceded to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, bringing the number of parties to 12.

At its fifty-eighth session, on 22 December 2003, the General Assembly adopted without a vote three resolutions related to the United Nations Convention against Transnational Organized Crime, namely, resolution 58/135 entitled “International cooperation in the fight against transnational organized crime: assistance to States in capacity-building with a view to facilitating the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto”; resolution 58/137 entitled “Strengthening international cooperation in preventing and combating trafficking in persons and in protecting victims of such trafficking” and resolution 58/140 entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”.

In all three resolutions, the General Assembly welcomed the entry into force of the Convention and the forthcoming entry into force of the first Protocol thereto, and urged States and regional organizations that had not yet done so to ratify the Convention and the three Protocols thereto.

In resolutions 58/135 and 58/140, the General Assembly took note of the Secretary-General reports on the respective matters²¹⁰ and, in resolution 58/137, the Assembly urged Members States to take a series of legal measures: (a) to employ a comprehensive approach to combating trafficking in persons, incorporating law enforcement efforts and, where appropriate, the confiscation and seizure of the proceeds of trafficking; (b) to criminalize trafficking in persons; (c) to establish the offences of trafficking in persons as a predicate offence for money-laundering offences; (d) to adopt legislative or other measures to reduce the demand that fosters all forms of trafficking in persons; (e) to discourage, especially among men, the demand that fosters sexual exploitation in accordance with the Protocol

²⁰⁶ A/55/383.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ A/55/383/Add.2.

²¹⁰ See E/CN/2003/5 and A/58/222, respectively.

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; (f) to adopt measures in accordance with their domestic law in order to first, fight sexual exploitation with a view to abolishing it, by prosecuting and punishing those who engage in that activity; secondly, treat victims and witness with sensitivity throughout criminal judicial proceedings in accordance with the Convention; thirdly, promote the legislative and other measures necessary to establish a wide range of assistance to the victims of trafficking; and fourthly, to provide humane treatment for all these victims in accordance with the Protocol related to the trafficking persons. In the same resolution, the General Assembly also urged Member States to ensure that the measures taken against trafficking in persons are consistent with internationally recognized principles of non-discrimination and that they respect the human rights and fundamental freedoms of victims.

2. The United Nations Convention against Corruption, 2003²¹¹

During 2003, one State ratified the United Nations Convention against Corruption, bringing the number of parties to one.

In resolution 58/4, adopted without a vote on 31 October 2003, entitled “United Nations Convention against Corruption”, the General Assembly adopted the United Nations Convention against Corruption and urged all States to ratify it as soon as possible.

On 23 December 2003, the General Assembly adopted without a vote resolution 58/205, entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets to the countries of origin”. Having taken note of the report of the Secretary General,²¹² the General Assembly stated in the resolution that the prevention of corrupt practices, transfer of assets of illicit origin and the return of such assets to the countries of origin had not been adequately regulated by all national legislation and international legal instruments. As a result, the Assembly underlined the responsibility of all governments to enact laws aimed at preventing those practices and encouraged all of them that had not yet done so to enact such laws.

3. Other international conventions

During 2003:

- two States ratified and 18 States acceded to the International Convention against the Taking of Hostages, 1979,²¹³ bringing the number of parties to 136;

- 18 States acceded to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973,²¹⁴ bringing the number of parties to 144;

- 12 States ratified and 25 States acceded to the International Convention for the Suppression of Terrorist Bombings, 1997,²¹⁵ bringing the number of parties to 115;

²¹¹ A/58/422.

²¹² A/58/125.

²¹³ United Nations *Treaty Series*, vol. 1316, p. 205.

²¹⁴ United Nations *Treaty Series*, vol. 1035, p. 167.

²¹⁵ United Nations *Treaty Series*, vol. 2149, p. 256..

– and 19 States ratified and 12 States acceded to the International Convention for the Suppression of the Financing of Terrorism, 1999,²¹⁶ bringing the number of parties to 107.

4. Other consideration by the General Assembly

On 22 December 2003, the General Assembly adopted two resolutions concerning crime prevention which were not directly related to specific conventions, namely resolution 58/136, entitled “Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the Center for International Crime Prevention” and resolution 58/139 on the “United Nations African Institute for the Prevention of Crime and the Treatment of Offenders”.

(h) Ad hoc international criminal tribunals

Statutes of the ad hoc international criminal tribunals

The Security Council adopted resolution 1503 on 28 August 2003 and resolution 1512 on 27 October 2003, in which, acting under Chapter VII of the United Nations Charter, it decided to amend, respectively, article 15²¹⁷ (The Prosecutor) and articles 11 (Composition of the Chambers) and 12 quater²¹⁸ (Status of *ad litem* judges) of the Statute of the International Criminal Tribunal for Rwanda.

In resolution 1481 adopted on 19 May 2003, the Security Council decided, under Chapter VII of the United Nations Charter, to amend article 13 quater²¹⁹ (Status of *ad litem* judges) of the Statute of the International Criminal Tribunal for the former Yugoslavia.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted decision 58/504 on 9 October 2003, in which it took note of the eighth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994,²²⁰ and decision 58/505 on 9 October 2003, in which it took note of the tenth annual report of the International Tribunal for the Prosecution of Persons Responsible for serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.²²¹

²¹⁶ United Nations *Treaty Series*, vol. 2178, p. 197.

²¹⁷ For the text of the amendment, see Security Council resolution 1503 (2003), annex I.

²¹⁸ For the text of the amendment, see Security Council resolution 1512 (2003), annex.

²¹⁹ For the text of the amendment, see Security Council resolution 1481 (2003), annex.

²²⁰ See A/58/140-S/2003/707.

²²¹ See A/58/297-S/2003/829.

(i) Safety of United Nations personnel

During 2003, six States acceded to the Convention on the Safety of United Nations and Associated Personnel, 1994,²²² bringing the number of parties to 69.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted without a vote two resolutions addressing the issue of safety of United Nations personnel,²²³ resolution 58/82 adopted on 9 December 2003, entitled “Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel”, and resolution 58/122 adopted on 17 December 2003, entitled “Safety and security of humanitarian personnel and protection of United Nations personnel”.

In both resolutions, after having taken note of the reports of the Secretary-General on the respective subjects,²²⁴ the Assembly first, urged States to ensure that crimes against United Nations and associated personnel do not go unpunished and that the perpetrators of such crimes are brought to justice, secondly called upon States to consider becoming parties to and to respect fully their obligations under the relevant international instruments, in particular the Convention on the Safety of United Nations and Associated Personnel, and finally recommended that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, including those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and the prosecution or extradition of offenders, in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements.

Moreover, in resolution 58/122, the General Assembly, welcoming the adoption by the Security Council of resolution 1502 on 26 August 2003 on the safety and security of humanitarian personnel and United Nations and its associated personnel, also (a) called upon all States to consider becoming parties to and to respect fully their obligations under the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies; (b) called upon all States to provide adequate and prompt information in the event of the arrest or detention of humanitarian personnel or United Nations and its associated personnel, to afford them the necessary medical assistance and to allow independent medical teams to visit and examine the health of those detained, and urged them to take the necessary measures to ensure the speedy release of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation who have been arrested or detained in violation of their immunity, in accordance with the relevant conventions and applicable international humanitarian law; and (c) requested the Secretary-General to seek the inclusion, in negotiations of headquarters and other mission agreements concerning United Nations and its associated personnel, of the applicable conditions contained in

²²² United Nations *Treaty Series*, vol. 2051, p. 363.

²²³ See also resolution 57/338 adopted by the General Assembly at its fifty-seventh session on 15 September 2003 and entitled “Condemnation of the attack on United Nations personnel and premises in Baghdad”.

²²⁴ See A/58/187 and A/58/344, respectively.

the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies and the Convention on the Safety of United Nations and Associated Personnel.

4. LAW OF THE SEA

(a) Status of international instruments²²⁵

In 2003, four States became parties to the United Nations Convention on the Law of the Sea (the Convention), 1982,²²⁶ bringing the total number of States parties to 145. Six States became parties to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994,²²⁷ bringing the total number of States parties to 117. Nineteen additional States became parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995,²²⁸ bringing the total number of States parties to 51. One State became a party to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, 1997,²²⁹ bringing the total number of States parties to 13. On 31 May 2003, the Protocol on the Privileges and Immunities of the International Seabed Authority, 1998,²³⁰ entered into force, 30 days after the date of the deposit of the tenth instrument of ratification, approval, acceptance or accession. Subsequently, one more State became a party to the Protocol, bringing the total number of States parties to 11.

(b) Report of the Secretary-General²³¹

The report of the Secretary-General on oceans and the law of the sea was submitted to the General Assembly at its fifty-eighth session and covers a number of areas, including maritime space, safety of navigation, crimes at sea, marine resources, the marine environment and sustainable development, marine science and technology, settlement of disputes, capacity-building and international cooperation and coordination.

In the section of the report relating to maritime space, it was noted that, at its ninth annual session (28 July to 7 August 2003), the International Seabed Authority had considered a proposal by the secretariat of the Authority to carry out a study on the implications of article 82, paragraph 4, of the Convention. It was generally agreed that the study should be limited to the responsibilities of the Authority set out in the relevant provisions of article 82. Furthermore, in the area of maritime claims and the delimitation of maritime zones, it was reported that, in order to improve information regarding legislative measures undertaken by States parties in implementing the Convention, the Division for

²²⁵ For a complete list of signatories and States parties to the international instruments relating to the law of the sea, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2003* (ST/LEG/SERE/22).

²²⁶ United Nations *Treaty Series*, vol. 1833, p. 3.

²²⁷ United Nations *Treaty Series*, vol. 1836, p. 3.

²²⁸ United Nations *Treaty Series*, vol. 2167, p. 3.

²²⁹ United Nations *Treaty Series*, vol. 2167, p. 271.

²³⁰ United Nations *Treaty Series*, vol. 2214, p. 133.

²³¹ A/58/65 and Add.1.

Ocean Affairs and the Law of the Sea, Office of Legal Affairs, had circulated a questionnaire to all States in February 2002, requesting input on the application of its provisions. As of February 2003, replies had been received from 22 States parties and two non-parties.

Regarding safety of navigation, it was reported that many aspects of this subject are regulated within the framework of a number of United Nations organizations, in particular the International Maritime Organisation (IMO), which constitutes a comprehensive and substantial body of global rules and regulations. It was further noted that the outcome of the initiative of the Office of the United Nations High Commissioner for Refugees (UNHCR) and IMO in 2002 to consider more effective modes of cooperation in response to emergency situations at sea and challenges posed by complex rescue scenarios had been considered by the IMO Subcommittee on Radio Communications and Search and Rescue in January 2003. As a consequence, the Maritime Safety Committee (MSC), at its seventy-seventh session, from 28 May to 6 June, adopted amendments relating to the new chapter V of the International Convention for the Safety of Life at Sea, 1974.²³² The amendments were expected to enter into force on 1 July 2006. Furthermore, also at its seventy-seventh session, the MSC approved draft amendments to the International Convention on Maritime Search and Rescue, 1979,²³³ for adoption in 2004, and adopted amendments to the 1988 Protocol to the International Convention on Load Lines, 1966.²³⁴ Furthermore, the IMO Marine Environment Protection Committee (MEPC), at its forty-ninth session in July 2003, considered a proposal to amend annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978²³⁵ relating thereto, relating to single-hull oil tankers.²³⁶ A new Convention on Seafarers' Identity Documents was also adopted on 19 June 2003 at the ninety-first session of the International Labour Conference to replace the 1958 Convention on the same subject.²³⁷

Regarding crimes at sea, it was reported that the IMO Legal Committee had begun considering possible amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,²³⁸ and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988,²³⁹ in order to strengthen the means of combating unlawful acts, including terrorist acts. Moreover, in order to facilitate cooperation among States against the illicit traffic in narcotic drugs and psychotropic substances by sea, the United Nations International Drug Control Programme had prepared, with the assistance of an expert working group, a Practical Guide for Competent National Authorities under article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.²⁴⁰ The Guide addressed, *inter alia*, the legal and practical considerations to be borne in mind when establishing or designating a competent national authority.

In the area of marine resources, the marine environment and sustainable development, it was noted that a draft convention to address the problem of invasive species in ballast

²³² Resolution MSC.142(77). United Nations *Treaty Series*, vol. 1184, p. 2.

²³³ United Nations *Treaty Series*, vol. 1405, p. 97.

²³⁴ Resolution MSC.143 (77). For the text of the Protocol, see MCS 77/26/Add.1.

²³⁵ United Nations *Treaty Series*, vol. 1340, p. 61.

²³⁶ MEPC 49/16/1.

²³⁷ For the text of the Revised Convention, see the website of the International Labour Organization, <http://www.ilo.org>.

²³⁸ United Nations *Treaty Series*, vol. 1678, p. 201.

²³⁹ *Ibid.*

²⁴⁰ United Nations *Treaty Series*, vol. 1582, p. 95.

water was to be finalized in 2003, under the auspices of IMO, to enable its adoption at a Diplomatic Conference on Ballast Water Management in early 2004.²⁴¹

In the section of the report on dispute settlement, it was noted that the annex VII arbitral tribunal constituted for the MOX Plant case (*Ireland v. United Kingdom*) had begun to hear oral arguments in June 2003 but suspended proceedings until 1 December 2003, in view of questions raised regarding the positions of the parties under the law of the European Communities. The European Commission had brought to the attention of the annex VII arbitral tribunal that it was examining the question of whether to institute proceedings under article 226 of the European Community Treaty. The annex VII arbitral tribunal declined to order provisional measures specifically requested by Ireland and instead affirmed the provisional measures that had been prescribed by the International Tribunal for the Law of the Sea in 2001.²⁴²

It was also noted in the report that at a special Meeting of States parties, on 2 September 2003, Mr. Anthony Amos Lucky (Trinidad and Tobago) was elected as a judge to fill a vacancy in the International Tribunal for the Law of the Sea.

(c) Consideration by the General Assembly

At its fifty-seventh session, the General Assembly, on 23 December 2003, without reference to a Main Committee, adopted by a recorded vote of 156 to 1, with 2 abstentions, resolution 58/240, entitled "Oceans and the law of the sea", in which it noted with satisfaction the continued contribution of the International Tribunal of the Law of the Sea to the peaceful settlement of disputes in accordance with Part XV of the Convention, underlined the important role of the Tribunal concerning the interpretation or application of the Convention and the Agreement relating to the Implementation of Part XI of the Convention, encouraged States parties to the Convention that had not yet done so to consider making a written declaration choosing from the means set out in article 287 for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement, and invited States parties to note the provisions of annexes V, VI, VII and VIII to the Convention concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration. By the same resolution, the General Assembly welcomed the work of IMO in developing guidelines on places of refuge for ships in need of assistance and in developing amendments to the International Convention for the Safety of Life at Sea, 1974,²⁴³ and to the International Convention on Maritime Search and Rescue, 1979,²⁴⁴ and the work of the International Labour Organization to consolidate and modernize international maritime labour standards. Moreover, the Assembly urged flag States without an effective maritime administration and appropriate legal frameworks to establish or enhance the necessary infrastructure, legislative and enforcement capabilities to ensure effective compliance with, and implementation and enforcement of, their responsibilities under international law and invited IMO and other relevant competent international

²⁴¹ For the most recent draft articles, see text prepared during the 48th session of MEPC (7–11 October 2002), IMO document MEPC 48/21, annex 2.

²⁴² See Order No. 3 entitled "Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures" available on the website of the International Bureau of the Permanent Court of Arbitration, which is serving as registry in the proceedings, at <http://www.pca-cpa.org>.

²⁴³ United Nations *Treaty Series*, vol. 1184, p. 2.

²⁴⁴ United Nations *Treaty Series*, vol. 1405, p. 97.

organizations to study, examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag. The Assembly further requested the Secretary-General, in cooperation and consultation with relevant agencies, organizations and programmes of the United Nations system, to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences for non-compliance prescribed in the relevant international instruments. It called upon States and relevant international bodies to cooperate in the prevention and combating of piracy and armed robbery at sea and invited States to participate in the review by the Legal Committee of IMO of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,²⁴⁵ and its 1988 Protocol, to strengthen means of combating such unlawful acts, including terrorist acts. The General Assembly also welcomed the convening by IMO of a diplomatic conference to adopt an international convention for the control and management of ships’ ballast waters and sediments. Resolution 58/240 further contained, in its annex, amendments to the terms of reference, guidelines and rules of the Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, in particular the least developed countries and small island developing States, and compliance with article 76 of the Convention.

On 24 November 2003, the General Assembly also adopted, without reference to a Main Committee, and without a vote, resolution 58/14, entitled “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”, in which it, taking note with appreciation of the report of the Secretary-General,²⁴⁶ welcomed the entry into force of the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, 2001,²⁴⁷ on 13 April 2003, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993,²⁴⁸ on 24 April 2003.

5. INTERNATIONAL COURT OF JUSTICE²⁴⁹

(a) Organization of the Court

In November 2002, the General Assembly and the Security Council had re-elected Judges Shi Jiuyong and A. G. Koroma and elected Messrs H. Owada, B. Simma and P. Tomka as Members of the Court for a term of nine years beginning on 6 February 2003. On that latter date, the Court elected Judge Shi Jiuyong as President and Raymond Ranjeva as Vice-President of the Court, for a term of three years.

In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure, which was constituted as follows in 2003:

²⁴⁵ United Nations *Treaty Series*, vol. 1678, p. 201.

²⁴⁶ A/58/215.

²⁴⁷ United Nations *Treaty Series* vol. 2221, p. 189.

²⁴⁸ United Nations *Treaty Series* vol. 2221, p. 91.

²⁴⁹ For the composition of the Court, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No.4 and corrigendum* (A/58/4 and Corr.1).

Members

President Shi Jiuyong

Vice-President R. Ranjeva

Judges G. Parra-Aranguren, A. S. Al-Khasawneh and T. Buergenthal

Substitute Members

Judges N. Elaraby and H. Owada.

Following elections held on 6 February 2003, the Court's Chamber for Environmental Matters, which was established in 1993 pursuant to Article 26, paragraph 1 of the Statute, and whose mandate in the following composition runs to February 2006, is composed as follows:

President Shi Jiuyong

Vice-President R. Ranjeva

Judges G. Guillaume, P.H. Kooijmans, F. Rezek, B. Simma and P. Tomka.

(b) Jurisdiction of the Court

As at 31 December 2003, 64 States had made declarations recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute.

Peru. 7 July 2003

[Translation from the Spanish]

"In accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, the Government of Peru recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation and on condition of reciprocity, the jurisdiction of the International Court of Justice in all legal disputes, until such time as it may give notice withdrawing this declaration.

This declaration does not apply to any dispute with regard to which the parties have agreed or shall agree to have recourse to arbitration or judicial settlement for a final and binding decision or which has been settled by some other method of peaceful settlement.

The Government of Peru reserves the right at any time by means of a notification addressed to the Secretary-General of the United Nations to amend or withdraw this declaration or reservations set out herein. Such notification shall take effect on the day on which it is received by the Secretary-General of the United Nations.

This declaration shall apply to countries that have entered reservations or set conditions with respect to it, with the same restrictions as set by such countries in their respective declarations."

Lima, 9 April 2003.

(c) Contentious cases before the Court²⁵⁰

1. *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)*

On 3 February 2003, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph.

On 24 April 2001, the Federal Republic of Yugoslavia (hereinafter referred to as the “FRY”) instituted proceedings, whereby, referring to Article 61 of the Statute of the Court, it requested the Court to revise the Judgment delivered on 11 July 1996 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (I.C.J. Reports 1996 (II), p. 595)*.

Since the Court included upon the Bench no judge of the nationality of either of the Parties, the FRY chose Mr. Vojin Dimitrijevic and Bosnia and Herzegovina Mr. Sead Hodzic to sit as judges *ad hoc*. After Mr. Hodzic had subsequently resigned from his duties, Bosnia and Herzegovina designated Mr. Ahmed Mahiou to sit in his stead.

Bosnia and Herzegovina filed its written observations on the admissibility of the FRY’s Application within the time-limit fixed by the Court. The Court decided that a second round of written pleadings was not necessary. Public hearings were held on 4, 5, 6 and 7 November 2002.

At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the FRY, at the hearing of 6 November 2002:

“For the reasons advanced in its Application of 23 April 2001 and in its pleadings during the oral proceedings held from 4 to 7 November 2002, the Federal Republic of Yugoslavia respectfully requests the Court to adjudge and declare:

- that there are newly discovered facts of such a character as to lay the 11 July 1996 Judgment open to revision under Article 61 of the Statute of the Court; and

- that the Application for revision of the Federal Republic of Yugoslavia is therefore admissible.”

On behalf of the Government of Bosnia and Herzegovina, at the hearing of 7 November 2002:

“In consideration of all that has been submitted by the representatives of Bosnia and Herzegovina in the written and oral stages of these proceedings, Bosnia and Herzegovina requests the Court to adjudge and declare that the Application for revision of the Judgment of 11 July 1996, submitted by the Federal Republic of Yugoslavia on 23 April 2001, is not admissible.”

²⁵⁰ The materials contained herein are based on the summaries prepared by the Registry of the Court of its judgements, advisory opinions and orders. The full texts of the judgements, advisory opinions and orders are published in the *I.C.J. Reports*. Procedural orders such as those relating to time-limits in particular proceedings are not reflected.

The Court notes that in its Application for revision of the 1996 Judgment, the FRY relies on Article 61 of the Statute, which provides for revision proceedings to open with a judgment of the Court declaring the Application admissible on the grounds contemplated by the Statute; article 99 of the Rules makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the application admissible.

Thus, the Court points out, the Statute and the Rules of Court foresee a “two-stage procedure”. The first stage of the procedure for a request for revision of the Court’s judgment should be “limited to the question of admissibility of that request”. Therefore, at the current stage of the proceedings the Court’s decision is limited to the question whether the request satisfies the conditions contemplated by the Statute. Under Article 61 of the Statute, these conditions are as follows:

- (a) the application should be based upon the “discovery” of a “fact”;
- (b) the fact, the discovery of which is relied on, must be “of such a nature as to be a decisive factor”;
- (c) the fact should have been “unknown” to the Court and to the party claiming revision when the judgment was given;
- (d) ignorance of this fact must not be “due to negligence”; and
- (e) the application for revision must be “made at latest within six months of the discovery of the new fact” and before ten years have elapsed from the date of the judgment.

The Court observes that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed.

The Court then begins by ascertaining whether there is here a “fact” which, although in existence at the date of its Judgment of 11 July 1996, was at that time unknown both to the FRY and to the Court.

In this regard, it notes that in its Application for revision of the Court’s Judgment of 11 July 1996, the FRY contended the following:

“The admission of the FRY to the United Nations as a new Member on 1 November 2000 is certainly a new fact. It can also be demonstrated, and the Applicant submits, that this new fact is of such a nature as to be a decisive factor regarding the question of jurisdiction *ratione personae* over the FRY.

After the FRY was admitted as a new Member on 1 November 2000, dilemmas concerning its standing have been resolved, and it has become an unequivocal fact that the FRY did not continue the personality of the SFRY, was not a Member of the United Nations before 1 November 2000, was not a State party to the Statute, and was not a State party to the Genocide Convention. . .

The admission of the FRY to the United Nations as a new Member clears ambiguities and sheds a different light on the issue of the membership of the FRY in the United Nations, in the Statute and in the Genocide Convention.”

The Court points out that in its oral pleadings, the FRY did not invoke its admission to the United Nations in November 2000 as a decisive “new fact”, within the meaning of Article 61 of the Statute, capable of founding its request for revision of the 1996 Judgment. The FRY claimed that this admission “as a new Member” as well as the Legal Counsel’s

letter of 8 December 2000 inviting it, according to the FRY, “to take treaty actions if it wished to become a party to treaties to which the former Yugoslavia was a party” were

“events which. . . revealed the following two decisive facts:

1. the FRY was not a party to the Statute at the time of the Judgment; and
2. the FRY did not remain bound by article IX of the Genocide Convention continuing the personality of the former Yugoslavia”.

The Court observes that it is on the basis of these two “facts” that, in its oral argument, the FRY ultimately founded its request for revision. The FRY further stressed at the hearings that these “newly discovered facts” had not occurred subsequently to the Judgment of 1996. In this regard, the FRY stated that “the FRY never argued or contemplated that the newly discovered fact would or could have a retroactive effect”.

For its part, Bosnia and Herzegovina maintained the following:

“there is no ‘new fact’ capable of ‘laying the case open’ to revision pursuant to Article 61, paragraph 2, of the Court’s Statute: neither the admission of Yugoslavia to the United Nations which the Applicant State presents as a fact of this kind, or in any event as being the source of such a fact, nor its allegedly new situation vis-à-vis the Genocide Convention. . . constitute facts of that kind”.

In short, Bosnia and Herzegovina submitted that what the FRY referred to as “facts” were “the consequences. . . of a fact, which is and can only be the admission of Yugoslavia to the United Nations in 2000”. It stated that “Article 61 of the Statute of the Court. . . requires that the fact was ‘when the judgment was given, unknown to the Court and also to the party claiming revision’” and that “this implies that. . . the fact in question actually did exist ‘when the judgment was given’”. According to Bosnia and Herzegovina, the FRY “is regarding its own change of position [as to its continuation of the personality of the SFRY] (and the ensuing consequences) as a new fact”. Bosnia and Herzegovina concluded that the “new fact” invoked by the FRY “is subsequent to the Judgment whose revision is sought”. It noted that the alleged new fact could have “no retroactive or retrospective effect”.

With a view to providing the context for the contentions of the FRY, the Court then recounts the background to the case:

In the early 1990s the SFRY, made up of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, began to break up. On 25 June 1991 Croatia and Slovenia both declared independence, followed by Macedonia on 17 September 1991 and Bosnia and Herzegovina on 6 March 1992. On 22 May 1992, Bosnia and Herzegovina, Croatia and Slovenia were admitted as Members to the United Nations; as was the former Yugoslav Republic of Macedonia on 8 April 1993.

On 27 April 1992 the “participants of the joint session of the SFRY Assembly, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro” adopted a declaration. Expressing the will of the citizens of their respective Republics to stay in the common state of Yugoslavia, they stated that:

- “1. The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally,

Remaining bound by all obligations to international organizations and institutions whose member it is. . .”

An official note of the same date from the Permanent Mission of Yugoslavia to the United Nations stated *inter alia*

“Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia.” (United Nations doc. A/46/915, annex I.)

On 22 September 1992, the General Assembly adopted resolution 47/1, whereby, upon the recommendation contained in Security Council resolution 777 (1992) of 19 September 1992, it considered “that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly”.

On 29 September 1992, in response to a letter from the Permanent Representatives of Bosnia-Herzegovina and Croatia requesting certain clarifications, the Under-Secretary-General and Legal Counsel of the United Nations addressed a letter to them, in which he stated that the “considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1” was as follows:

“While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not *participate* in the work of the General Assembly. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer *participate* in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

On the other hand, the resolution neither terminates nor suspends Yugoslavia’s *membership* in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign ‘Yugoslavia’. Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies. The admission to the United Nations of a new Yugoslavia under Article 4 of the Charter will terminate the situation created by resolution 47/1.” (United Nations doc. A/47/485; emphasis added in the original.)

On 29 April 1993, the General Assembly, upon the recommendation contained in Security Council resolution 821 (1993) (couched in terms similar to those of Security Council resolution 777 (1992)), adopted resolution 47/229 in which it decided that “the

Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council”.

The Court recalls that between the adoption of General Assembly resolution 47/1 of 22 September 1992 and the admission of the FRY to the United Nations on 1 November 2000, the legal position of the FRY remained complex. As examples thereof, the Court cites several changes to the English text of certain relevant paragraphs of the “*Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*”, prepared by the Treaty Section of the Office of Legal Affairs, which was published at the beginning of 1996 (those changes were directly incorporated into the French text of the Summary published in 1997); it also referred to the letters sent by the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia which questioned the validity of the deposit of the declaration recognizing the compulsory jurisdiction of the International Court of Justice by the FRY dated 25 April 1999, and which set out their “permanent objection to the groundless assertion of the Federal Republic of Yugoslavia (Serbia and Montenegro), which has also been repudiated by the international community, that it represents the continuity of our common predecessor, and thereby continues to enjoy its status in international organizations and treaties”.

The Court adds to the above account of the FRY’s special situation that existed between September 1992 and November 2000, certain details concerning the United Nations membership dues and rates of assessment set for the FRY during that same period.

The Court then recalls that on 27 October 2000, Mr. Koštunica, the newly elected President of the FRY, sent a letter to the Secretary-General requesting admission of the FRY to membership in the United Nations; and that, on 1 November 2000, the General Assembly, upon the recommendation of the Security Council, adopted resolution 55/12, by which it decided to admit the Federal Republic of Yugoslavia to membership in the United Nations.

The Court observes that the admission of the FRY to membership of the United Nations on 1 November 2000 put an end to Yugoslavia’s *sui generis* position within the United Nations. It notes that, on 8 December 2000, the Under-Secretary-General, the Legal Counsel, sent a letter to the Minister for Foreign Affairs of the FRY, reading in pertinent parts:

“Following [the admission of the Federal Republic of Yugoslavia to the United Nations on 1 November 2000], a review was undertaken of the multilateral treaties deposited with the Secretary-General, in relation to many of which the former Socialist Federal Republic of Yugoslavia (the SFRY) and the Federal Republic of Yugoslavia (FRY) had undertaken a range of treaty actions . . .

It is the Legal Counsel’s view that the Federal Republic of Yugoslavia should now undertake treaty actions, as appropriate, in relation to the treaties concerned, if its intention is to assume the relevant legal rights and obligations as a successor State.” (Letter by the Legal Counsel of the United Nations, Application of Yugoslavia, annex 27.)

The Court further notes that at the beginning of March 2001, a notification of accession to the Genocide Convention by the FRY was deposited with the Secretary-General of the United Nations; and that, on 15 March 2001, the Secretary-General, acting in his capacity as depositary, issued a Depositary Notification (C.N.164.2001.TREATIES-1), indicating that the accession of the FRY to the 1948 Convention on the Prevention and Punishment of the

Crime of Genocide “was effected on 12 March 2001” and that the Convention would “enter into force for the FRY on 10 June 2001”.

The Court, in order to complete the contextual background, also recalls the proceedings leading up to the delivery of the Judgment of 11 July 1996, as well as the passages in that Judgment relevant to the present proceedings.

It refers to its Order dated 8 April 1993, by which it indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. It recalls that in this Order the Court, referring to Security Council resolution 777 (1992), General Assembly resolution 47/1 and the Legal Counsel’s letter of 29 September 1992, stated, *inter alia*, that, “while the solution adopted is not free from legal difficulties, the question whether or not Yugoslavia is a Member of the United Nations and as such a party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage of the proceedings”; and that it concluded that “article IX of the Genocide Convention, to which both Bosnia-Herzegovina and Yugoslavia are parties, thus appears to the Court to afford a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to ‘the interpretation, application or fulfilment’ of the Convention, including disputes ‘relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III’ of the Convention.” The Court further refers to its second Order on provisional measures, of 13 September 1993, by which it confirmed that it had *prima facie* jurisdiction in the case on the basis of article IX of the Genocide Convention.

It finally observes that, in its Judgment of 11 July 1996, on the preliminary objections raised by the FRY, it came to the conclusion that both Parties were bound by the Convention when the Application was filed. In the operative part of its Judgment the Court, having rejected the preliminary objections raised by the FRY, found that “on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute” and that “the Application filed by the Republic of Bosnia and Herzegovina on 20 March 1993 is admissible”.

In order to examine whether the FRY relies on facts which fall within the terms of Article 61 of the Statute, the Court observes first that, under the terms of paragraph 1 of that Article, an application for revision of a judgment may be made only when it is “based upon the discovery” of some fact which, “when the judgment was given”, was unknown. These are the characteristics which the “new” fact referred to in paragraph 2 of that Article must possess. Thus, both paragraphs refer to a fact existing at the time when the judgment was given and discovered subsequently. A fact which occurs several years after a judgment has been given is not a “new” fact within the meaning of Article 61; this remains the case irrespective of the legal consequences that such a fact may have.

The Court points out that, in the present case, the admission of the FRY to the United Nations occurred on 1 November 2000, well after the 1996 Judgment. It concludes accordingly that that admission cannot be regarded as a new fact, within the meaning of Article 61, capable of founding a request for revision of that Judgment.

The Court goes on to note that, in the final version of its argument, the FRY claims that its admission to the United Nations and the Legal Counsel’s letter of 8 December 2000 simply “revealed” two facts which had existed in 1996 but had been unknown at the time: that it was not then a party to the Statute of the Court and that it was not bound by the Genocide Convention. The Court finds that, in advancing this argument, the FRY does

not rely on facts that existed in 1996. In reality, it bases its Application for revision on the legal consequences which it seeks to draw from facts subsequent to the Judgment which it is asking to have revised. Those consequences, even supposing them to be established, cannot be regarded as facts within the meaning of Article 61. The Court finds that the FRY's argument cannot accordingly be upheld.

The Court furthermore notes that the admission of the FRY to membership of the United Nations took place more than four years after the Judgment which it is seeking to have revised. At the time when that Judgment was given, the situation obtaining was that created by General Assembly resolution 47/1. In this regard the Court observes that the difficulties which arose regarding the FRY's status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the Former Yugoslavia was not "generally accepted" (see Security Council resolution 777 (1992) of 19 September 1992), the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and the Economic and Social Council). Resolution 47/1 did not, *inter alia*, affect the FRY's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute. Nor did it affect the position of the FRY in relation to the Genocide Convention. To "terminate the situation created by resolution 47/1", the FRY had to submit a request for admission to the United Nations as had been done by the other Republics composing the SFRY. The Court points out that all these elements were known to the Court and to the FRY at the time when the Judgment was given. Nevertheless, what remained unknown in July 1996 was if and when the FRY would apply for membership in the United Nations and if and when that application would be accepted, thus terminating the situation created by General Assembly resolution 47/1.

The Court emphasizes that General Assembly resolution 55/12 of 1 November 2000 cannot have changed retroactively the *sui generis* position which the FRY found itself in vis-à-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention. Furthermore, the letter of the Legal Counsel of the United Nations dated 8 December 2000 cannot have affected the FRY's position in relation to treaties. The Court also observes that, in any event, the said letter did not contain an invitation to the FRY to accede to the relevant conventions, but rather to "undertake treaty actions, as appropriate, . . . as a successor State".

The Court concludes from the foregoing that it has not been established that the request of the FRY is based upon the discovery of "some fact" which was "when the judgment was given, unknown to the Court and also to the party claiming revision". It finds that one of the conditions for the admissibility of an application for revision prescribed by paragraph 1 of Article 61 of the Statute has therefore not been satisfied. The Court finally indicates that it therefore does not need to address the issue of whether the other requirements of Article 61 of the Statute for the admissibility of the FRY's Application have been satisfied.

The full text of the *operative paragraph* (para. 75) reads as follows:

"For these reasons,

THE COURT,

By ten votes to three,

Finds that the Application submitted by the Federal Republic of Yugoslavia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 11 July 1996, is inadmissible.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Koroma, Parra-Aranguren, Al-Khasawneh, Buergenthal, Elaraby; *Judge ad hoc* Mahiou;

AGAINST: *Judges* Vereshchetin, Rezek; *Judge ad hoc* Dimitrijevic.”

Judge Koroma and Judge *ad hoc* Mahiou appended separate opinions to the judgement; Judge Vereshchetin and Judge *ad hoc* Dimitrijevic appended dissenting opinions; and Judge Rezek appended a declaration.

* * *

2. *Oil Platforms (Islamic Republic of Iran v. United States of America)*

On 6 November 2003, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph.

History of the proceedings and submissions of the Parties (paras. 1–20)

On 2 November 1992, the Islamic Republic of Iran (hereinafter called “Iran”) instituted proceedings against the United States of America (hereinafter called “the United States”) in respect of a dispute “aris[ing] out of the attack [on] and destruction of three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, by several warships of the United States Navy on 19 October 1987 and 18 April 1988, respectively”.

In its Application, Iran contended that these acts constituted a “fundamental breach” of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter called “the 1955 Treaty”), as well as of international law. The Application invoked, as a basis for the Court’s jurisdiction, article XXI, paragraph 2, of the 1955 Treaty.

Within the time-limit fixed for the filing of the Counter-Memorial, the United States raised a preliminary objection to the jurisdiction of the Court pursuant to article 79, paragraph 1, of the Rules of Court of 14 April 1978. By a Judgment dated 12 December 1996, the Court rejected the preliminary objection of the United States according to which the 1955 Treaty did not provide any basis for the jurisdiction of the Court and found that it had jurisdiction, on the basis of article XXI, paragraph 2, of the 1955 Treaty, to entertain the claims made by Iran under article X, paragraph 1, of that Treaty.

The United States Counter-Memorial included a counter-claim concerning “Iran’s actions in the Gulf during 1987–88 which, among other things, involved mining and other attacks on U.S.-flag or U.S.-owned vessels”. By an Order of 10 March 1998 the Court held that this counter-claim was admissible as such and formed part of the proceedings.

Public sittings were held between 17 February and 7 March 2003, at which the Court heard the oral arguments and replies on the claim of Iran and on the counter-claim of the United States. At those oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of Iran, at the hearing of 3 March 2003, on the claim of Iran:

“The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare:

1. That in attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms referred to in Iran’s Application, the United States breached its obligations to Iran under article X, paragraph 1, of the Treaty of Amity, and that the United States bears responsibility for the attacks; and

2. That the United States is accordingly under an obligation to make full reparation to Iran for the violation of its international legal obligations and the injury thus caused in a form and amount to be determined by the Court at a subsequent stage of the proceedings, the right being reserved to Iran to introduce and present to the Court in due course a precise evaluation of the reparation owed by the United States; and

3. Any other remedy the Court may deem appropriate”;

at the hearing of 7 March 2003, on the counter-claim of the United States:

“The Islamic Republic of Iran respectfully requests the Court, rejecting all contrary claims and submissions, to adjudge and declare:

That the United States counter-claim be dismissed.”

On behalf of the Government of the United States, at the hearing of 5 March 2003, on the claim of Iran and the counter-claim of the United States:

“The United States respectfully requests that the Court adjudge and declare:

1. that the United States did not breach its obligations to the Islamic Republic of Iran under article X, paragraph 1, of the 1955 Treaty between the United States and Iran; and

2. that the claims of the Islamic Republic of Iran are accordingly dismissed.

With respect to its counter-claim, the United States requests that the Court adjudge and declare:

1. Rejecting all submissions to the contrary, that, in attacking vessels in the Gulf with mines and missiles and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the territories of the United States and the Islamic Republic of Iran, the Islamic Republic of Iran breached its obligations to the United States under article X, paragraph 1, of the 1955 Treaty; and

2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for its breach of the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings.”

Basis of jurisdiction and factual background (paras. 21–26)

The Court begins by pointing out that its task in the present proceedings is to determine whether or not there have been breaches of the 1955 Treaty, and if it finds that such is the case, to draw the appropriate consequences according to the submissions of the Parties. The Court is seised both of a claim by Iran alleging breaches by the United States, and of a

counter-claim by the United States alleging breaches by Iran. Its jurisdiction to entertain both the claim and the counter-claim is asserted to be based upon article XXI, paragraph 2, of the 1955 Treaty.

The Court recalls that, as regards the claim of Iran, the question of jurisdiction has been the subject of its judgment of 12 December 1996. It notes that certain questions have however been raised between the Parties as to the precise significance or scope of that Judgment, which will be examined below.

As to the counter-claim, the Court also recalls that it decided by its Order of 10 March 1998 to admit the counter-claim, and indicated in that Order that the facts alleged and relied on by the United States “are capable of falling within the scope of article X, paragraph 1, of the 1955 Treaty as interpreted by the Court”, and accordingly that “the Court has jurisdiction to entertain the United States counter-claim in so far as the facts alleged may have prejudiced the freedoms guaranteed by article X, paragraph 1” (*I.C.J. Reports 1998*, p. 204, para. 36). It notes that in this respect also questions have been raised between the Parties as to the significance and scope of that ruling on jurisdiction, and these will be examined below.

The Court points out that it is however established, by the decisions cited, that both Iran’s claim and the counter-claim of the United States can be upheld only so far as a breach or breaches of article X, paragraph 1, of the 1955 Treaty may be shown, even though other provisions of the Treaty may be relevant to the interpretation of that paragraph. Article X, paragraph 1, of the 1955 Treaty reads as follows: “Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

The Court then sets out the factual background to the case, as it emerges from the pleadings of both Parties, observing that the broad lines of this background are not disputed, being a matter of historical record. The actions giving rise to both the claim and the counter-claim occurred in the context of the general events that took place in the Persian Gulf—which is an international commercial route and line of communication of major importance—between 1980 and 1988, in particular the armed conflict that opposed Iran and Iraq. In 1984, Iraq commenced attacks against ships in the Persian Gulf, notably tankers carrying Iranian oil. These were the first incidents of what later became known as the “Tanker War”: in the period between 1984 and 1988, a number of commercial vessels and warships of various nationalities, including neutral vessels, were attacked by aircraft, helicopters, missiles or warships, or struck mines in the waters of the Persian Gulf. Naval forces of both belligerent parties were operating in the region, but Iran has denied responsibility for any actions other than incidents involving vessels refusing a proper request for stop and search. The United States attributes responsibility for certain incidents to Iran, whereas Iran suggests that Iraq was responsible for them.

The Court takes note that two specific attacks on shipping are of particular relevance in this case. On 16 October 1987, the Kuwaiti tanker *Sea Isle City*, reflagged to the United States, was hit by a missile near Kuwait harbour. The United States attributed this attack to Iran, and three days later, on 19 October 1987, it attacked two Iranian offshore oil production installations in the Reshadat [“Rostam”] complex. On 14 April 1988, the warship *USS Samuel B. Roberts* struck a mine in international waters near Bahrain while returning from an escort mission; four days later the United States employed its naval forces to attack and destroy simultaneously the Nasr [“Sirri”] and Salman [“Sassan”] complexes.

These attacks by United States forces on the Iranian oil platforms are claimed by Iran to constitute breaches of the 1955 Treaty; and the attacks on the *Sea Isle City* and the USS *Samuel B. Roberts* were invoked in support of the United States' claim to act in self-defence. The counter-claim of the United States is however not limited to those attacks.

The United States request to dismiss Iran's claim because of Iran's allegedly unlawful conduct (paras. 27–30)

The Court first considers a contention to which the United States appears to have attributed a certain preliminary character. The United States asks the Court to dismiss Iran's claim and refuse it the relief it seeks, because of Iran's allegedly unlawful conduct, i.e., its violation of the 1955 Treaty and other rules of international law relating to the use of force.

The Court notes that in order to make the finding requested by the United States it would have to examine Iranian and United States actions in the Persian Gulf during the relevant period—which it has also to do in order to rule on the Iranian claim and the United States counter-claim. At this stage of its judgment, it does not therefore need to deal with this request.

Application of article XX, paragraph 1 (d), of the 1955 Treaty (paras. 31–78)

The Court recalls that the dispute in the present case has been brought before it on the jurisdictional basis of article XXI, paragraph 2, of the 1955 Treaty, which provides that “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.”

The Court further recalls that by its Judgment of 12 December 1996, it found that it had jurisdiction, on the basis of this article, “to entertain the claims made by the Islamic Republic of Iran under article X, paragraph 1, of that Treaty” (*I.C.J. Reports 1996 (II)*, p. 821, para. 55 (2)). Its task is thus to ascertain whether there has been a breach by the United States of the provisions of article X, paragraph 1; other provisions of the Treaty are only relevant in so far as they may affect the interpretation or application of that text.

In that respect, the Court notes that the United States has relied on article XX, paragraph 1 (d), of the Treaty as determinative of the question of the existence of a breach of its obligations under article X. That paragraph provides that

“The present Treaty shall not preclude the application of measures:

...

(d) necessary to fulfil the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.”

In its Judgment on the United States preliminary objection of 12 December 1996, the Court ruled that article XX, paragraph 1 (d), does not afford an objection to admissibility, but “is confined to affording the Parties a possible defence on the merits” (*I.C.J. Reports 1996 (II)*, p. 811, para. 20). In accordance with article XXI, paragraph 2, of the Treaty, it is now for the Court to interpret and apply that subparagraph, inasmuch as such a defence is asserted by the United States.

To uphold the claim of Iran, the Court must be satisfied both that the actions of the United States, complained of by Iran, infringed the freedom of commerce between the territories of the Parties guaranteed by article X, paragraph 1, and that such actions were not justified to protect the essential security interests of the United States as contemplated by article XX, paragraph 1 (*d*). The question however arises in what order the Court should examine these questions of interpretation and application of the Treaty.

In the present case, it appears to the Court that there are particular considerations militating in favour of an examination of the application of article XX, paragraph 1 (*d*), before turning to article X, paragraph 1. It is clear that the original dispute between the Parties related to the legality of the actions of the United States, in the light of international law on the use of force. At the time of those actions, neither Party made any mention of the 1955 Treaty. The contention of the United States at the time was that its attacks on the oil platforms were justified as acts of self-defence, in response to what it regarded as armed attacks by Iran, and on that basis it gave notice of its action to the Security Council under Article 51 of the United Nations Charter. Before the Court, it has continued to maintain that it was justified in acting as it did in exercise of the right of self-defence; it contends that, even if the Court were to find that its actions do not fall within the scope of article XX, paragraph 1 (*d*), those actions were not wrongful since they were necessary and appropriate actions in self-defence. Furthermore, as the United States itself recognizes in its Rejoinder, “The self-defence issues presented in this case raise matters of the highest importance to all members of the international community”, and both Parties are agreed as to the importance of the implications of the case in the field of the use of force, even though they draw opposite conclusions from this observation. The Court therefore considers that, to the extent that its jurisdiction under article XXI, paragraph 2, of the 1955 Treaty authorizes it to examine and rule on such issues, it should do so.

The question of the relationship between self-defence and article XX, paragraph 1 (*d*), of the Treaty has been disputed between the Parties, in particular as regards the jurisdiction of the Court. In the view of the Court, the matter is one of interpretation of the Treaty, and in particular of article XX, paragraph 1 (*d*). The question is whether the parties to the 1955 Treaty, when providing therein that it should “not preclude the application of measures . . . necessary to protect [the] essential security interests” of either party, intended that such should be the effect of the Treaty even where those measures involved a use of armed force; and if so, whether they contemplated, or assumed, a limitation that such use would have to comply with the conditions laid down by international law. The Court considers that its jurisdiction under article XXI, paragraph 2, of the 1955 Treaty to decide any question of interpretation or application of (*inter alia*) article XX, paragraph 1 (*d*), of that Treaty extends, where appropriate, to the determination whether action alleged to be justified under that paragraph was or was not an unlawful use of force, by reference to international law applicable to this question, that is to say, the provisions of the Charter of the United Nations and customary international law.

The Court therefore examines first the application of article XX, paragraph 1 (*d*), of the 1955 Treaty, which in the circumstances of this case, as explained above, involves the principle of the prohibition in international law of the use of force, and the qualification to it constituted by the right of self-defence. On the basis of that provision, a party to the Treaty may be justified in taking certain measures which it considers to be “necessary” for the protection of its essential security interests. In the present case, the question whether

the measures taken were “necessary” overlaps with the question of their validity as acts of self-defence.

In this connection, the Court notes that it is not disputed between the Parties that neutral shipping in the Persian Gulf was caused considerable inconvenience and loss, and grave damage, during the Iran-Iraq war. It notes also that this was to a great extent due to the presence of mines and minefields laid by both sides. The Court has no jurisdiction to enquire into the question of the extent to which Iran and Iraq complied with the international legal rules of maritime warfare. It can however take note of these circumstances, regarded by the United States as relevant to its decision to take action against Iran which it considered necessary to protect its essential security interests. Nevertheless, the legality of the action taken by the United States has to be judged by reference to article XX, paragraph 1 (*d*), of the 1955 Treaty, in the light of international law on the use of force in self-defence.

The Court observes that the United States has never denied that its actions against the Iranian platforms amounted to a use of armed force. The Court indicates that it will examine whether each of these actions met the conditions of article XX, paragraph 1 (*d*), as interpreted by reference to the relevant rules of international law.

Attack of 19 October 1987 on Reshadat (paras. 46–64)

The Court recalls that the first installation attacked, on 19 October 1987, was the Reshadat complex, which was also connected by submarine pipeline to another complex, named Resalat. At the time of the United States attacks, these complexes were not producing oil due to damage inflicted by prior Iraqi attacks. Iran has maintained that repair work on the platforms was close to completion in October 1987. The United States has however challenged this assertion. As a result of the attack, one platform was almost completely destroyed and another was severely damaged and, according to Iran, production from the Reshadat and Resalat complexes was interrupted for several years.

The Court first concentrates on the facts tending to show the validity or otherwise of the claim to exercise the right of self-defence. In its communication to the Security Council at the time of the attack, the United States based this claim on the existence of “a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation”; it referred in particular to a missile attack on the *Sea Isle City* as being the specific incident that led to the attack on the Iranian platforms. Before the Court, it has based itself more specifically on the attack on the *Sea Isle City*, but has continued to assert the relevance of the other attacks.

The Court points out that the United States has not claimed to have been exercising collective self-defence on behalf of the neutral States engaged in shipping in the Persian Gulf. Therefore, in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of individual self-defence, the United States has to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature as to be qualified as “armed attacks” within the meaning of that expression in Article 51 of the United Nations Charter, and as understood in customary law on the use of force. The United States must also show that its actions were necessary and proportional to the armed attack made on it, and that the platforms were a legitimate military target open to attack in the exercise of self-defence.

Having examined with great care the evidence and arguments presented on each side, the Court finds that the evidence indicative of Iranian responsibility for the attack

on the *Sea Isle City*, is not sufficient to support the contentions of the United States. The conclusion to which the Court has come on this aspect of the case is thus that the burden of proof of the existence of an armed attack by Iran on the United States, in the form of the missile attack on the *Sea Isle City*, has not been discharged.

In its notification to the Security Council, and before the Court, the United States has however also asserted that the *Sea Isle City* incident was “the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce”.

The Court finds that even taken cumulatively, and reserving the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States.

Attacks of 18 April 1988 on Nasr and Salman and “Operation Praying Mantis” (paras. 65–72)

The Court recalls that the second occasion on which Iranian oil installations were attacked was on 18 April 1988, with the attacks on the Salman and Nasr complexes. Iran states that the attacks caused severe damage to the production facilities of the platforms; that the activities of the Salman complex were totally interrupted for four years, its regular production being resumed only in September 1992, and reaching a normal level in 1993; and that activities in the whole Nasr complex were interrupted and did not resume until nearly four years later.

The nature of the attacks on the Salman and Nasr complexes, and their alleged justification, was presented by the United States to the United Nations Security Council in a letter from the United States Permanent Representative of 18 April 1988, which stated, *inter alia*, that the United States had “exercised their inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf”, namely the mining of the USS *Samuel B. Roberts*; according to the United States, “This [was] but the latest in a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf.”

The Court notes that the attacks on the Salman and Nasr platforms were not an isolated operation, aimed simply at the oil installations, as had been the case with the attacks of 19 October 1987; they formed part of a much more extensive military action, designated “Operation Praying Mantis”, conducted by the United States against what it regarded as “legitimate military targets”; armed force was used, and damage done to a number of targets, including the destruction of two Iranian frigates and other Iranian naval vessels and aircraft.

As in the case of the attack on the *Sea Isle City*, the first question is whether the United States has discharged the burden of proof that the USS *Samuel B. Roberts* was the victim of a mine laid by Iran. The Court notes that mines were being laid at the time by both belligerents in the Iran-Iraq war, so that evidence of other mine laying operations by Iran is not conclusive as to responsibility of Iran for this particular mine. The main evidence that the mine struck by the USS *Samuel B. Roberts* was laid by Iran was the discovery of moored mines in the same area, bearing serial numbers matching other Iranian mines, in particular those found aboard the vessel *Iran Ajr*. This evidence is highly suggestive, but not conclusive.

Furthermore, no attacks on United States-flagged vessels (as distinct from United States-owned vessels), additional to those cited as justification for the earlier attacks on the Reshadat platforms, have been brought to the Court's attention, other than the mining of the USS *Samuel B. Roberts* itself. The question is therefore whether that incident sufficed in itself to justify action in self-defence, as amounting to an "armed attack". The Court does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence"; but in view of all the circumstances, including the inconclusiveness of the evidence of Iran's responsibility for the mining of the USS *Samuel B. Roberts*, the Court is unable to hold that the attacks on the Salman and Nasr platforms have been shown to have been justifiably made in response to an "armed attack" on the United States by Iran, in the form of the mining of the USS *Samuel B. Roberts*.

Criteria of necessity and proportionality (paras. 73–77)

The Court points out that in the present case a question of whether certain action is "necessary" arises both as an element of international law relating to self-defence and on the basis of the actual terms of article XX, paragraph 1 (d), of the 1955 Treaty, already quoted, whereby the Treaty does "not preclude. . . measures. . . necessary to protect [the] essential security interests" of either party. The Court therefore turns to the criteria of necessity and proportionality in the context of international law on self-defence. One aspect of these criteria is the nature of the target of the force used avowedly in self-defence.

The Court indicates that it is not sufficiently convinced that the evidence available supports the contentions of the United States as to the significance of the military presence and activity on the Reshadat oil platforms; and it notes that no such evidence is offered in respect of the Salman and Nasr complexes. However, even accepting those contentions, for the purposes of discussion, the Court finds itself unable to hold that the attacks made on the platforms could have been justified as acts of self-defence. In the case both of the attack on the *Sea Isle City* and the mining of the USS *Samuel B. Roberts*, the Court is not satisfied that the attacks on the platforms were necessary to respond to these incidents.

As to the requirement of proportionality, the attack of 19 October 1987 might, had the Court found that it was necessary in response to the *Sea Isle City* incident as an armed attack committed by Iran, have been considered proportionate. In the case of the attacks of 18 April 1988, however, they were conceived and executed as part of a more extensive operation entitled "Operation Praying Mantis". As a response to the mining, by an unidentified agency, of a single United States warship, which was severely damaged but not sunk, and without loss of life, neither "Operation Praying Mantis" as a whole, nor even that part of it that destroyed the Salman and Nasr platforms, can be regarded, in the circumstances of this case, as a proportionate use of force in self-defence.

Conclusion (para. 78)

The Court thus concludes from the foregoing that the actions carried out by United States forces against Iranian oil installations on 19 October 1987 and 18 April 1988 cannot be justified, under article XX, paragraph 1 (d), of the 1955 Treaty, as being measures necessary to protect the essential security interests of the United States, since those actions constituted recourse to armed force not qualifying, under international law on the question, as acts of self-defence, and thus did not fall within the category of measures contemplated, upon its correct interpretation, by that provision of the Treaty.

Iran's claim under article X, paragraph 1, of the 1955 Treaty (paras. 79–99)

Having satisfied itself that the United States may not rely, in the circumstances of the case, on the defence to the claim of Iran afforded by article XX, paragraph 1 (*d*), of the 1955 Treaty, the Court turns to that claim, made under article X, paragraph 1, of that Treaty, which provides that “Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

In its Judgment of 12 December 1996 on the preliminary objection of the United States, the Court had occasion, for the purposes of ascertaining and defining the scope of its jurisdiction, to interpret a number of provisions of the 1955 Treaty, including article X, paragraph 1. It noted that the Applicant had not alleged that any military action had affected its freedom of navigation, so that the only question to be decided was “whether the actions of the United States complained of by Iran had the potential to affect ‘freedom of commerce’” as guaranteed by that provision (*I.C.J. Reports 1996 (II)*, p. 817, para. 38). After examining the contentions of the Parties as to the meaning of the word, the Court concluded that “it would be a natural interpretation of the word ‘commerce’ in article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general—not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce” (*ibid.*, p. 819, para. 49).

In that decision, the Court also observed that it did not then have to enter into the question whether article X, paragraph 1, “is restricted to commerce ‘between’ the Parties” (*I.C.J. Reports 1996 (II)*, p. 817, para. 44). However it is now common ground between the Parties that that provision is in terms limited to the protection of freedom of commerce “between the territories of the two High Contracting Parties”. The Court observes that it is oil exports from Iran to the United States that are relevant to the case, not such exports in general.

In the 1996 Judgment, the Court further emphasized that “article X, paragraph 1, of the Treaty of 1955 does not strictly speaking protect ‘commerce’ but ‘freedom of commerce’”, and continued: “Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and storage with a view to export” (*ibid.*, p. 819, para. 50). The Court also noted that “Iran’s oil production, a vital part of that country’s economy, constitutes an important component of its foreign trade”, and that “On the material now before the Court, it is . . . not able to determine if and to what extent the destruction of the Iranian oil platforms had an effect upon the export trade in Iranian oil. . .” (*ibid.*, p. 820, para. 51). The Court concludes by observing that if, at the present stage of the proceedings, it were to find that Iran had established that such was the case, the claim of Iran under article X, paragraph 1, could be upheld.

Before turning to the facts and to the details of Iran’s claim, the Court mentions that the United States has not succeeded, to the satisfaction of the Court, in establishing that the limited military presence on the platforms, and the evidence as to communications to and from them, could be regarded as justifying treating the platforms as military installations (see above). For the same reason, the Court is unable to regard them as outside the protection afforded by article X, paragraph 1, of the 1955 Treaty, as alleged by the United States.

The Court in its 1996 Judgment contemplated the possibility that freedom of commerce could be impeded not only by “the destruction of goods destined to be exported”, but also by acts “capable of affecting their transport and their storage with a view to export”

(*I.C.J. Reports 1996 (II)*, p. 819, para. 50). In the view of the Court, the activities of the platforms are to be regarded, in general, as commercial in nature; it does not, however, necessarily follow that any interference with such activities involves an impact on the freedom of commerce between the territories of Iran and the United States.

The Court considers that where a State destroys another State's means of production and transport of goods destined for export, or means ancillary or pertaining to such production or transport, there is in principle an interference with the freedom of international commerce. In destroying the platforms, whose function, taken as a whole, was precisely to produce and transport oil, the military actions made commerce in oil, at that time and from that source, impossible, and to that extent prejudiced freedom of commerce. While the oil, when it left the platform complexes, was not yet in a state to be safely exported, the fact remains that it could be already at that stage destined for export, and the destruction of the platform prevented further treatment necessary for export. The Court therefore finds that the protection of freedom of commerce under article X, paragraph 1, of the 1955 Treaty applied to the platforms attacked by the United States, and the attacks thus impeded Iran's freedom of commerce. However, the question remains whether there was in this case an interference with freedom of commerce "between the territories of the High Contracting Parties".

The United States in fact contends further that there was in any event no breach of article X, paragraph 1, inasmuch as, even assuming that the attacks caused some interference with freedom of commerce, it did not interfere with freedom of commerce "between the territories of the two High Contracting Parties". First, as regards the attack of 19 October 1987 on the Reshadat platforms, it observes that the platforms were under repair as a result of an earlier attack on them by Iraq; consequently, they were not engaged in, or contributing to, commerce between the territories of the Parties. Secondly, as regards the attack of 18 April 1988 on the Salman and Nasr platforms, it draws attention to United States Executive Order 12613, signed by President Reagan on 29 October 1987, which prohibited, with immediate effect, the import into the United States of most goods (including oil) and services of Iranian origin. As a consequence of the embargo imposed by this Order, there was, it is suggested, no commerce between the territories of the Parties that could be affected, and consequently no breach of the Treaty protecting it.

Iran has asserted, and the United States has not denied, that there was a market for Iranian crude oil directly imported into the United States up to the issuance of Executive Order 12613 of 29 October 1987. Thus Iranian oil exports did up to that time constitute the subject of "commerce between the territories of the High Contracting Parties" within the meaning of article X, paragraph 1, of the 1955 Treaty.

The Court observes that at the time of the attack of 19 October 1987 no oil whatsoever was being produced or processed by the Reshadat and Resalat platforms, since these had been put out of commission by earlier Iraqi attacks. While it is true that the attacks caused a major setback to the process of bringing the platforms back into production, there was at the moment of the attacks on these platforms no ongoing commerce in oil produced or processed by them.

The Court further observes that the embargo imposed by Executive Order 12613 was already in force when the attacks on the Salman and Nasr platforms were carried out; and that, it has not been shown that the Reshadat and Resalat platforms would, had it not been for the attack of 19 October 1987, have resumed production before the embargo was

imposed. The Court must therefore consider the significance of that Executive Order for the interpretation and application of article X, paragraph 1, of the 1955 Treaty.

The Court sees no reason to question the view sustained by Iran that, over the period during which the United States embargo was in effect, petroleum products were reaching the United States, in considerable quantities, that were derived in part from Iranian crude oil. It points out, however, that what the Court has to determine is not whether something that could be designated “Iranian” oil entered the United States, in some form, during the currency of the embargo; it is whether there was “commerce” in oil between the territories of Iran and the United States during that time, within the meaning given to that term in the 1955 Treaty.

In this respect, what seems to the Court to be determinative is the nature of the successive commercial transactions relating to the oil, rather than the successive technical processes that it underwent. What Iran regards as “indirect” commerce in oil between itself and the United States involved a series of commercial transactions: a sale by Iran of crude oil to a customer in Western Europe, or some third country other than the United States; possibly a series of intermediate transactions; and ultimately the sale of petroleum products to a customer in the United States. This is not “commerce” between Iran and the United States, but commerce between Iran and an intermediate purchaser; and “commerce” between an intermediate seller and the United States.

The Court thus concludes, with regard to the attack of 19 October 1987 on the Reshadat platforms, that there was at the time of those attacks no commerce between the territories of Iran and the United States in respect of oil produced by those platforms and the Resalat platforms, inasmuch as the platforms were under repair and inoperative; and that the attacks cannot therefore be said to have infringed the freedom of commerce in oil between the territories of the High Contracting Parties protected by article X, paragraph 1, of the 1955 Treaty, particularly taking into account the date of entry into force of the embargo effected by Executive Order 12613. The Court notes further that, at the time of the attacks of 18 April 1988 on the Salman and Nasr platforms, all commerce in crude oil between the territories of Iran and the United States had been suspended by that Executive Order, so that those attacks also cannot be said to have infringed the rights of Iran under article X, paragraph 1, of the 1955 Treaty.

The Court is therefore unable to uphold the submissions of Iran, that in carrying out those attacks the United States breached its obligations to Iran under article X, paragraph 1, of the 1955 Treaty. In view of this conclusion, the Iranian claim for reparation cannot be upheld.

The Court furthermore concludes that, in view of this finding on the claim of Iran, it becomes unnecessary to examine the argument of the United States (referred to above) that Iran might be debarred from relief on its claim by reason of its own conduct.

United States Counter-Claim (paras. 101–124)

The Court recalls that the United States has filed a counter-claim against Iran and refers to the corresponding final submissions presented by the United States in the Counter-Memorial.

The Court further recalls that, by an Order of 10 March 1998 it found “that the counter-claim presented by the United States in its Counter-Memorial is admissible as such and forms part of the current proceedings.”

Iran's objections to the Court's jurisdiction and to the admissibility of the United States counter-claim (paras. 103–116)

Iran maintains that the Court's Order of 10 March 1998 did not decide all of the preliminary issues involved in the counter-claim presented by the United States; the Court only ruled on the admissibility of the United States counter-claim in relation to article 80 of the Rules of Court, declaring it admissible "as such", whilst reserving the subsequent procedure for further decision. Iran contends that the Court should not deal with the merits of the counter-claim, presenting five objections.

The Court considers that it is open to Iran at this stage of the proceedings to raise objections to the jurisdiction of the Court to entertain the counter-claim or to its admissibility, other than those addressed by the Order of 10 March 1998. It points out that this Order does not address any question relating to jurisdiction and admissibility not directly linked to article 80 of the Rules. The Court indicates that it will therefore proceed to address the objections now presented by Iran.

The Court finds that it cannot uphold the first objection of Iran to the effect that the Court cannot entertain the counter-claim of the United States because it was presented without any prior negotiation, and thus does not relate to a dispute "not satisfactorily adjusted by diplomacy" as contemplated by article XXI, paragraph 2, of the 1955 Treaty. The Court points out that it is established that a dispute has arisen between Iran and the United States over the issues raised in the counter-claim; and that it is sufficient for the Court to satisfy itself that the dispute was not satisfactorily adjusted by diplomacy before being submitted to the Court.

The Court finds that the second objection of Iran, according to which the United States is in effect submitting a claim on behalf of third States or of foreign entities and has no title to do so, is devoid of any object and cannot be upheld. The Court recalls that the first submission presented by the United States in regard to its counter-claim simply requests the Court to adjudge and declare that the alleged actions of Iran breached its obligations to the United States, without mention of any third States.

In its third objection, Iran contends that the United States counter-claim extends beyond article X, paragraph 1, of the 1955 Treaty, the only text in respect of which the Court has jurisdiction, and that the Court cannot therefore uphold any submissions falling outside the terms of paragraph 1 of that article. The Court notes that the United States, in presenting its final submissions on the counter-claim, no longer relies, as it did at the outset, on article X of the 1955 Treaty as a whole, but on paragraph 1 of that article only, and, furthermore, recognizes the territorial limitation of article X, paragraph 1, referring specifically to the military actions that were allegedly "dangerous and detrimental to commerce and navigation *between the territories of the United States and the Islamic Republic of Iran*" (emphasis added) rather than, generally, to "military actions that were dangerous and detrimental to maritime commerce". By limiting the scope of its counter-claim in its final submissions, the United States has deprived Iran's third objection of any object, and the Court finds that it cannot therefore uphold it.

In its fourth objection Iran maintains that "the Court has jurisdiction to rule only on counter-claims alleging a violation by Iran of freedom of commerce as protected under article X, (1), and not on counter-claims alleging a violation of freedom of navigation as protected by the same paragraph". The Court notes nevertheless, that Iran seems to have changed its position and recognized that the counter-claim could be founded on a violation

of freedom of navigation. The Court further observes that it also concluded in 1998 that it had jurisdiction to entertain the United States Counter-Claim in so far as the facts alleged may have prejudiced the freedoms (in the plural) guaranteed by article X, paragraph 1, of the 1955 Treaty, i.e., freedom of commerce and freedom of navigation. This objection of Iran thus cannot be upheld by the Court.

Iran presents one final argument against the admissibility of the United States Counter-Claim, which however it concedes relates only to part of the counter-claim. Iran contends that the United States has broadened the subject-matter of its claim beyond the submissions set out in its counter-claim by having, belatedly, added complaints relating to freedom of navigation to its complaints relating to freedom of commerce, and by having added new examples of breaches of freedom of maritime commerce in its Rejoinder in addition to the incidents already referred to in the Counter-Claim presented with the Counter-Memorial.

The Court observes that the issue raised by Iran is whether the United States is presenting a new claim. The Court is thus faced with identifying what is “a new claim” and what is merely “additional evidence relating to the original claim”. It is well established in the Court’s jurisprudence that the parties to a case cannot in the course of proceedings “transform the dispute brought before the Court into a dispute that would be of a different nature.” The Court recalls that it has noted in its Order of 10 March 1998 in the present case that the Counter-Claim alleged “attacks on shipping, the laying of mines, and other military actions said to be ‘dangerous and detrimental to maritime commerce’” (*I.C.J. Reports 1998*, p. 204, para. 36). Subsequently to its Counter-Memorial and Counter-Claim and to that Order of the Court, the United States provided detailed particulars of further incidents substantiating, in its contention, its original claims. In the view of the Court, the United States has not, by doing so, transformed the subject of the dispute originally submitted to the Court, nor has it modified the substance of its counter-claim, which remains the same. The Court therefore cannot uphold the objection of Iran.

Merits of the United States Counter-Claim (paras. 119–123)

Having disposed of all objections of Iran to its jurisdiction over the counter-claim, and to the admissibility thereof, the Court considers the counter-claim on its merits. It points out that, to succeed on its counter-claim, the United States must show that: (a) its freedom of commerce or freedom of navigation *between the territories* of the High Contracting Parties to the 1955 Treaty was impaired; and that (b) the acts which allegedly impaired one or both of those freedoms are attributable to Iran.

The Court recalls that article X, paragraph 1, of the 1955 Treaty does not protect, as between the Parties, freedom of commerce or freedom of navigation in general. As already noted above, the provision of that paragraph contains an important territorial limitation. In order to enjoy the protection provided by that text, the commerce or the navigation is to be between the territories of the United States and Iran. The United States bears the burden of proof that the vessels which were attacked were engaged in commerce or navigation between the territories of the United States and Iran.

The Court then examines each of Iran’s alleged attacks, in chronological order, from the standpoint of this requirement of the 1955 Treaty and concludes that none of the vessels described by the United States as being damaged by Iran’s alleged attacks was engaged in commerce or navigation “between the territories of the two High Contracting Parties”. Therefore, the Court concludes that there has been no breach of article X, paragraph 1,

of the 1955 Treaty in any of the specific incidents involving these ships referred to in the United States pleadings.

The Court takes note that the United States has also presented its claim in a generic sense. It has asserted that as a result of the cumulation of attacks on US and other vessels, laying mines and otherwise engaging in military actions in the Persian Gulf, Iran made the Gulf unsafe, and thus breached its obligation with respect to freedom of commerce and freedom of navigation which the United States should have enjoyed under article X, paragraph 1, of the 1955 Treaty.

The Court observes that, while it is a matter of public record that as a result of the Iran-Iraq war navigation in the Persian Gulf involved much higher risks, that alone is not sufficient for the Court to decide that article X, paragraph 1, was breached by Iran. It is for the United States to show that there was an *actual impediment* to commerce or navigation *between* the territories of the two High Contracting Parties. However, the United States has not demonstrated that the alleged acts of Iran actually infringed the freedom of commerce or of navigation between the territories of the United States and Iran. The Court also notes that the examination above of specific incidents shows that none of them individually involved any interference with the commerce and navigation protected by the 1955 Treaty; accordingly the generic claim of the United States cannot be upheld.

The Court has thus found that the counter-claim of the United States concerning breach by Iran of its obligations to the United States under article X, paragraph 1, of the 1955 Treaty, whether based on the specific incidents listed, or as a generic claim, must be rejected; there is therefore no need for it to consider, under this head, the contested issues of attribution of those incidents to Iran. In view of the foregoing, the United States claim for reparation cannot be upheld.

The full text of the *operative paragraph* (para. 125) reads as follows:

“For these reasons,

THE COURT,

1. By fourteen votes to two,

Finds that the actions of the United States of America against Iranian oil platforms on 19 October 1987 and 18 April 1988 cannot be justified as measures necessary to protect the essential security interests of the United States of America under article XX, paragraph 1 (*d*), of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, as interpreted in the light of international law on the use of force; *finds* further that the Court cannot however uphold the submission of the Islamic Republic of Iran that those actions constitute a breach of the obligations of the United States of America under article X, paragraph 1, of that Treaty, regarding freedom of commerce between the territories of the parties, and that, accordingly, the claim of the Islamic Republic of Iran for reparation also cannot be upheld;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal, Owada, Simma, Tomka; *Judge ad hoc* Rigaux;

AGAINST: *Judges* Al-Khasawneh, Elaraby;

2. By fifteen votes to one,

Finds that the counter-claim of the United States of America concerning the breach of the obligations of the Islamic Republic of Iran under article X, paragraph 1, of the above-mentioned 1955 Treaty, regarding freedom of commerce and navigation between the territories of the parties, cannot be upheld; and accordingly, that the counter-claim of the United States of America for reparation also cannot be upheld.

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; *Judge ad hoc* Rigaux;

AGAINST: *Judge* Simma.”

Judges Al-Khasawneh and Elaraby appended dissenting opinions to the judgement; Judge Ranjeva, Vice-President, and Judge Koroma appended declarations; and Judges Buergenthal, Higgins, Kooijmans, Owada, Parra-Aranguren, Simma and Judge *ad hoc* Rigaux separate opinions.

* * *

3. *Application for Revision of the Judgement of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*

On 18 December 2003, the Court delivered its judgment, a summary of which is given below, followed by the text of the operative paragraph.

History of the proceedings and submissions of the Parties (paras. 1–14)

On 10 September 2002, the Republic of El Salvador (hereinafter “El Salvador”) submitted a request to the Court for revision of the Judgment delivered on 11 September 1992 by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (I.C.J. Reports 1992, p. 351)*.

In its Application, El Salvador requested the Court “To proceed to form the Chamber that will hear the Application for revision of the Judgment, bearing in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986.”

The Parties having been duly consulted by the President, the Court, by an Order of 27 November 2002, decided to grant their request for the formation of a special chamber to deal with the case; it declared that three Members of the Court had been elected to sit alongside two *ad hoc* judges chosen by the Parties: President G. Guillaume; Judges F. Rezek, T. Buergenthal; Judges *ad hoc* S. Torres Bernárdez (chosen by Honduras) and F. H. Paolillo (chosen by El Salvador).

On 1 April 2003, within the time-limit fixed by the Court, Honduras filed its written observations on the admissibility of El Salvador’s Application. Public sittings were held on 8, 9, 10 and 12 September 2003.

At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the Republic of El Salvador,

“The Republic of El Salvador respectfully requests the Chamber, rejecting all contrary claims and submissions to adjudge and declare that:

1. The Application of the Republic of El Salvador is admissible based on the existence of new facts of such a nature as to leave the case open to revision, pursuant to Article 61 of the Statute of the Court, and

2. Once the request is admitted that it proceed to a revision of the Judgment of 11 September 1992, so that a new judgment fixes the boundary line in the sixth disputed sector of the land boundary between El Salvador and Honduras as follows:

‘Starting at the old mouth of the Goascorán River at the entry point known as the Estero de la Cutú, located at latitude 13 degrees 22 minutes 00 seconds north and longitude 87 degrees 41 minutes 25 seconds west, the border follows the old bed of the Goascorán River for a distance of 17,300 metres up to the place known as Rompición de Los Amates, located at latitude 13 degrees 26 minutes 29 seconds north and longitude 87 degrees 43 minutes 25 seconds west, which is where the Goascorán River changed course.’”

On behalf of the Government of the Republic of Honduras,

“In view of the facts and arguments presented above, the Government of the Republic of Honduras requests the Chamber to declare the inadmissibility of the Application for revision presented on 10 September 2002 by El Salvador.”

Basis of jurisdiction and circumstances of the case (paras. 15–22)

The Chamber begins by stating that, under Article 61 of the Statute, revision proceedings open with a judgment of the Court declaring the Application admissible on the grounds contemplated by the Statute, and that article 99 of the Rules of Court makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the Application admissible.

The Chamber observes that, at this stage, its decision is thus limited to the question whether El Salvador’s request satisfies the conditions contemplated by the Statute. Under Article 61, these conditions are as follows:

- (a) the application should be based upon the “discovery” of a “fact”;
- (b) the fact the discovery of which is relied on must be “of such a nature as to be a decisive factor”;
- (c) the fact should have been “unknown” to the Court and to the party claiming revision when the judgment was given;
- (d) ignorance of this fact must not be “due to negligence”; and
- (e) the application for revision must be “made at latest within six months of the discovery of the new fact” and before ten years have elapsed from the date of the judgment.

The Chamber observes that “an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed.”

However, El Salvador appears to argue *in limine* that there is no need for the Chamber to consider whether the conditions of Article 61 of the Statute have been satisfied, since,

by its attitude, “Honduras implicitly acknowledged the admissibility of El Salvador’s Application”.

In this respect, the Chamber observes that regardless of the parties’ views on the admissibility of an application for revision, it is in any event for the Court, when seised of such an application, to ascertain whether the admissibility requirements laid down in Article 61 of the Statute have been met. Revision is not available simply by consent of the parties, but solely when the conditions of Article 61 are met.

The new facts alleged by El Salvador concern on the one hand the avulsion of the river Goascorán and on the other the “Carta Esférica” and the report of the 1794 *El Activo* expedition.

Avulsion of the river Goascorán (paras. 23–40)

“In order properly to understand El Salvador’s present contentions”, the Chamber first recapitulates part of the reasoning in the 1992 Judgment in respect of the sixth sector of the land boundary.

The Chamber then indicates that in the present case, El Salvador first claims to possess scientific, technical and historical evidence showing, contrary to what it understands the 1992 decision to have been, that the Goascorán did in the past change its bed, and that the change was abrupt, probably as a result of a cyclone in 1762. El Salvador argues that evidence can constitute “new facts” for purposes of Article 61 of the Statute.

El Salvador further contends that the evidence it is now offering establishes the existence of an old bed of the Goascorán debouching in the Estero La Cutú, and the avulsion of the river in the mid-eighteenth century or that at the very least, it justifies regarding such an avulsion as plausible. These are said to be “new facts” for purposes of Article 61. According to El Salvador, the facts thus set out are decisive, because the considerations and conclusions of the 1992 Judgment are founded on the rejection of an avulsion which, in the Chamber’s view, had not been proved.

El Salvador finally maintains that, given all the circumstances of the case, in particular the “bitter civil war [which] was raging in El Salvador” “for virtually the whole period between 1980 and the handing down of the Judgment on 11 September 1992”, its ignorance of the various new facts which it now advances concerning the course of the Goascorán was not due to negligence.

The Chamber states that Honduras, for its part, argues that with regard to the application of Article 61 of the Statute, it is “well-established case law that there is a distinction in kind between the facts alleged and the evidence relied upon to prove them and that only the discovery of the former opens a right to revision”. Accordingly, in the view of Honduras, the evidence submitted by El Salvador cannot open a right to revision.

Honduras adds that El Salvador has not demonstrated the existence of a new fact. In reality, El Salvador is seeking “a new interpretation of previously known facts” and asking the Chamber for a “genuine reversal” of the 1992 Judgment.

Honduras further maintains that the facts relied on by El Salvador, even if assumed to be new and established, are not of such a nature as to be decisive factors in respect of the 1992 Judgment.

Honduras argues lastly that El Salvador could have had the scientific and technical studies and historical research which it is now relying on carried out before 1992.

Turning to consideration of El Salvador's submissions concerning the avulsion of the Goascorán, the Chamber recalls that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied, and that if any one of them is not met, the application must be dismissed; in the present case, the Chamber begins by ascertaining whether the alleged facts, supposing them to be new facts, are of such a nature as to be decisive factors in respect of the 1992 Judgment.

In this regard, the Chamber first recalls the considerations of principle on which the Chamber hearing the original case relied for its ruling on the disputes between the two States in six sectors of their land boundary. According to that Chamber, the boundary was to be determined "by the application of the principle generally accepted in Spanish America of the *uti possidetis juris*, whereby the boundaries were to follow the colonial administrative boundaries" (para. 28 of the 1992 Judgment). The Chamber did however note that "the *uti possidetis juris* position can be qualified by adjudication and by treaty". It reasoned from this that "the question then arises whether it can be qualified in other ways, for example, by acquiescence or recognition". It concluded that "There seems to be no reason in principle why these factors should not operate, where there is sufficient evidence to show that the parties have in effect clearly accepted a variation, or at least an interpretation, of the *uti possidetis juris* position" (para. 67 of the 1992 Judgment).

The Chamber then considered "The contention of El Salvador that a former bed of the river Goascorán forms the *uti possidetis juris* boundary". In this respect, it observed that:

"[this contention] depends, as a question of fact, on the assertion that the Goascorán formerly was running in that bed, and that at some date it abruptly changed its course to its present position. On this basis El Salvador's argument of law is that where a boundary is formed by the course of a river, and the stream suddenly leaves its old bed and forms a new one, this process of 'avulsion' does not bring about a change in the boundary, which continues to follow the old channel." (Para. 308 of the 1992 Judgment.)

The Chamber added that:

"No record of such an abrupt change of course having occurred has been brought to the Chamber's attention, but were the Chamber satisfied that the river's course was earlier so radically different from its present one, then an avulsion might reasonably be inferred." (Ibid.)

Pursuing its consideration of El Salvador's argument, the Chamber did however note:

"There is no scientific evidence that the previous course of the Goascorán was such that it debouched in the Estero La Cutú. . . rather than in any of the other neighbouring inlets in the coastline, such as the Estero El Coyol" (para. 309 of the 1992 Judgment).

Turning to consideration as a matter of law of El Salvador's proposition concerning the avulsion of the Goascorán, the Chamber observed that El Salvador "suggests. . . that the change in fact took place in the 17th century" (para. 311 of the 1992 Judgment). It concluded that "On this basis, what international law may have to say, on the question of the shifting of rivers which form frontiers, becomes irrelevant: the problem is mainly one of Spanish colonial law." (Para. 311 of the 1992 Judgment.)

Beginning in paragraph 312 of the 1992 Judgment, the Chamber turned to a consideration of a different ground. At the outset, it tersely stated the conclusions which it had reached and then set out the reasoning supporting them. In the view of the Chamber, "any claim by El Salvador that the boundary follows an old course of the river abandoned at

some time before 1821 must be rejected. It is a new claim and inconsistent with the previous history of the dispute.” (Para. 312 of the 1992 Judgment.)

In the present case, the Chamber observes that, whilst in 1992 the Chamber rejected El Salvador’s claims that the 1821 boundary did not follow the course of the river at that date, it did so on the basis of that State’s conduct during the nineteenth century.

The Chamber concludes that, in short, it does not matter whether or not there was an avulsion of the Goascorán. Even if avulsion were now proved, and even if its legal consequences were those inferred by El Salvador, findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on wholly different grounds. The facts asserted in this connection by El Salvador are not “decisive factors” in respect of the Judgment which it seeks to have revised.

Discovery of new copies of the “Carta Esférica” and report of the 1794 El Activo expedition (paras. 41–55)

The Chamber then examines the second “new fact” relied upon by El Salvador in support of its Application for revision, namely, the discovery in the Ayer Collection of the Newberry Library in Chicago of a further copy of the “Carta Esférica” and of a further copy of the report of the expedition of the *El Activo*, thereby supplementing the copies from the Madrid Naval Museum to which the 1992 Chamber made reference in paragraphs 314 and 316 of its Judgment.

The Chamber points out that Honduras denies that the production of the documents found in Chicago can be characterized as a new fact. For Honduras, this is simply “another copy of one and the same document already submitted by Honduras during the written stage of the case decided in 1992, and already evaluated by the Chamber in its Judgment”. The Chamber proceeds first, as it did in respect of the avulsion, to determine first whether the alleged facts concerning the “Carta Esférica” and the report of the *El Activo* expedition are of such a nature as to be decisive factors in respect of the 1992 Judgment.

The Chamber recalls in this regard that its predecessor in 1992, after having held El Salvador’s claims concerning the old course of the Goascorán to be inconsistent with the previous history of the dispute, considered “the evidence made available to it concerning the course of the river Goascorán in 1821” (para. 313 of the 1992 Judgment). The 1992 Chamber paid particular attention to the chart prepared by the captain and navigators of the vessel *El Activo* around 1796, described as a “Carta Esférica”, which Honduras had found in the archives of the Madrid Naval Museum. That Chamber concluded from the foregoing “that the report of the 1794 expedition and the ‘Carta Esférica’ leave little room for doubt that the river Goascorán in 1821 was already flowing in its present-day course” (para. 316 of the 1992 Judgment).

In the present case, the Chamber observes in this connection, that the two copies of the “Carta Esférica” held in Madrid and the copy from Chicago differ only as to certain details, such as for example, the placing of titles, the legends, and the handwriting. These differences reflect the conditions under which documents of this type were prepared in the late eighteenth century; they afford no basis for questioning the reliability of the charts that were produced to the Chamber in 1992. The Chamber notes further that the Estero La Cutú and the mouth of the Rio Goascorán are shown on the copy from Chicago, just as on the copies from Madrid, at their present-day location. The new chart produced by El Salvador

thus does not overturn the conclusions arrived at by the Chamber in 1992; it bears them out.

As for the new version of the report of the *El Activo* expedition found in Chicago, it differs from the Madrid version only in terms of certain details, such as the opening and closing indications, spelling, and placing of accents. The body of the text is the same, in particular in the identification of the mouth of the Goascorán. Here again, the new document produced by El Salvador bears out the conclusions reached by the Chamber in 1992.

The Chamber concludes from the foregoing that the new facts alleged by El Salvador in respect of the “Carta Esférica” and the report of the *El Activo* expedition are not “decisive factors” in respect of the Judgment whose revision it seeks.

Final observations (paras. 56–59)

The Chamber takes note of El Salvador’s further contention that proper contextualization of the alleged new facts “necessitates consideration of other facts that the Chamber weighed and that are now affected by the new facts”.

The Chamber states that it agrees with El Salvador’s view that, in order to determine whether the alleged “new facts” concerning the avulsion of the Goascorán, the “Carta Esférica” and the report of the *El Activo* expedition fall within the provisions of Article 61 of the Statute, they should be placed in context, which the Chamber has done. However, the Chamber recalls that, under that Article, revision of a judgment can be opened only by “the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence”. Thus, the Chamber cannot find admissible an application for revision on the basis of facts which El Salvador itself does not allege to be new facts within the meaning of Article 61.

The full text of the *operative paragraph* (para.60) reads as follows:

“For these reasons,

The Chamber,

By four votes to one,

Finds that the Application submitted by the Republic of El Salvador for revision, under Article 61 of the Statute of the Court, of the Judgment given on 11 September 1992, by the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, is inadmissible.

IN FAVOUR: Judge Guillaume, *President of the Chamber*; Judges Rezek, Buergenthal; Judge ad hoc Torres Bernárdez;

AGAINST: Judge ad hoc Paolillo”.

Judge *ad hoc* Paolillo appended a dissenting opinion to the Judgment of the Chamber.

4. *Avena and other Mexican Nationals (Mexico v. United States of America)*

On 5 February 2003, the Court delivered an order regarding provisional measures, a summary of which is given below, followed by the text of the operative paragraph.

The Court begins by recalling that, on 9 January 2003, the United Mexican States (hereinafter “Mexico”) instituted proceedings against the United States of America (hereinafter the “United States”) for “violations of the Vienna Convention on Consular Relations (done on 24 April 1963)” (hereinafter the “Vienna Convention”) allegedly committed by the United States. The Court notes that, in its Application, Mexico bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963, (hereinafter the “Optional Protocol”).

The Court notes further that in its Application Mexico 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 *restitutio 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.”

The Court further recalls that on 9 January 2003 Mexico also submitted a request for the indication of provisional measures in order to protect its rights, asking that, pending final judgment in this case, the Court indicate:

“(a) That the Government of the United States take all measures necessary to ensure that no Mexican national be executed;

(b) That the Government of the United States take all measures necessary to ensure that no execution dates be set for any Mexican national;

(c) That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraphs (a) and (b); and

(d) That the Government of the United States ensure that no action is taken that might prejudice the rights of the United Mexican States or its nationals with respect to any decision this Court may render on the merits of the case.”

The Court finally notes that, by a letter of 20 January 2003, Mexico informed the Court that, further to the decision of the Governor of the State of Illinois to commute the death sentences of all convicted individuals awaiting execution in that State, it was withdrawing its request for provisional measures on behalf of three of the 54 Mexican nationals referred to in the Application: Messrs. Juan Caballero Hernández, Mario Flores Urbán and Gabriel Solache Romero. In that letter, Mexico further stated that its request for provisional measures would stand for the other 51 Mexican nationals imprisoned in the United States and that “[t]he application stands, on its merits, for the fifty-four cases”.

The Court then summarizes the arguments put forward by the Parties during the public hearings held on 21 January 2003.

The Court begins its reasoning by observing that, on a request for the indication of provisional measures, it need not finally satisfy itself, before deciding whether or not to indicate such measures, that it has jurisdiction on the merits of the case, yet it may not indicate them unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded.

The Court goes on to note that Mexico has argued that the issues in dispute between itself and the United States concern articles 5 and 36 of the Vienna Convention and fall within the compulsory jurisdiction of the Court under article I of the Optional Protocol, and that Mexico has accordingly concluded that the Court has the jurisdiction necessary to indicate the provisional measures requested. The Court notes that the United States has said that it “does not propose to make an issue now of whether the Court possesses *prima facie* jurisdiction, although this is without prejudice to its right to contest the Court’s jurisdiction at the appropriate stage later in the case”. In view of the foregoing, the Court accordingly considers that, *prima facie*, it has jurisdiction under article I of the aforesaid Optional Protocol to hear the case.

The Court then recalls that in its Application Mexico asked the Court to adjudge and declare that the United States “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”; that Mexico is seeking various measures aimed at remedying these breaches and avoiding any repetition thereof; and that Mexico contends that the Court should preserve the right to such remedies by calling upon the United States to take all necessary steps to ensure that no Mexican national be executed and that no execution date be set in respect of any such national.

The Court further recalls that the United States has acknowledged that, in certain cases, Mexican nationals have been prosecuted and sentenced without being informed of their rights pursuant to article 36, paragraph 1 (*b*), of the Vienna Convention, but that it argues, however, that in such cases, in accordance with the Court’s Judgment in the *LaGrand* case²⁵¹, it has the obligation “by means of its own choosing, [to] allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention”, and that it submits that, in the specific cases identified by Mexico, the evidence indicates the commitment of the United States to providing such review and reconsideration. According to the United States, such review and reconsideration can occur through the process of executive clemency—an institution “deeply rooted in the Anglo-American system of justice”—which may be initiated by the individuals concerned after the judicial process has been completed. It contends that such review and reconsideration has already occurred in several cases during the last two years; that none of the Mexicans “currently under sentence of death will be executed unless there has been a review and reconsideration of the conviction and sentence that takes into account any failure to carry out the obligations of article 36 of the Vienna Convention”; that, under the terms of the Court’s decision in the *LaGrand* case, this is a sufficient remedy for its breaches, and that there is accordingly no need to indicate provisional measures intended to preserve the rights to such remedies.

The Court also notes that, according to Mexico, the position of the United States amounts to maintaining that “the Vienna Convention entitles Mexico only to review and reconsideration, and that review and reconsideration equals only the ability to request clemency”; and that, in Mexico’s view, “the standardless, secretive and unreviewable process that is called clemency cannot and does not satisfy this Court’s mandate [in the *LaGrand* case]”.

The Court concludes that there is thus a dispute between the Parties concerning the rights of Mexico and of its nationals regarding the remedies that must be provided in the event of a failure by the United States to comply with its obligations under article 36, paragraph 1, of the Vienna Convention; that this dispute belongs to the merits and cannot be settled at this stage of the proceedings; and that the Court must accordingly address the issue of whether it should indicate provisional measures to preserve any rights that may subsequently be adjudged on the merits to be those of the Applicant.

The Court notes, however, that the United States argues that it is incumbent upon the Court, pursuant to Article 41 of its Statute, to indicate provisional measures “not to preserve only rights claimed by the Applicant, but ‘to preserve the respective rights of either party’”; that, “[a]fter balancing the rights of both Parties, the scales tip decidedly against Mexico’s request in this case”; that the measures sought by Mexico to be implemented immediately amount to “a sweeping prohibition on capital punishment for Mexican nationals in the United States, regardless of United States law”, which “would drastically interfere with United States sovereign rights and implicate important federalism interests”; that this

²⁵¹ *LaGrand (Germany v. United States of America)*, Judgment 27 June 2001.

would, moreover, transform the Court into a “general criminal court of appeal”, which the Court has already indicated in the past is not its function; and that the measures requested by Mexico should accordingly be refused.

The Court points out that, when considering a request for the indication of provisional measures, it “must be concerned to preserve. . . the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent”, without being obliged at that stage of the proceedings to rule on those rights; that the issues brought before the Court in this case “do not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes”; that “the function of this Court is to resolve international legal disputes between States, *inter alia*, when they arise out of the interpretation or application of international conventions, and not to act as a court of criminal appeal”; that the Court may indicate provisional measures without infringing these principles; and that the argument put forward on these specific points by the United States accordingly cannot be accepted.

The Court goes on to state that “provisional measures are indicated ‘pending the final decision’ of the Court on the merits of the case, and are therefore only justified if there is urgency in the sense that action prejudicial to the rights of either party is likely to be taken before such final decision is given”. It further points out that the jurisdiction of the Court is limited in the present case to the dispute between the Parties concerning the interpretation and application of the Vienna Convention with regard to the individuals which Mexico identified as being victims of a violation of the Convention. Accordingly, the Court observes, it cannot rule on the rights of Mexican nationals who are not alleged to have been victims of a violation of that Convention.

The Court further states that “the sound administration of justice requires that a request for the indication of provisional measures founded on article 73 of the Rules of Court be submitted in good time”; it recalls in this respect that the Supreme Court of the United States, when considering a petition seeking the enforcement of an Order of this Court, observed that: “It is unfortunate that this matter came before us while proceedings are pending before the ICJ that might have been brought to that court earlier”. The Court further observes that, in view of the rules and time-limits governing the granting of clemency and the fixing of execution dates in a number of the states of the United States, the fact that no such dates have been fixed in any of the cases before the Court is not *per se* a circumstance that should preclude the Court from indicating provisional measures.

The Court finds that it is apparent from the information before it in this case that three Mexican nationals, Messrs. César Roberto Fierro Reyna, Roberto Moreno Ramos and Osvaldo Torres Aguilera, are at risk of execution in the coming months, or possibly even weeks; that their execution would cause irreparable prejudice to any rights that may subsequently be adjudged by the Court to belong to Mexico. The Court accordingly concludes that the circumstances require that it indicate provisional measures to preserve those rights, as Article 41 of its Statute provides.

The Court points out that the other individuals listed in Mexico’s Application, although currently on death row, are not in the same position as the three persons identified in the preceding paragraph and that the Court may, if appropriate, indicate provisional measures under Article 41 of the Statute in respect of those individuals before it renders final judgment in this case.

The Court finally observes that it is clearly in the interest of both Parties that their respective rights and obligations be determined definitively as early as possible; and that it

is therefore appropriate that the Court, with the co-operation of the Parties, ensure that a final judgment be reached with all possible expedition.

The Court concludes by pointing out that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and that it leaves unaffected the right of the Governments of Mexico and the United States to submit arguments in respect of those questions.

The full text of the *operative paragraph* (para. 59) reads as follows:

“For these reasons,

THE COURT,

Unanimously,

I. *Indicates* 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.

II. *Decides* that, until the Court has rendered its final judgment, it shall remain seized of the matters which form the subject of this Order.”

Judge Oda appended a declaration to the Order of the Court.

* * *

5. *Certain Criminal Proceedings in France (Republic of the Congo v. France)*

On 17 June 2003, the Court delivered an order regarding provisional measures, a summary of which is given below, followed by the text of the operative paragraph.

Application and request for a provisional measure (paras. 1–4, 22–24)

By Application filed in the Registry of the Court on 9 December 2002, the Republic of the Congo (hereinafter “the Congo”) sought to institute proceedings against the French Republic (hereinafter “France”) on the grounds, first, of alleged

“violation of the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations, as laid down in Article 2, paragraph 1, of the Charter of the United Nations, exercise its authority on the territory of another State,

by unilaterally attributing to itself universal jurisdiction in criminal matters

and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed in connection with the exercise of his powers for the maintenance of public order in his country”,

and second, alleged “violation of the criminal immunity of a foreign Head of State—an international customary rule recognized by the jurisprudence of the Court”.

By the Application the Congo requested the Court:

“to declare that the French Republic shall cause to be annulled the measures of investigation and prosecution taken by the *Procureur de la République* of the Paris *Tribunal de grande instance*, the *Procureur de la République* of the Meaux *Tribunal de grande instance* and the investigating judges of those courts”.

The Application further contained a “Request for the indication of a provisional measure”, directed to the preservation of the rights of the Congo under both of the categories mentioned above, and seeking “an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*”; upon receipt of the consent of France to the jurisdiction, the Court was convened for the purpose of proceeding to a decision on the request for the indication of a provisional measure as a matter of urgency; and that public hearings on the request were held on 28 and 29 April 2003.

Factual background (paras. 10–19)

The Order outlines as follows the factual background of the case, as stated in the Application or by the Parties at the hearings:

A complaint was filed on 5 December 2001, on behalf of certain human rights organizations, with the *Procureur de la République* of the Paris *Tribunal de grande instance* “for crimes against humanity and torture allegedly committed in the Congo against individuals having Congolese nationality, expressly naming H.E. Mr. Denis Sassou Nguesso, President of the Republic of the Congo, H.E. General Pierre Oba, Minister of the Interior, Public Security and Territorial Administration, General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard”.

The *Procureur de la République* of the Paris *Tribunal de grande instance* transmitted that complaint to the *Procureur de la République* of the Meaux *Tribunal de grande instance*, who ordered a preliminary enquiry and then on 23 January 2002 issued a *réquisitoire* (application for a judicial investigation of the alleged offences), and the investigating judge of Meaux initiated an investigation.

It was argued by the complainants that the French courts had jurisdiction, as regards crimes against humanity, by virtue of a principle of international customary law providing for universal jurisdiction over such crimes, and as regards the crime of torture, on the basis of articles 689–1 and 689–2 of the French Code of Criminal Procedure.

The *Procureur de la République* of the *Tribunal de grande instance* of Meaux, in his *réquisitoire* of 23 January 2002, requested investigation both of crimes against humanity and of torture, without mentioning any jurisdictional basis other than article 689–1 of that Code.

The complaint was referred to the *parquet* of the *Tribunal de grande instance* of Meaux taking into account that General Norbert Dabira possessed a residence in the area of that court’s jurisdiction; however, the investigation was initiated against a non-identified person, not against any of the Congolese personalities named in the complaint.

The testimony of General Dabira was first taken on 23 May 2002 by judicial police officers who had taken him into custody, and then on 8 July 2002 by the investigating judge, as a *témoin assisté* (legally represented witness). (It has been explained by France that a *témoin assisté* in French criminal procedure is a person who is not merely a witness, but

to some extent a suspect, and who therefore enjoys certain procedural rights (assistance of counsel, access to the case file) not conferred on ordinary witnesses). On 16 September 2002, the investigating judge issued against General Dabira, who had by then returned to the Congo, a *mandat d'amener* (warrant for immediate appearance), which, it was explained by France at the hearing, could be enforced against him should he return to France, but is not capable of being executed outside French territory.

The Application states that when the President of the Republic of the Congo, H.E. Mr. Denis Sassou Nguesso "was on a State visit to France, the investigating judge issued a *commission rogatoire* (warrant) to judicial police officers instructing them to take testimony from him". However no such *commission rogatoire* has been produced, and France has informed the Court that no *commission rogatoire* has been issued against President Sassou Nguesso, but that the investigating judge sought to obtain evidence from him under article 656 of the Code of Criminal Procedure, applicable where evidence is sought through the diplomatic channel from a "representative of a foreign power"; the Congo acknowledged in its Application that President Sassou Nguesso was never "*mis en examen*, nor called as a *témoïn assisté*".

It is common ground between the Parties that no acts of investigation (*instruction*) have been taken in the French criminal proceedings against the other Congolese personalities named in the Application (H.E. General Pierre Oba, Minister of the Interior, and General Blaise Adoua), nor in particular has any application been made to question them as witnesses.

Jurisdiction (paras. 20–21)

After recalling the need for a *prima facie* basis of jurisdiction in order for provisional measures to be indicated, the Court notes that in the Application the Congo proposed to found the jurisdiction of the Court upon a consent thereto yet to be given by France, as contemplated by article 38, paragraph 5, of the Rules of the Court; and that by a letter dated 8 April 2003 from the Minister for Foreign Affairs of France, France consented explicitly to the jurisdiction of the Court to entertain the Application on the basis of that text.

Reasoning of the Court (paras. 22–40)

The Court takes note that the circumstances relied on by the Congo, which in its view require the indication of measures requiring suspension of the French proceedings, are set out as follows in the request:

"The proceedings in question are perturbing the international relations of the Republic of the Congo as a result of the publicity accorded, in flagrant breach of French law governing the secrecy of criminal investigations, to the actions of the investigating judge, which impugn the honour and reputation of the Head of State, of the Minister of the Interior and of the Inspector-General of the Armed Forces and, in consequence, the international standing of the Congo. Furthermore, those proceedings are damaging to the traditional links of Franco-Congolese friendship. If these injurious proceedings were to continue, that damage would become irreparable."

It observes that at the hearings the Congo re-emphasized the irreparable prejudice which in its contention would result from the continuation of the French criminal proceedings before the *Tribunal de grande instance* of Meaux, in the same terms as in the request; and that the Congo further stated that the prejudice which would result if no provisional measures are indicated would be the continuation and exacerbation of the

prejudice already caused to the honour and reputation of the highest authorities of the Congo, and to internal peace in the Congo, to the international standing of the Congo and to Franco-Congolese friendship.

The Court observes that the rights which, according to the Congo's Application, are subsequently to be adjudged to belong to the Congo in the present case are, first, the right to require a State, in this case France, to abstain from exercising universal jurisdiction in criminal matters in a manner contrary to international law, and second, the right to respect by France for the immunities conferred by international law on, in particular, the Congolese Head of State.

The Court further observes that the purpose of any provisional measures that the Court might indicate in this case should be to preserve those claimed rights; that the irreparable prejudice claimed by the Congo and summarized above would not be caused to those rights as such; that however this prejudice might, in the circumstances of the case, be regarded as such as to affect irreparably the rights asserted in the Application. The Court notes that in any event it has not been informed in what practical respect there has been any deterioration internally or in the international standing of the Congo, or in Franco-Congolese relations, since the institution of the French criminal proceedings, nor has any evidence been placed before the Court of any serious prejudice or threat of prejudice of this nature.

The Court observes that the first question before it at the present stage of the case is thus whether the criminal proceedings currently pending in France entail a risk of irreparable prejudice to the right of the Congo to respect by France for the immunities of President Sassou Nguesso as Head of State, such as to require, as a matter of urgency, the indication of provisional measures.

The Court takes note of the statements made by the Parties as to the relevance of article 656 of the French Code of Criminal Procedure (see above), and of a number of statements made by France as to the respect in French criminal law for the immunities of Heads of State. It then observes that it is not now called upon to determine the compatibility with the rights claimed by the Congo of the procedure so far followed in France, but only the risk or otherwise of the French criminal proceedings causing irreparable prejudice to such claimed rights. The Court finds, on the information before it, that, as regards President Sassou Nguesso, there is at the present time no risk of irreparable prejudice, so as to justify the indication of provisional measures as a matter of urgency; and neither is it established that any such risk exists as regards General Oba, Minister of the Interior of the Republic of the Congo, for whom the Congo also claims immunity in its Application.

The Court then considers, as a second question, the existence of a risk of irreparable prejudice in relation to the claim of the Congo that the unilateral assumption by a State of universal jurisdiction in criminal matters constitutes a violation of a principle of international law; the Court observes that in this respect the question before it is thus whether the proceedings before the *Tribunal de grande instance* of Meaux involve a threat of irreparable prejudice to the rights invoked by the Congo justifying, as a matter of urgency, the indication of provisional measures.

The Court notes that, as regards President Sassou Nguesso, the request for a written deposition made by the investigating judge on the basis of article 656 of the French Code of Criminal Procedure has not been transmitted to the person concerned by the French Ministry of Foreign Affairs; that, as regards General Oba and General Adoua, they have

not been the subject of any procedural measures by the investigating judge; and that no measures of this nature are threatened against these three persons. The Court concludes that therefore there is no urgent need for provisional measures to preserve the rights of the Congo in that respect.

As regards General Dabira, the Court notes that it is acknowledged by France that the criminal proceedings instituted before the *Tribunal de grande instance* of Meaux have had an impact upon his own legal position, inasmuch as he possesses a residence in France, and was present in France and heard as a *témoïn assisté*, and in particular because, having returned to the Congo, he declined to respond to a summons from the investigating judge, who thereupon issued a *mandat d'amener* against him. It points out, however, that the practical effect of a provisional measure of the kind requested would be to enable General Dabira to enter France without fear of any legal consequences. The Congo, in the Court's view, has not demonstrated the likelihood or even the possibility of any irreparable prejudice to the rights it claims resulting from the procedural measures taken in relation to General Dabira.

The Court finally sees no need for the indication of any measures of the kind directed to preventing the aggravation or extension of the dispute.

The full text of the *final paragraph* of the Order (para. 41) reads as follows:

“For these reasons,

THE COURT,

By fourteen votes to one,

Finds that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka;

AGAINST: *Judge ad hoc de Cara*.”

Judges Koroma and Vereshchetin appended a Joint separate opinion to the Order and Judge *ad hoc de Cara* a dissenting opinion.

* * *

6. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*

By a letter of 9 September 2003, the Governments of the Libyan Arab Jamahiriya and the United Kingdom jointly notified the Court that they had “agreed to discontinue with prejudice the proceedings initiated by the Libyan Application filed on 3 March 1992”.

Following that notification, on 10 September 2003, the President of the Court, Judge Shi, made an Order placing on record the discontinuance of the proceedings with prejudice, by agreement of the Parties, and directing the removal of the case from the Court's List.

* * *

7. *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)*

By a letter of 9 September 2003, the Governments of the Libyan Arab Jamahiriya and the United States jointly notified the Court that they had “agreed to discontinue with prejudice the proceedings initiated by the Libyan Application filed on 3 March 1992”.

Following that notification, on 10 September 2003, the President of the Court, Judge Shi, made an Order placing on record the discontinuance of the proceedings with prejudice, by agreement of the Parties, and directing the removal of the case from the Court’s List.

(d) Request for advisory opinion

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory

On 8 December 2003, the United Nations General Assembly adopted resolution ES-10/14, whereby it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to give an urgent advisory opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”.

Certified true copies of the resolution and of the report of the Secretary-General²⁵² referred to therein were transmitted to the Court under cover of a letter from the Secretary-General of the United Nations dated 8 December 2003 and received in the Registry by facsimile on 10 December 2003.

By an Order of 19 December 2003, the Court fixed 30 January 2004 as the time-limit within which written statements might be submitted to it on the question. By the same Order, the Court further decided that, in the light of resolution ES-10/14 and the report of the Secretary-General transmitted with the request, and taking into account the fact that the General Assembly had granted Palestine a special status of observer and that the latter was co-sponsor of the draft resolution requesting the advisory opinion, Palestine may also submit a written statement on the question within the above time-limit.

The Court further fixed 23 February 2004 as the date for the opening of hearings during which oral statements and comments might be presented. By the same Order, the Court decided that, for the reasons set out above, Palestine may also take part in the said hearings.

²⁵² A/ES-10-248.

(e) Pending cases as at 31 December 2003

1. *Avena and other Mexican Nationals (Mexico v. United States of America)* (2003-)
2. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2003-)
3. *Certain Criminal Proceedings in France (Republic of the Congo v. France)* (2002-)
4. *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)* (2002-)
5. *Frontier Dispute (Benin/Niger)* (2002-)
6. *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (2001-)
7. *Certain Property (Liechtenstein v. Germany)* (2001-)
8. *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (1999-)
9. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)* (1999-)
10. *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)* (1999-)
11. *Legality of Use of Force (Serbia and Montenegro v. Belgium)* (1999-)
12. *Legality of Use of Force (Serbia and Montenegro v. Canada)* (1999-)
13. *Legality of Use of Force (Serbia and Montenegro v. France)* (1999-)
14. *Legality of Use of Force (Serbia and Montenegro v. Germany)* (1999-)
15. *Legality of Use of Force (Serbia and Montenegro v. Italy)* (1999-)
16. *Legality of Use of Force (Serbia and Montenegro v. Netherlands)* (1999-)
17. *Legality of Use of Force (Serbia and Montenegro v. Portugal)* (1999-)
18. *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)* (1999-)
19. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (1998-)
20. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (1993-)
21. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (1993-)

(f) Consideration by the General Assembly

The General Assembly, by its decision 58/510 of 31 October 2003, took note of the report of the International Court of Justice.²⁵³

²⁵³ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 4 and corrigendum (A/58/4 and Corr.1).*

6. INTERNATIONAL LAW COMMISSION²⁵⁴(a) Fifty-fifth session of the Commission²⁵⁵

The International Law Commission held the first part of its fifty-fifth session from 5 May to 6 June 2003 and the second part from 7 July to 8 August 2003 at its seat at the United Nations Office at Geneva. The Commission considered the following items.

In the course of the fifty-fifth session, the Commission had before it the first report of the Special Rapporteur (Mr. Giorgio Gaja) on the topic “Responsibility of international organizations”²⁵⁶, dealing with the scope of the work and general principles concerning responsibility of international organizations. In the report, the Special Rapporteur explained that the Commission’s work on State responsibility could not fail to affect the study of the current topic and that it would be reasonable to follow the same approach on issues that were parallel to those concerning States. It was also stressed that such an approach did not assume that similar issues between the two topics would necessarily lead to analogous solutions. The Rapporteur proposed three draft articles concerning responsibility of international organizations, “Scope of the present draft articles” (article 1), “Use of terms” (article 2) and “General Principles” (article 3). Draft articles 1 and 3 and, subsequently, an amended version of draft article 2, were referred to the Drafting Committee. The Commission adopted articles 1 to 3 as recommended by the Drafting Committee together with commentaries. Furthermore, bearing in mind the close relationship between the topic and the work of international organizations, the Commission requested the Secretariat to circulate, on an annual basis, the chapter of the report of the Commission on this topic to the United Nations, its Specialized Agencies and some other international organizations for their comments.

Regarding the topic “Diplomatic Protection”, the Commission considered the fourth report²⁵⁷ of the Special Rapporteur (Mr. John Robert Dugard) concerning draft articles 17 to 22 on the diplomatic protection of corporations and shareholders and of other legal persons. The Commission considered and referred draft articles 17 to 22 to the Drafting Committee. Furthermore, having considered the report of the Drafting Committee on draft articles 8 [10], 9 [11] and 10 [14], the Commission adopted draft articles 8 [10], 9 [11] and 10 [14], with commentaries.

In relation to the topic “International liability for injurious consequences arising out of acts not prohibited by international law” (International liability in case of loss from transboundary harm arising out of hazardous activities), the Commission had before it the Special Rapporteur’s (Mr. Pemmeraju Sreenivasa Rao) first report²⁵⁸ pertaining to the legal regime for the allocation of loss in case of transboundary harm arising out of hazardous activities. The report reviewed the work of the Commission in the previous years, analysed the liability regimes of various instruments and offered conclusions for the Commission’s consideration. The Commission established an open-ended working group, which held

²⁵⁴ For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, chap. I, sect. A.

²⁵⁵ For detailed information, see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*.

²⁵⁶ A/CN.4/532.

²⁵⁷ A/CN.4/530 and Corr.1 (Spanish only) and Add.1.

²⁵⁸ A/CN.4/531.

three meetings, to assist the Special Rapporteur in considering the future orientation of the topic in light of his report and the debate in the Commission.

Concerning the topic “Unilateral Acts of States”, the Commission considered the sixth report²⁵⁹ of the Special Rapporteur (Mr. Victor Rodríguez Cedaño) dealing with the unilateral act of recognition, with special emphasis on recognition of States. The Commission established an open-ended Working Group, which held six meetings, and adopted its recommendations, dealing with the definition of the scope of the topic and the method of work.

As regards the topic “Reservation to treaties”, the Commission considered the eighth report²⁶⁰ of the Special Rapporteur (Mr. Alain Pellet) relating to withdrawal and modification of reservations and interpretative declarations as well as to the formulation of objections to reservations and interpretative declarations. Furthermore, the Commission considered and provisionally adopted 11 draft guidelines (with three model clauses) and commentaries thereto, dealing with withdrawal and modification of reservations. It also decided to refer to the Drafting Committee five other draft guidelines on this topic.

At its fifty-fourth session, in 2002, the Commission decided to include the topic “Shared natural resources”, in its programme of work and appointed Mr. Chusei Yamada as Special Rapporteur.²⁶¹ During its fifty-fifth session, the Commission considered the Special Rapporteur’s first report²⁶² which was of a preliminary nature and set out the background on the topic and proposed to limit its scope to the study of confined transboundary groundwaters, oil and gas, with work to proceed initially on the study on transboundary groundwaters. In introducing his report, the Special Rapporteur indicated that he intended to conduct studies on the practice of States with respect to uses and management, including pollution prevention, and cases of conflicts, as well as domestic and international rules. Furthermore, he would attempt to extract some legal norms from existing regimes and possibly prepare some draft articles.

With regard to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, which was also included in the Commission’s programme of work at its previous session²⁶³, the Commission decided to establish an open-ended Study Group and appointed Mr. Martti Koskenniemi as Chairman. The Study Group held four meetings and established a schedule for work to be carried out during the remaining part of the quinquennium (2003–2006), agreed upon the distribution among its members of the preparation of the studies endorsed by the Commission in 2002,²⁶⁴ decided upon the methodology to be adopted for studies and held a preliminary

²⁵⁹ A/CN.4/534.

²⁶⁰ A/CN.4/535 and Add.1.

²⁶¹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10 (A/57/10)*; chap. X.A.1, paras. 518–519.

²⁶² A/CN.4/533 and Add.1.

²⁶³ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10 (A/57/10)*, chap. IX, para. 492.

²⁶⁴ The following topics were included in 2002: (a) The function and scope of the *lex specialis* rule and the question of “self-contained regimes”; (b) The interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (art. 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) The application of successive treaties relating to the same subject matter (art. 30 of the Vienna Convention on the Law of Treaties); (d) The modification of multilateral treaties between certain of the parties only (art. 41 of the Vienna Convention on the Law of Treaties); (e) Hierarchy in

discussion of an outline by the Chairman of the question of “The function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’”. The Commission took note of the report of the Study Group.

(b) Consideration by the General Assembly

On 9 December 2003, the General Assembly adopted resolution 58/77, entitled “Report of the International Law Commission on the work of its fifty-fifth session”, without a vote. The General Assembly, taking note of the report of the International Law Commission on the work of its fifty-fifth session, reiterated the invitation to governments to provide information regarding State practice on the topic “Unilateral acts of States” and invited governments to submit information regarding national legislation, bilateral and other agreements and arrangements with regard to the use and management of transboundary groundwaters, in particular those governing quality and quantity of such waters, relevant to the topic entitled “Shared natural resources”. Furthermore, the General Assembly requested the Secretary-General to invite States and international organizations to submit information concerning their practice relevant to the topic “Responsibility of international organizations”, including cases in which States members of an international organization may be regarded as responsible for acts of the Organization.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW ²⁶⁵

(a) Thirty-sixth session of the Commission ²⁶⁶

The United Nations Commission on International Trade Law held its thirty-sixth session in Vienna from 30 June to 11 July 2003 and adopted its report on 11 July 2003. During the session, the Commission considered and adopted the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects and requested the Secretariat to consolidate the *Model Legislative Provisions* with the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects into a single publication. The Commission recommended that States assess the economic efficiency of their regimes and give favorable consideration to the Legislative Provisions when revising or adopting legislation related to private participation in the development and operation of public infrastructure. With regard to the draft UNCITRAL Legislative Guide on Insolvency Law, the Commission considered and approved in principle the policy considerations reflected in the draft legislative guide, the key objectives, general features and structure of the insolvency regime, subject to completion consistent with the key objectives of the draft guide. The Commission recommended that the Working Group on Insolvency Law coordinate with the World Bank with a view to aligning the text of the World Bank’s *Principles and Guidelines for effective Insolvency and Creditor Rights Systems* with the draft UNCITRAL Legislative Guide. The Working Group was requested to complete its work and submit the draft Legislative Guide to the Commission at its next session for finalization and adoption. With respect to the

international law: jus cogens, obligations erga omnes, Article 103 of the Charter of the United Nations, as conflict rules.

²⁶⁵ For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17 (A/58/17)*, chap. I, sect. B.

²⁶⁶ A/58/17.

topic of arbitration, the Commission had before it the report of the Working Group on its thirty-seventh and thirty-eighth sessions and noted that the Secretariat had held an expert group meeting in conjunction with the Organisation for Economic Cooperation and Development, which found that arbitration was an appropriate method to resolve intra-corporate disputes, in particular those involving parties from different States. With respect to transport law, the Commission had before it the report of the Working Group on its tenth and eleventh sessions and noted the progress made in the development of an instrument on transport law.²⁶⁷ In connection with electronic commerce, the Commission noted the progress made by the Secretariat in the development of a preliminary draft convention dealing with selected issues on electronic contracting.²⁶⁸ With regard to its work on security interests, the Commission had before it the report of the Working Group on its second and third sessions and a report on a joint session of Working Groups on insolvency law and security interests. The Commission reaffirmed the mandate of the Working Group to develop an efficient legal regime for security rights in goods and to consider extending the scope of its work to cover trade receivables, letters of credit, deposit accounts and intellectual and industrial property rights.²⁶⁹ In connection with the subject "Monitoring the implementation of the 1958 New York Convention",²⁷⁰ the Commission requested the Secretariat to re-circulate to States the questionnaire by the Secretariat relating to the legal regime in their jurisdictions governing the recognition and enforcement of foreign awards and intensify its efforts to obtain replies to the questionnaire. The Commission considered future work in the area of procurement law and noted that whilst the UNCITRAL Model Law on Procurement of Goods, Construction and Services, had proved to be an important benchmark in procurement law reform, there was need to consider work in new areas such as in electronic procurement practices. The Secretariat was requested to prepare detailed studies in the area and formulate proposals on how to address them. On a proposal for the Secretariat to prepare a study of fraudulent financial and trade practices, the Commission considered a note by the Secretariat, which observed that commercial fraud had grown significantly. The Commission however noted that its resources were fully engaged in the formulation of private law rules and related activities and therefore appealed to the Commission on Crime Prevention and Criminal Justice for assistance in conducting a study on commercial fraud as the basis for possible future work in the area. With regard to case law on UNCITRAL texts (CLOUT) and digests of case law, the Commission observed that a draft of nine chapters of the digest of case law on the United Nations Convention on Contracts for the International Sale of Goods, 1980,²⁷¹ and initial drafts of the digest on the Model Law on International Commercial Arbitration²⁷² had been prepared.

(b) Consideration by the General Assembly

At its fifty-eighth session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 58/75 of 9 December 2003, entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session, in

²⁶⁷ A/CN.9/525 and A/CN.9/526.

²⁶⁸ A/CN.9/527 and A/CN.9/528.

²⁶⁹ A/CN.9/531 and A/CN.9/532.

²⁷⁰ For the text of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, see United Nations *Treaty Series*, vol. 330, p. 3.

²⁷¹ United Nations *Treaty Series*, vol. 1489, p. 3.

²⁷² United Nations *Treaty Series*, vol. 1489, p. 3.

which it took note of the report of the Commission on the work of its thirty-sixth session, and commended the Commission for the progress made in its work on privately financed infrastructure projects, insolvency law, secured transactions, electronic contracting, interim measures in international commercial arbitration, transport law, procurement law and the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

(c) Model Legislative Provisions on Privately Financed Infrastructure Projects

On 9 December 2003, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 58/76, entitled “Model Legislative Provisions on Privately Financed Infrastructure Projects of the United Nations Commission on International Trade Law”, The Assembly, *inter alia*, expressed its appreciation to UNICTRAL for the completion and adoption of the Model Legislative Provisions, and recommended that all States give due consideration to the Model Legislative Provisions and the UNICTRAL Legislative Guide on Privately Financed Infrastructure Projects when revising or adopting legislation related to private participation in the development and operation of public infrastructure.

UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects

Foreword

The following pages contain a set of general recommended legislative principles entitled “legislative recommendations” and model legislative provisions (the “model provisions”) on privately financed infrastructure projects. The legislative recommendations and the model provisions are intended to assist domestic legislative bodies in the establishment of a legislative framework favourable to privately financed infrastructure projects. They are followed by notes that offer an analytical explanation to the financial, regulatory, legal, policy and other issues raised in the subject area. The user is advised to read the legislative recommendations and the model provisions together with the notes, which provide background information to enhance the understanding of the legislative recommendations and model provisions. The legislative recommendations and the model provisions consist of a set of core provisions dealing with matters that deserve attention in legislation specifically concerned with privately financed infrastructure projects.

The model provisions are designed to be implemented and supplemented by the issuance of regulations providing further details. Areas suitable for being addressed by regulations rather than by statutes are identified accordingly. Moreover, the successful implementation of privately financed infrastructure projects typically requires various measures beyond the establishment of an appropriate legislative framework, such as adequate administrative structures and practices, organizational capability, technical, legal and financial expertise, appropriate human and financial resources and economic stability.

It should be noted that the legislative recommendations and the model provisions do not deal with other areas of law that also have an impact on privately financed infrastructure projects but on which no specific legislative recommendations are made in the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects*.²⁷³ Those

²⁷³ United Nations publication, Sales No. E.01.V.4.

other areas of law include, for instance, promotion and protection of investments, property law, security interests, rules and procedures on compulsory acquisition of private property, general contract law, rules on government contracts and administrative law, tax law and environmental protection and consumer protection laws. The relationship of such other areas of law to any law enacted specifically with respect to privately financed infrastructure projects should be borne in mind.

Part One

Legislative recommendations

I. General legislative and institutional framework

Constitutional, legislative and institutional framework

(see chap. I, “General legislative and institutional framework”, paras. 2–14)

Recommendation 1. *The constitutional, legislative and institutional framework for the implementation of privately financed infrastructure projects should ensure transparency, fairness and the long-term sustainability of projects. Undesirable restrictions on private sector participation in infrastructure development and operation should be eliminated.*

Scope of authority to award concessions

(see chap. I, “General legislative and institutional framework”, paras. 15–22)

Recommendation 2. *The law should identify the public authorities of the host country (including, as appropriate, national, provincial and local authorities) that are empowered to award concessions and enter into agreements for the implementation of privately financed infrastructure projects.*

Recommendation 3. *Privately financed infrastructure projects may include concessions for the construction and operation of new infrastructure facilities and systems or the maintenance, modernization, expansion and operation of existing infrastructure facilities and systems.*

Recommendation 4. *The law should identify the sectors or types of infrastructure in respect of which concessions may be granted.*

Recommendation 5. *The law should specify the extent to which a concession might extend to the entire region under the jurisdiction of the respective contracting authority, to a geographical subdivision thereof or to a discrete project, and whether it might be awarded with or without exclusivity, as appropriate, in accordance with rules and principles of law, statutory provisions, regulations and policies applying to the sector concerned. Contracting authorities might be jointly empowered to award concessions beyond a single jurisdiction.*

Administrative coordination

(see chap. I, “General legislative and institutional framework”, paras. 23–29)

Recommendation 6. *Institutional mechanisms should be established to coordinate the activities of the public authorities responsible for issuing approvals, licences, permits or authorizations required for the implementation of privately financed infrastructure projects in accordance with statutory or regulatory provisions on the construction and operation of infrastructure facilities of the type concerned.*

Authority to regulate infrastructure services

(see chap. I, “General legislative and institutional framework”, paras. 30–53)

Recommendation 7. *The authority to regulate infrastructure services should not be entrusted to entities that directly or indirectly provide infrastructure services.*

Recommendation 8. *Regulatory competence should be entrusted to functionally independent bodies with a level of autonomy sufficient to ensure that their decisions are taken without political interference or inappropriate pressures from infrastructure operators and public service providers.*

Recommendation 9. *The rules governing regulatory procedures should be made public. Regulatory decisions should state the reasons on which they are based and should be accessible to interested parties through publication or other means.*

Recommendation 10. *The law should establish transparent procedures whereby the concessionaire may request a review of regulatory decisions by an independent and impartial body, which may include court review, and should set forth the grounds on which such a review may be based.*

Recommendation 11. *Where appropriate, special procedures should be established for handling disputes among public service providers concerning alleged violations of laws and regulations governing the relevant sector.*

II. Project risks and government support

Project risks and risk allocation

(see chap. II, “Project risks and government support”, paras. 8–29)

Recommendation 12. *No unnecessary statutory or regulatory limitations should be placed upon the contracting authority’s ability to agree on an allocation of risks that is suited to the needs of the project.*

Government support

(see chap. II, “Project risks and government support”, paras. 30–60)

Recommendation 13. *The law should clearly state which public authorities of the host country may provide financial or economic support to the implementation of privately financed infrastructure projects and which types of support they are authorized to provide.*

Part Two

Model legislative provisions

I. General provisions

Model provision 1. Preamble

(see recommendation 1 and chap. I, paras. 2–14)

WHEREAS the [Government] [Parliament] of [. . .] considers it desirable to establish a favourable legislative framework to promote and facilitate the implementation of privately financed infrastructure projects by enhancing transparency, fairness and long-term sustainability and removing undesirable restrictions on private sector participation in infrastructure development and operation;

WHEREAS the [Government] [Parliament] of [. . .] considers it desirable to further develop the general principles of transparency, economy and fairness in the award of contracts by public authorities through the establishment of specific procedures for the award of infrastructure projects;

[Other objectives that the enacting State might wish to state];

Be it therefore enacted as follows:

Model provision 2. Definitions

(see introduction, paras. 9–20)

For the purposes of this law:

(a) “Infrastructure facility” means physical facilities and systems that directly or indirectly provide services to the general public;

(b) “Infrastructure project” means the design, construction, development and operation of new infrastructure facilities or the rehabilitation, modernization, expansion or operation of existing infrastructure facilities;

(c) “Contracting authority” means the public authority that has the power to enter into a concession contract for the implementation of an infrastructure project [under the provisions of this law];²⁷⁴

(d) “Concessionaire” means the person that carries out an infrastructure project under a concession contract entered into with a contracting authority;

(e) “Concession contract” means the mutually binding agreement or agreements between the contracting authority and the concessionaire that set forth the terms and conditions for the implementation of an infrastructure project;

(f) “Bidder” and “bidders” mean persons, including groups thereof, that participate in selection proceedings concerning an infrastructure project;²⁷⁵

(g) “Unsolicited proposal” means any proposal relating to the implementation of an infrastructure project that is not submitted in response to a request or solicitation issued by the contracting authority within the context of a selection procedure;

(h) “Regulatory agency” means a public authority that is entrusted with the power to issue and enforce rules and regulations governing the infrastructure facility or the provision of the relevant services.²⁷⁶

²⁷⁴ It should be noted that the authority referred to in this definition relates only to the power to enter into concession contracts. Depending on the regulatory regime of the enacting State, a separate body, referred to as “regulatory agency” in subparagraph (h), may have responsibility for issuing rules and regulations governing the provision of the relevant service.

²⁷⁵ The term “bidder” or “bidders” encompasses, according to the context, both persons that have sought an invitation to take part in pre-selection proceedings or persons that have submitted a proposal in response to a contracting authority’s request for proposals.

²⁷⁶ The composition, structure and functions of such a regulatory agency may need to be addressed in special legislation (see recommendations 7–11 and chap. I, “General legislative and institutional framework”, paras. 30–53).

Model provision 3. Authority to enter into concession contracts

(see recommendation 2 and chap. I, paras. 15–18)

The following public authorities have the power to enter into concession contracts²⁷⁷ for the implementation of infrastructure projects falling within their respective spheres of competence: [*the enacting State lists the relevant public authorities of the host country that may enter into concession contracts by way of an exhaustive or indicative list of public authorities, a list of types or categories of public authority or a combination thereof*].²⁷⁸

Model provision 4. Eligible infrastructure sectors

(see recommendation 4 and chap. I, paras. 19–22)

Concession contracts may be entered into by the relevant authorities in the following sectors: [*the enacting State indicates the relevant sectors by way of an exhaustive or indicative list*].²⁷⁹

II. Selection of the concessionaire

Model provision 5. Rules governing the selection proceedings

(see recommendation 14 and chap. III, paras. 1–33)

The selection of the concessionaire shall be conducted in accordance with model provisions 6–27 and, for matters not provided herein, in accordance with [*the enacting State indicates the provisions of its laws that provide for transparent and efficient competitive procedures for the award of government contracts*].²⁸⁰

²⁷⁷ It is advisable to establish institutional mechanisms to coordinate the activities of the public authorities responsible for issuing the approvals, licences, permits or authorizations required for the implementation of privately financed infrastructure projects in accordance with statutory or regulatory provisions on the construction and operation of infrastructure facilities of the type concerned (see legislative recommendation 6 and chap. I, “General legislative and institutional framework”, paras. 23–29). In addition, for countries that contemplate providing specific forms of government support to infrastructure projects, it may be useful for the relevant law, such as legislation or regulation governing the activities of entities authorized to offer government support, to identify clearly which entities have the power to provide such support and what kind of support may be provided (see chap. II, “Project risks and government support”).

²⁷⁸ Enacting States may generally have two options for completing this model provision. One alternative may be to provide a list of authorities empowered to enter into concession contracts, either in the model provision or in a schedule to be attached thereto. Another alternative might be for the enacting State to indicate the levels of government that have the power to enter into those contracts, without naming the relevant public authorities. In a federal State, for example, such an enabling clause might refer to “the Union, the states [or provinces] and the municipalities”. In any event, it is advisable for enacting States that wish to include an exhaustive list of authorities to consider mechanisms allowing for revisions of such a list as the need arises. One possibility to that end might be to include the list in a schedule to the law or in regulations that may be issued thereunder.

²⁷⁹ It is advisable for enacting States that wish to include an exhaustive list of sectors to consider mechanisms allowing for revisions of such a list as the need arises. One possibility to that end might be to include the list in a schedule to the law or in regulations that may be issued thereunder.

²⁸⁰ The user’s attention is drawn to the relationship between the procedures for the selection of the concessionaire and the general legislative framework for the award of government contracts in the enacting State. While some elements of structured competition that exist in traditional procurement methods may be usefully applied, a number of adaptations are needed to take into account the particular needs of privately financed infrastructure projects, such as a clearly defined pre-selection phase, flexibility in the formulation of requests for proposals, special evaluation criteria and some scope for negotiations with bidders. The selection procedures reflected in this chapter are based largely on the features of the principal method for the procurement of services under the UNCITRAL Model Law on Procurement of

1. Pre-selection of bidders

Model provision 6. Purpose and procedure of pre-selection

(see chap. III, paras. 34–50)

1. The contracting authority shall engage in pre-selection proceedings with a view to identifying bidders that are suitably qualified to implement the envisaged infrastructure project.

2. The invitation to participate in the pre-selection proceedings shall be published in accordance with [*the enacting State indicates the provisions of its laws governing publication of invitation to participate in proceedings for the pre-qualification of suppliers and contractors*].

3. To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of invitations to participate in proceedings for the pre-qualification of suppliers and contractors*],²⁸¹ the invitation to participate in the pre-selection proceedings shall include at least the following:

(a) A description of the infrastructure facility;

(b) An indication of other essential elements of the project, such as the services to be delivered by the concessionaire, the financial arrangements envisaged by the contracting authority (for example, whether the project will be entirely financed by user fees or tariffs or whether public funds such as direct payments, loans or guarantees may be provided to the concessionaire);

(c) Where already known, a summary of the main required terms of the concession contract to be entered into;

(d) The manner and place for the submission of applications for pre-selection and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their applications; and

(e) The manner and place for solicitation of the pre-selection documents.

4. To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of the pre-selection documents to be provided to suppliers and contractors in proceedings for the pre-qualification of*

Goods, Construction and Services, which was adopted by UNCITRAL at its twenty-seventh session, held in New York from 31 May to 17 June 1994 (the “Model Procurement Law”). The model provisions on the selection of the concessionaire are not intended to replace or reproduce the entire rules of the enacting State on government procurement, but rather to assist domestic legislators to develop special rules suited for the selection of the concessionaire. The model provisions assume that there exists in the enacting State a general framework for the award of government contracts providing for transparent and efficient competitive procedures in a manner that meets the standards of the Model Procurement Law. Thus, the model provisions do not deal with a number of practical procedural steps that would typically be found in an adequate general procurement regime. Examples include the following matters: manner of publication of notices, procedures for issuance of requests for proposals, record-keeping of the procurement process, accessibility of information to the public and review procedures. Where appropriate, the notes to these model provisions refer the reader to provisions of the Model Procurement Law, which may, *mutatis mutandis*, supplement the practical elements of the selection procedure described herein.

²⁸¹ A list of elements typically contained in an invitation to participate in pre-qualification proceedings can be found in article 25, paragraph 2, of the Model Procurement Law.

suppliers and contractors],²⁸² the pre-selection documents shall include at least the following information:

- (a) The pre-selection criteria in accordance with model provision 7;
- (b) Whether the contracting authority intends to waive the limitations on the participation of consortia set forth in model provision 8;
- (c) Whether the contracting authority intends to request only a limited number²⁸³ of pre-selected bidders to submit proposals upon completion of the pre-selection proceedings in accordance with model provision 9, paragraph 2, and, if applicable, the manner in which this selection will be carried out;
- (d) Whether the contracting authority intends to require the successful bidder to establish an independent legal entity established and incorporated under the laws of [*the enacting State*] in accordance with model provision 30.

5. For matters not provided in this model provision, the pre-selection proceedings shall be conducted in accordance with [*the enacting State indicates the provisions of its laws on government procurement governing the conduct of proceedings for the pre-qualification of suppliers and contractors*].²⁸⁴

Model provision 7. Pre-selection criteria

(see recommendation 15 and chap. III, paras. 34–40, 43 and 44)

In order to qualify for the selection proceedings, interested bidders must meet objectively justifiable criteria²⁸⁵ that the contracting authority considers appropriate in the particular proceedings, as stated in the pre-selection documents. These criteria shall include at least the following:

- (a) Adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;
- (b) Sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements;
- (c) Appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.

²⁸² A list of elements typically contained in pre-qualification documents can be found in article 7, paragraph 3, of the Model Procurement Law.

²⁸³ In some countries, practical guidance on selection procedures encourages domestic contracting authorities to limit the prospective proposals to the lowest possible number sufficient to ensure meaningful competition (for example, three or four). The manner in which rating systems (in particular quantitative ones) may be used to arrive at such a range of bidders is discussed in the *Legislative Guide* (see chap. III, “Selection of the concessionaire”, paras. 48 and 49). See also footnote 14.

²⁸⁴ Procedural steps on pre-qualification proceedings, including procedures for handling requests for clarifications and disclosure requirements for the contracting authority’s decision on the bidders’ qualifications, can be found in article 7 of the Model Procurement Law, paragraphs 2–7.

²⁸⁵ The laws of some countries provide for some sort of preferential treatment for domestic entities or afford special treatment to bidders that undertake to use national goods or employ local labour. The various issues raised by domestic preferences are discussed in the *Legislative Guide* (see chap. III, “Selection of the concessionaire”, paras. 43 and 44). The *Legislative Guide* suggests that countries that wish to provide some incentive to national suppliers may wish to apply such preferences in the form of special evaluation criteria, rather than by a blanket exclusion of foreign suppliers. In any event, where domestic preferences are envisaged, they should be announced in advance, preferably in the invitation to the pre-selection proceedings.

Model provision 8. Participation of consortia

(see recommendation 16 and chap. III, paras. 41 and 42)

1. The contracting authority, when first inviting the participation of bidders in the selection proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications in accordance with model provision 7 shall relate to the consortium as a whole as well as to its individual participants.

2. Unless otherwise [authorized by . . . [the enacting State indicates the relevant authority] and] stated in the pre-selection documents, each member of a consortium may participate, either directly or indirectly, in only one consortium²⁸⁶ at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.

3. When considering the qualifications of bidding consortia, the contracting authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

Model provision 9. Decision on pre-selection

(see recommendation 17 (for para. 2) and chap. III, paras. 47–50)

1. The contracting authority shall make a decision with respect to the qualifications of each bidder that has submitted an application for pre-selection. In reaching that decision, the contracting authority shall apply only the criteria that are set forth in the pre-selection documents. All pre-selected bidders shall thereafter be invited by the contracting authority to submit proposals in accordance with model provisions 10–17.

2. Notwithstanding paragraph 1, the contracting authority may, provided that it has made an appropriate statement in the pre-selection documents to that effect, reserve the right to request proposals upon completion of the pre-selection proceedings only from a limited number²⁸⁷ of bidders that best meet the pre-selection criteria. For this purpose, the contracting authority shall rate the bidders that meet the pre-selection criteria on the basis of the criteria applied to assess their qualifications and draw up the list of bidders that will be invited to submit proposals upon completion of the pre-selection proceedings. In drawing up the list, the contracting authority shall apply only the manner of rating that is set forth in the pre-selection documents.

²⁸⁶ The rationale for prohibiting the participation of bidders in more than one consortium to submit proposals for the same project is to reduce the risk of leakage of information or collusion between competing consortia. Nevertheless, the model provision contemplates the possibility of ad hoc exceptions to this rule, for instance, in the event that only one company or only a limited number of companies could be expected to deliver a specific good or service essential for the implementation of the project.

²⁸⁷ In some countries, practical guidance on selection procedures encourages domestic contracting authorities to limit the prospective proposals to the lowest possible number sufficient to ensure meaningful competition (for example, three or four). The manner in which rating systems (in particular quantitative ones) may be used to arrive at such a range of bidders is discussed in the *Legislative Guide* (see chap. III, “Selection of the concessionaire”, para. 48). It should be noted that the rating system is used solely for the purpose of the pre-selection of bidders. The ratings of the pre-selected bidders should not be taken into account at the stage of evaluation of proposals (see model provision 15), at which all pre-selected bidders should start out on an equal standing.

2. Procedure for requesting proposals

Model provision 10. Single-stage and two-stage procedures for requesting proposals

(see recommendations 18 (for para. 1) and 19 (for paras. 2 and 3) and chap. III, paras. 51–58)

1. The contracting authority shall provide a set of the request for proposals and related documents issued in accordance with model provision 11 to each pre-selected bidder that pays the price, if any, charged for those documents.

2. Notwithstanding the above, the contracting authority may use a two-stage procedure to request proposals from pre-selected bidders when the contracting authority does not deem it to be feasible to describe in the request for proposals the characteristics of the project such as project specifications, performance indicators, financial arrangements or contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.

3. Where a two-stage procedure is used, the following provisions apply:

(a) The initial request for proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as to the main contractual terms proposed by the contracting authority;²⁸⁸

(b) The contracting authority may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for proposals or the initial proposals and accompanying documents submitted by the bidders. The contracting authority shall prepare minutes of any such meeting or discussion containing the questions raised and the clarifications provided by the contracting authority;

(c) Following examination of the proposals received, the contracting authority may review and, as appropriate, revise the initial request for proposals by deleting or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms, and any criterion for evaluating and comparing proposals and for ascertaining the successful bidder, as set forth in the initial request for proposals, as well as by adding characteristics or criteria to it. The contracting authority shall indicate in the record of the selection proceedings to be kept pursuant to model provision 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated in the invitation to submit final proposals;

²⁸⁸ In many cases, in particular for new types of project, the contracting authority may not be in a position, at this stage, to have formulated a detailed draft of the contractual terms envisaged by it. Also, the contracting authority may find it preferable to develop such terms only after an initial round of consultations with the pre-selected bidders. In any event, however, it is important for the contracting authority, at this stage, to provide some indication of the key contractual terms of the concession contract, in particular the way in which the project risks should be allocated between the parties under the concession contract. If this allocation of contractual rights and obligations is left entirely open until after the issuance of the final request for proposals, the bidders may respond by seeking to minimize the risks they accept, which may frustrate the purpose of seeking private investment for developing the project (see chap. III, “Selection of the concessionaire”, paras. 67–70; see further chap. II, “Project risks and government support”, paras. 8–29).

(d) In the second stage of the proceedings, the contracting authority shall invite the bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with model provisions 11–17.

Model provision 11. Content of the request for proposals

(see recommendation 20 and chap. III, paras. 59–70)

To the extent not already required by [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the content of requests for proposals*],²⁸⁹ the request for proposals shall include at least the following information:

(a) General information as may be required by the bidders in order to prepare and submit their proposals;²⁹⁰

(b) Project specifications and performance indicators, as appropriate, including the contracting authority's requirements regarding safety and security standards and environmental protection;²⁹¹

(c) The contractual terms proposed by the contracting authority, including an indication of which terms are deemed to be non-negotiable;

(d) The criteria for evaluating proposals and the thresholds, if any, set by the contracting authority for identifying non-responsive proposals; the relative weight to be accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

Model provision 12. Bid securities

(see chap. III, para. 62)

1. The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

2. A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of:²⁹²

(a) Withdrawal or modification of a proposal after the deadline for submission of proposals and, if so stipulated in the request for proposals, before that deadline;

(b) Failure to enter into final negotiations with the contracting authority pursuant to model provision 17, paragraph 1;

(c) Failure to submit its best and final offer within the time limit prescribed by the contracting authority pursuant to model provision 17, paragraph 2;

(d) Failure to sign the concession contract, if required by the contracting authority to do so, after the proposal has been accepted;

(e) Failure to provide required security for the fulfilment of the concession contract after the proposal has been accepted or to comply with any other condition prior to signing the concession contract specified in the request for proposals.

²⁸⁹ A list of elements typically contained in a request for proposals for services can be found in article 38 of the Model Procurement Law.

²⁹⁰ A list of elements that should be provided can be found in chapter III, "Selection of the concessionaire", paragraphs 61 and 62, of the *Legislative Guide*.

²⁹¹ See chapter III, "Selection of the concessionaire", paragraphs 64–66.

²⁹² General provisions on bid securities can be found in article 32 of the Model Procurement Law.

Model provision 13. Clarifications and modifications

(see recommendation 21 and chap. III, paras. 71 and 72)

The contracting authority may, whether on its own initiative or as a result of a request for clarification by a bidder, review and, as appropriate, revise any element of the request for proposals as set forth in model provision 11. The contracting authority shall indicate in the record of the selection proceedings to be kept pursuant to model provision 26 the justification for any revision to the request for proposals. Any such deletion, modification or addition shall be communicated to the bidders in the same manner as the request for proposals at a reasonable time prior to the deadline for submission of proposals.

Model provision 14. Evaluation criteria

(see recommendations 22 (for para. 1) and 23 (for para. 2) and chap. III, paras. 73-77)

1. The criteria for the evaluation and comparison of the technical proposals²⁹³ shall include at least the following:

- (a) Technical soundness;
- (b) Compliance with environmental standards;
- (c) Operational feasibility;
- (d) Quality of services and measures to ensure their continuity.

2. The criteria for the evaluation and comparison of the financial and commercial proposals²⁹⁴ shall include, as appropriate:

- (a) The present value of the proposed tolls, unit prices and other charges over the concession period;
- (b) The present value of the proposed direct payments by the contracting authority, if any;
- (c) The costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
- (d) The extent of financial support, if any, expected from a public authority of [*the enacting State*];
- (e) Soundness of the proposed financial arrangements;
- (f) The extent of acceptance of the negotiable contractual terms proposed by the contracting authority in the request for proposals
- (g) The social and economic development potential offered by the proposals.

Model provision 15. Comparison and evaluation of proposals

(see recommendation 24 and chap. III, paras. 78-82)

1. The contracting authority shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set forth in the request for proposals.

2. For the purposes of paragraph 1, the contracting authority may establish thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to

²⁹³ See chapter III, "Selection of the concessionaire", paragraph 74.

²⁹⁴ See chapter III, "Selection of the concessionaire", paragraphs 75-77.

achieve the thresholds shall be regarded as non-responsive and rejected from the selection procedure.²⁹⁵

Model provision 16. Further demonstration of fulfilment of qualification criteria
(see recommendation 25 and chap. III, paras. 78–82)

The contracting authority may require any bidder that has been pre-selected to demonstrate again its qualifications in accordance with the same criteria used for pre-selection. The contracting authority shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.²⁹⁶

Model provision 17. Final negotiations

(see recommendations 26 (for para. 1) and 27 (for para. 2) and chap. III, paras. 83 and 84)

1. The contracting authority shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the concession contract the bidder that has attained the best rating. Final negotiations shall not concern those contractual terms, if any, that were stated as non-negotiable in the final request for proposals.

2. If it becomes apparent to the contracting authority that the negotiations with the bidder invited will not result in a concession contract, the contracting authority shall inform the bidder of its intention to terminate the negotiations and give the bidder reasonable time to formulate its best and final offer. If the contracting authority does not find that proposal acceptable, it shall terminate the negotiations with the bidder concerned. The contracting authority shall then invite for negotiations the other bidders in the order of their ranking until it arrives at a concession contract or rejects all remaining proposals. The contracting authority shall not resume negotiations with a bidder with which negotiations have been terminated pursuant to this paragraph.

3. Negotiation of concession contracts without competitive procedures

Model provision 18. Circumstances authorizing award without competitive procedures

(see recommendation 28 and chap. III, para. 89)

Subject to approval by [*the enacting State indicates the relevant authority*],²⁹⁷ the contracting authority is authorized to negotiate a concession contract without using the procedure set forth in model provisions 6 to 17 in the following cases:

²⁹⁵ This model provision offers an example of an evaluation process that a contracting authority may wish to apply to compare and evaluate proposals for privately financed infrastructure projects. Alternative evaluation processes are described in chapter III, “Selection of the concessionaire”, paragraphs 79–82, of the *Legislative Guide*, such as a two-step evaluation process or the two-envelope system. In contrast to the process set forth in this model provision, the processes described in the *Legislative Guide* are designed to allow the contracting authority to compare and evaluate the non-financial criteria separately from the financial criteria so as to avoid situations where undue weight would be given to certain elements of the financial criteria (such as the unit price) to the detriment of the non-financial criteria. In order to ensure the integrity, transparency and predictability of the evaluation stage of the selection proceedings, it is recommended that the enacting State set forth in its law the evaluation processes that contracting authorities may use to compare and evaluate proposals and the details of the application of this process.

²⁹⁶ Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

²⁹⁷ The rationale for subjecting the award of the concession contract without competitive procedures to the approval of a higher authority is to ensure that the contracting authority engages in direct negotiations with bidders only in the appropriate circumstances (see chap. III, “Selection of the concessionaire”, paras.

(a) When there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set forth in model provisions 6 to 17 would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the contracting authority nor the result of dilatory conduct on its part;

(b) Where the project is of short duration and the anticipated initial investment value does not exceed the amount [of [*the enacting State specifies a monetary ceiling*]] [set forth in [*the enacting State indicates the provisions of its laws that specify the monetary threshold below which a privately financed infrastructure project may be awarded without competitive procedures*]],²⁹⁸

(c) Where the project involves national defence or national security;

(d) Where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;

(e) In cases of unsolicited proposals falling under model provision 23;

(f) When an invitation to the pre-selection proceedings or a request for proposals has been issued but no applications or proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals and if, in the judgement of the contracting authority, issuing a new invitation to the pre-selection proceedings and a new request for proposals would be unlikely to result in a project award within a required time frame;²⁹⁹

(g) In other cases where the [*the enacting State indicates the relevant authority*] authorizes such an exception for compelling reasons of public interest.³⁰⁰

85–96). The model provision therefore suggests that the enacting State indicate a relevant authority that is competent to authorize negotiations in all cases set forth in the model provision. The enacting State may provide, however, for different approval requirements for each subparagraph of the model provision. In some cases, for instance, the enacting State may provide that the authority to engage in such negotiations derives directly from the law. In other cases, the enacting State may make the negotiations subject to the approval of different higher authorities, depending on the nature of the services to be provided or the infrastructure sector concerned. In those cases, the enacting State may need to adapt the model provision to these approval requirements by adding the particular approval requirement to the subparagraph concerned, or by adding a reference to provisions of its law where these approval requirements are set forth.

²⁹⁸ As an alternative to the exclusion provided in subparagraph (b), the enacting State may consider devising a simplified procedure for request for proposals for projects falling thereunder, for instance by applying the procedures described in article 48 of the Model Procurement Law.

²⁹⁹ The enacting State may wish to require that the contracting authority include in the record to be kept pursuant to model provision 26 a summary of the results of the negotiations and indicate the extent to which those results differed from the project specifications and contractual terms of the original request for proposals, and that it state the reasons therefore.

³⁰⁰ Enacting States that deem it desirable to authorize the use of negotiated procedures on an ad hoc basis may wish to retain subparagraph (g) when implementing the model provision. Enacting States wishing to limit exceptions to the competitive selection procedures may in turn prefer not to include the subparagraph. In any event, for purposes of transparency, the enacting State may wish to indicate here or elsewhere in the model provision other exceptions, if any, authorizing the use of negotiated procedures that may be provided under specific legislation.

Model provision 19. Procedures for negotiation of a concession contract
(see recommendation 29 and chap. III, para. 90)

Where a concession contract is negotiated without using the procedures set forth in model provisions 6–17 the contracting authority shall:³⁰¹

(a) Except for concession contracts negotiated pursuant to model provision 18, subparagraph (c), cause a notice of its intention to commence negotiations in respect of a concession contract to be published in accordance with [the enacting State indicates the provisions of any relevant laws on procurement proceedings that govern the publication of notices];

(b) Engage in negotiations with as many persons as the contracting authority judges capable³⁰² of carrying out the project as circumstances permit;

(c) Establish evaluation criteria against which proposals shall be evaluated and ranked.

4. Unsolicited proposals³⁰³

Model provision 20. Admissibility of unsolicited proposals
(see recommendation 30 and chap. III, paras. 97–109)

As an exception to model provisions 6 to 17, the contracting authority³⁰⁴ is authorized to consider unsolicited proposals pursuant to the procedures set forth in model provisions 21 to 23, provided that such proposals do not relate to a project for which selection procedures have been initiated or announced.

Model provision 21. Procedures for determining the admissibility of unsolicited proposals
(see recommendations 31 (for paras. 1 and 2) and 32 (for para. 3) and chap. III, paras. 110–112)

1. Following receipt and preliminary examination of an unsolicited proposal, the contracting authority shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest.³⁰⁵

³⁰¹ A number of elements to enhance transparency in negotiations under this model provision are discussed in chapter III, “Selection of the concessionaire”, paragraphs 90–96, of the *Legislative Guide*.

³⁰² Enacting States wishing to enhance transparency in the use of negotiated procedures may establish, by specific regulations, qualification criteria to be met by persons invited to negotiations pursuant to model provisions 18 and 19. An indication of possible qualification criteria is contained in model provision 7.

³⁰³ The policy considerations on the advantages and disadvantages of unsolicited proposals are discussed in chapter III, “Selection of the concessionaire”, paragraphs 98–100, of the *Legislative Guide*. States that wish to allow contracting authorities to handle such proposals may wish to use the procedures set forth in model provisions 21–23.

³⁰⁴ The model provision assumes that the power to entertain unsolicited proposals lies with the contracting authority. However, depending on the regulatory system of the enacting State, a body separate from the contracting authority may have the responsibility for entertaining unsolicited proposals or for considering, for instance, whether an unsolicited proposal is in the public interest. In such a case, the manner in which the functions of such a body may need to be coordinated with those of the contracting authority should be carefully considered by the enacting State (see footnotes 1, 3 and 24 and the references cited therein).

³⁰⁵ The determination that a proposed project is in the public interest entails a considered judgement regarding the potential benefits to the public that are offered by the project, as well as its relationship to the Government’s policy for the infrastructure sector concerned. In order to ensure the integrity, transparency and predictability of the procedures for determining the admissibility of unsolicited proposals, it may be

2. If the project is considered to be potentially in the public interest under paragraph 1, the contracting authority shall invite the proponent to submit as much information on the proposed project as is feasible at this stage to allow the contracting authority to make a proper evaluation of the proponent's qualifications³⁰⁶ and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the contracting authority. For this purpose, the proponent shall submit a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

3. In considering an unsolicited proposal, the contracting authority shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. Therefore, the contracting authority shall not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the contracting authority shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.

Model provision 22. Unsolicited proposals that do not involve intellectual property, trade secrets or other exclusive rights

(see recommendation 33 and chap. III, paras. 113 and 114)

1. Except in the circumstances set forth in model provision 18, the contracting authority shall, if it decides to implement the project, initiate a selection procedure in accordance with model provisions 6 to 17 if the contracting authority considers that:

(a) The envisaged output of the project can be achieved without the use of intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and

(b) The proposed concept or technology is not truly unique or new.

2. The proponent shall be invited to participate in the selection proceedings initiated by the contracting authority pursuant to paragraph 1 and may be given an incentive or a similar benefit in a manner described by the contracting authority in the request for proposals in consideration for the development and submission of the proposal.

Model provision 23. Unsolicited proposals involving intellectual property, trade secrets or other exclusive rights

(see recommendations 34 (for paras. 1 and 2) and 35 (for paras. 3 and 4) and chap. III, paras. 115–117)

1. If the contracting authority determines that the conditions of model provision 22, paragraph 1 (a) and (b), are not met, it shall not be required to carry out a selection procedure pursuant to model provisions 6 to 17. However, the contracting authority may

advisable for the enacting State to provide guidance, in regulations or other documents, concerning the criteria that will be used to determine whether an unsolicited proposal is in the public interest, which may include criteria for assessing the appropriateness of the contractual arrangements and the reasonableness of the proposed allocation of project risks.

³⁰⁶ The enacting State may wish to provide in regulations the qualification criteria that need to be met by the proponent. Elements to be taken into account for that purpose are indicated in model provision 7.

still seek to obtain elements of comparison for the unsolicited proposal in accordance with the provisions set out in paragraphs 2 to 4.³⁰⁷

2. Where the contracting authority intends to obtain elements of comparison for the unsolicited proposal, the contracting authority shall publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit proposals within [a reasonable period] [*the enacting State indicates a certain amount of time*].

3. If no proposals in response to an invitation issued pursuant to paragraph 2 are received within [a reasonable period] [the amount of time specified in paragraph 2 above], the contracting authority may engage in negotiations with the original proponent.

4. If the contracting authority receives proposals in response to an invitation issued pursuant to paragraph 2, the contracting authority shall invite the proponents to negotiations in accordance with the provisions set forth in model provision 19. In the event that the contracting authority receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the contracting authority shall request the submission of proposals pursuant to model provisions 10 to 17, subject to any incentive or other benefit that may be given to the person who submitted the unsolicited proposal in accordance with model provision 22, paragraph 2.

5. Miscellaneous provisions

Model provision 24. Confidentiality

(see recommendation 36 and chap. III, para. 118)

The contracting authority shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders. Any discussions, communications and negotiations between the contracting authority and a bidder pursuant to model provisions 10, paragraph 3, 17, 18, 19 or 23, paragraphs 3 and 4, shall be confidential. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations pursuant to the aforementioned provisions without the consent of the other party.

Model provision 25. Notice of contract award

(see recommendation 37 and chap. III, para. 119)

Except for concession contracts awarded pursuant to model provision 18, subparagraph (c), the contracting authority shall cause a notice of the contract award to be published in accordance with [*the enacting State indicates the provisions of its laws on procurement proceedings that govern the publication of contract award notices*]. The notice shall identify the concessionaire and include a summary of the essential terms of the concession contract.

³⁰⁷ The enacting State may wish to consider adopting a special procedure for handling unsolicited proposals falling under this model provision, which may be modelled, *mutatis mutandis*, on the request-for-proposals procedure set forth in article 48 of the Model Procurement Law.

Model provision 26. Record of selection and award proceedings

(see recommendation 38 and chap. III, paras. 120–126)

The contracting authority shall keep an appropriate record of information pertaining to the selection and award proceedings in accordance with [*the enacting State indicates the provisions of its laws on public procurement that govern record of procurement proceedings*].³⁰⁸

Model provision 27. Review procedures

(see recommendation 39 and chap. III, paras. 127–131)

A bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the contracting authority by the law may seek review of the contracting authority's acts or failures to act in accordance with [*the enacting State indicates the provisions of its laws governing the review of decisions made in procurement proceedings*].³⁰⁹

III. Contents and implementation of the concession contract

Model provision 28. Contents and implementation of the concession contract

(see recommendation 40 and chap. IV, paras. 1–11)

The concession contract shall provide for such matters as the parties deem appropriate,³¹⁰ such as:

(a) The nature and scope of works to be performed and services to be provided by the concessionaire (see chap. IV, para. 1);

(b) The conditions for provision of those services and the extent of exclusivity, if any, of the concessionaire's rights under the concession contract (see recommendation 5);

(c) The assistance that the contracting authority may provide to the concessionaire in obtaining licences and permits to the extent necessary for the implementation of the infrastructure project;

(d) Any requirements relating to the establishment and minimum capital of a legal entity incorporated in accordance with model provision 30 (see recommendations 42 and 43 and model provision 30);

(e) The ownership of assets related to the project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements, in accordance with model provisions 31 to 33 (see recommendations 44 and 45 and model provisions 31 to 33);

³⁰⁸ The content of such a record for the various types of project award contemplated in the model provisions, as well as the extent to which the information contained therein may be accessible to the public, are discussed in chapter III, "Selection of the concessionaire", paragraphs 120–126, of the *Legislative Guide*. The content of such a record for the various types of project award is further set out in article 11 of the Model Procurement Law. If the laws of the enacting State do not adequately address these matters, the enacting State should adopt legislation or regulations to that effect.

³⁰⁹ Elements for the establishment of an adequate review system are discussed in chapter III, "Selection of the concessionaire", paragraphs 127–131, of the *Legislative Guide*. They are also contained in chapter VI of the Model Procurement Law. If the laws of the enacting State do not provide such an adequate review system, the enacting State should consider adopting legislation to that effect.

³¹⁰ Enacting States may wish to note that the inclusion in the concession contract of provisions dealing with some of the matters listed in this model provision is mandatory pursuant to other model provisions.

(f) The remuneration of the concessionaire, whether consisting of tariffs or fees for the use of the facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; and payments, if any, that may be made by the contracting authority or other public authority (*see recommendations 46 and 48*);

(g) Procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority, and the procedures for testing and final inspection, approval and acceptance of the infrastructure facility (*see recommendation 52*);

(h) The extent of the concessionaire's obligations to ensure, as appropriate, the modification of the service so as to meet the actual demand for the service, its continuity and its provision under essentially the same conditions for all users (*see recommendation 53 and model provision 38*);

(i) The contracting authority's or other public authority's right to monitor the works to be performed and services to be provided by the concessionaire and the conditions and extent to which the contracting authority or a regulatory agency may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the infrastructure facility is properly operated and the services are provided in accordance with the applicable legal and contractual requirements (*see recommendations 52 and 54, subpara. (b)*);

(j) The extent of the concessionaire's obligation to provide the contracting authority or a regulatory agency, as appropriate, with reports and other information on its operations (*see recommendation 54, subpara. (a)*);

(k) Mechanisms to deal with additional costs and other consequences that might result from any order issued by the contracting authority or another public authority in connection with subparagraphs (h) and (i) above, including any compensation to which the concessionaire might be entitled (*see chap. IV, paras. 73 to 76*);

(l) Any rights of the contracting authority to review and approve major contracts to be entered into by the concessionaire, in particular with the concessionaire's own shareholders or other affiliated persons (*see recommendation 56*);

(m) Guarantees of performance to be provided and insurance policies to be maintained by the concessionaire in connection with the implementation of the infrastructure project (*see recommendation 58, subparas. (a) and (b)*);

(n) Remedies available in the event of default of either party (*see recommendation 58, subpara. (e)*);

(o) The extent to which either party may be exempt from liability for failure or delay in complying with any obligation under the concession contract owing to circumstances beyond its reasonable control (*see recommendation 58, subpara. (d)*);

(p) The duration of the concession contract and the rights and obligations of the parties upon its expiry or termination (*see recommendation 61*);

(q) The manner for calculating compensation pursuant to model provision 47 (*see recommendation 67*);

(r) The governing law and the mechanisms for the settlement of disputes that may arise between the contracting authority and the concessionaire (*see recommendation 69 and model provisions 29 and 49*);

(s) The rights and obligations of the parties with respect to confidential information (see *model provision 24*).

Model provision 29. Governing law

(see *recommendation 41 and chap. IV, paras. 5–8*)

The concession contract is governed by the law of [*the enacting State*] unless otherwise provided in the concession contract.³¹¹

Model provision 30. Organization of the concessionaire

(see *recommendations 42 and 43 and chap. IV, paras. 12–18*)

The contracting authority may require that the successful bidder establish a legal entity incorporated under the laws of [*the enacting State*], provided that a statement to that effect was made in the pre-selection documents or in the request for proposals, as appropriate. Any requirement relating to the minimum capital of such a legal entity and the procedures for obtaining the approval of the contracting authority to its statute and by-laws and significant changes therein shall be set forth in the concession contract consistent with the terms of the request for proposals.

Model provision 31. Ownership of assets³¹²

(see *recommendation 44 and chap. IV, paras. 20–26*)

The concession contract shall specify, as appropriate, which assets are or shall be public property and which assets are or shall be the private property of the concessionaire. The concession contract shall in particular identify which assets belong to the following categories:

(a) Assets, if any, that the concessionaire is required to return or transfer to the contracting authority or to another entity indicated by the contracting authority in accordance with the terms of the concession contract;

³¹¹ Legal systems provide varying answers to the question as to whether the parties to a concession contract may choose as the governing law of the contract a law other than the laws of the host country. Furthermore, as discussed in the *Legislative Guide* (see chap. IV, “Construction and operation of infrastructure: legislative framework and project agreement”, paras. 5–8), in some countries the concession contract may be subject to administrative law, while in others the concession contract may be governed by private law (see also *Legislative Guide*, chap. VII, “Other relevant areas of law”, paras. 24–27). The governing law also includes legal rules of other fields of law that apply to the various issues that arise during the implementation of an infrastructure project (see generally *Legislative Guide*, chap. VII, “Other relevant areas of law”, sect. B).

³¹² Private sector participation in infrastructure projects may be devised in a variety of different forms, ranging from publicly owned and operated infrastructure to fully privatized projects (see *Legislative Guide*, “Introduction and background information on privately financed infrastructure projects”, paras. 47–53). Those general policy options typically determine the legislative approach for ownership of project-related assets (see *Legislative Guide*, chap. IV, “Construction and operation of infrastructure: legislative framework and project agreement”, paras. 20–26). Irrespective of the host country’s general or sectoral policy, the ownership regime of the various assets involved should be clearly defined and based on sufficient legislative authority. Clarity in this respect is important, as it will directly affect the concessionaire’s ability to create security interests in project assets for the purpose of raising financing for the project (*ibid.*, paras. 52–61). Consistent with the flexible approach taken by various legal systems, the model provision does not contemplate an unqualified transfer of all assets to the contracting authority but allows a distinction between assets that must be transferred to the contracting authority, assets that may be purchased by the contracting authority, at its option, and assets that remain the private property of the concessionaire, upon expiry or termination of the concession contract or at any other time.

(b) Assets, if any, that the contracting authority, at its option, may purchase from the concessionaire; and

(c) Assets, if any, that the concessionaire may retain or dispose of upon expiry or termination of the concession contract.

Model provision 32. Acquisition of rights related to the project site

(see recommendation 45 and chap. IV, paras. 27–29)

1. The contracting authority or other public authority under the terms of the law and the concession contract shall make available to the concessionaire or, as appropriate, shall assist the concessionaire in obtaining such rights related to the project site, including title thereto, as may be necessary for the implementation of the project.

2. Any compulsory acquisition of land that may be required for the implementation of the project shall be carried out in accordance with (*the enacting State indicates the provisions of its laws that govern compulsory acquisition of private property by public authorities for reasons of public interest*).

Model provision 33. Easements³¹³

(see recommendation 45 and chap. IV, para. 30)

Variant A

1. The contracting authority or other public authority under the terms of the law and the concession contract shall make available to the concessionaire or, as appropriate, shall assist the concessionaire to enjoy the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with [*the enacting State indicates the provisions of its laws that govern easements and other similar rights enjoyed by public utility companies and infrastructure operators under its laws*].

Variant B

1. The concessionaire shall have the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with [*the enacting State indicates the provisions of its laws that govern easements and other similar rights enjoyed by public utility companies and infrastructure operators under its laws*].

2. Any easements that may be required for the implementation of the project shall be created in accordance with [*the enacting State indicates the provisions of its laws that govern the creation of easements for reasons of public interest*].

³¹³ The right to transit on or through adjacent property for project-related purposes or to do work on such property may be acquired by the concessionaire directly or may be compulsorily acquired by a public authority simultaneously with the project site. A somewhat different alternative, which is reflected in variant B, might be for the law itself to empower public service providers to enter, pass through or do work or fix installations upon the property of third parties, as required for the construction, operation and maintenance of public infrastructure (see *Legislative Guide*, chap. IV, “Construction and operation of infrastructure: legislative framework and project agreement”, paras. 30–32).

Model provision 34. Financial arrangements

(see recommendations 46, 47 and 48 and chap. IV, paras. 33–51)

1. The concessionaire shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the concession contract, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees [*in accordance with the rules established by the competent regulatory agency*].³¹⁴

2. The contracting authority shall have the power to agree to make direct payments to the concessionaire as a substitute for, or in addition to, tariffs or fees for the use of the facility or its services.

Model provision 35. Security interests

(see recommendation 49 and chap. IV, paras. 52–61)

1. Subject to any restriction that may be contained in the concession contract,³¹⁵ the concessionaire has the right to create security interests over any of its assets, rights or interests, including those relating to the infrastructure project, as required to secure any financing needed for the project, including, in particular, the following:

(a) Security over movable or immovable property owned by the concessionaire or its interests in project assets;

(b) A pledge of the proceeds of, and receivables owed to the concessionaire for, the use of the facility or the services it provides.

2. The shareholders of the concessionaire shall have the right to pledge or create any other security interest in their shares in the concessionaire.

3. No security under paragraph 1 may be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the law of [*the enacting State*].

Model provision 36. Assignment of the concession contract

(see recommendation 50 and chap. IV, paras. 62 and 63)

Except as otherwise provided in model provision 35, the rights and obligations of the concessionaire under the concession contract may not be assigned to third parties without the consent of the contracting authority. The concession contract shall set forth the conditions under which the contracting authority shall give its consent to an assignment of the rights and obligations of the concessionaire under the concession contract, including the acceptance by the new concessionaire of all obligations thereunder and evidence of

³¹⁴ Tolls, fees, prices or other charges accruing to the concessionaire, which are referred to in the *Legislative Guide* as “tariffs”, may be the main (sometimes even the sole) source of revenue to recover the investment made in the project in the absence of subsidies or payments by the contracting authority or other public authorities (see chap. II, “Project risks and government support”, paras. 30–60). The cost at which public services are provided is typically an element of the Government’s infrastructure policy and a matter of immediate concern for large sections of the public. Thus, the regulatory framework for the provision of public services in many countries includes special tariff-control rules. Furthermore, statutory provisions or general rules of law in some legal systems establish parameters for pricing goods or services, for instance by requiring that charges meet certain standards of “reasonableness”, “fairness” or “equity” (see chap. IV, “Construction and operation of infrastructure: legislative framework and project agreement”, paras. 36–46).

³¹⁵ These restrictions may, in particular, concern the enforcement of the rights or interests relating to assets of the infrastructure project.

the new concessionaire's technical and financial capability as necessary for providing the service.

Model provision 37. Transfer of controlling interest³¹⁶ in the concessionaire
(see recommendation 51 and chap. IV, paras. 64–68)

Except as otherwise provided in the concession contract, a controlling interest in the concessionaire may not be transferred to third parties without the consent of the contracting authority. The concession contract shall set forth the conditions under which consent of the contracting authority shall be given.

Model provision 38. Operation of infrastructure

(see recommendation 53 and chap. IV, paras. 80–93 (for para. 1) and recommendation 55 and chap. IV, paras. 96 and 97 (for para. 2))

1. The concession contract shall set forth, as appropriate, the extent of the concessionaire's obligations to ensure:

- (a) The modification of the service so as to meet the demand for the service;
- (b) The continuity of the service;
- (c) The provision of the service under essentially the same conditions for all users;
- (d) The non-discriminatory access, as appropriate, of other service providers to any public infrastructure network operated by the concessionaire.

2. The concessionaire shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the contracting authority or a regulatory body.

Model provision 39. Compensation for specific changes in legislation

(see recommendation 58, subpara. (c), and chap. IV, paras. 122–125)

The concession contract shall set forth the extent to which the concessionaire is entitled to compensation in the event that the cost of the concessionaire's performance of the concession contract has substantially increased or that the value that the concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically applicable to the infrastructure facility or the services it provides.

Model provision 40. Revision of the concession contract

(see recommendation 58, subpara. (c), and chap. IV, paras. 126–130)

1. Without prejudice to model provision 39, the concession contract shall further set forth the extent to which the concessionaire is entitled to a revision of the concession contract with a view to providing compensation in the event that the cost of the concessionaire's performance of the concession contract has substantially increased or that the value that the

³¹⁶ The notion of "controlling interest" generally refers to the power to appoint the management of a corporation and influence or determine its business. Different criteria may be used in various legal systems or even in different bodies of law within the same legal system, ranging from formal criteria attributing a controlling interest to the ownership of a certain amount (typically more than 50 per cent) of the total combined voting power of all classes of stock of a corporation to more complex criteria that take into account the actual management structure of a corporation. Enacting States that do not have a statutory definition of "controlling interest" may need to define the term in regulations issued to implement the model provision.

concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of:

- (a) Changes in economic or financial conditions; or
 - (b) Changes in legislation or regulations not specifically applicable to the infrastructure facility or the services it provides;
- provided that the economic, financial, legislative or regulatory changes:
- (a) Occur after the conclusion of the contract;
 - (b) Are beyond the control of the concessionaire; and
 - (c) Are of such a nature that the concessionaire could not reasonably be expected to have taken them into account at the time the concession contract was negotiated or to have avoided or overcome their consequences.

2. The concession contract shall establish procedures for revising the terms of the concession contract following the occurrence of any such changes.

Model provision 41. Takeover of an infrastructure project by the contracting authority
(see *recommendation 59 and chap. IV, paras. 143–146*)

Under the circumstances set forth in the concession contract, the contracting authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the concessionaire to perform its obligations and to rectify the breach within a reasonable period of time after having been given notice by the contracting authority to do so.

Model provision 42. Substitution of the concessionaire
(see *recommendation 60 and chap. IV, paras. 147–150*)

The contracting authority may agree with the entities extending financing for an infrastructure project and the concessionaire to provide for the substitution of the concessionaire by a new entity or person appointed to perform under the existing concession contract upon serious breach by the concessionaire or other events that could otherwise justify the termination of the concession contract or other similar circumstances.³¹⁷

IV. Duration, extension and termination of the concession contract

1. Duration and extension of the concession contract

Model provision 43. Duration and extension of the concession contract
(see *recommendation 62 and chap. V, paras. 2–8*)

The duration of the concession shall be set forth in the concession contract. The contracting authority may not agree to extend its duration except as a result of the following circumstances:

³¹⁷ The substitution of the concessionaire by another entity, proposed by the lenders and accepted by the contracting authority under the terms agreed by them, is intended to give the parties an opportunity to avert the disruptive consequences of termination of the concession contract (see *Legislative Guide*, chap. IV, “Construction and operation of infrastructure: legislative framework and project agreement”, paras. 147–150). The parties may wish first to resort to other practical measures, possibly in a successive fashion, such as temporary takeover of the project by the lenders or by a temporary administrator appointed by them, or enforcement of the lenders’ security over the shares of the concessionaire company by selling those shares to a third party acceptable to the contracting authority.

(a) Completion delay or interruption of operation due to circumstances beyond either party's reasonable control;

(b) Project suspension brought about by acts of the contracting authority or other public authorities;

(c) Increase in costs arising from requirements of the contracting authority not originally foreseen in the concession contract, if the concessionaire would not be able to recover such costs without such extension; or

(d) [*Other circumstances, as specified by the enacting State*].³¹⁸

2. Termination of the concession contract

Model provision 44. Termination of the concession contract by the contracting authority (*see recommendation 63 and chap. V, paras. 14–27*)

The contracting authority may terminate the concession contract:

(a) In the event that it can no longer be reasonably expected that the concessionaire will be able or willing to perform its obligations, owing to insolvency, serious breach or otherwise;

(b) For compelling³¹⁹ reasons of public interest, subject to payment of compensation to the concessionaire, the terms of the compensation to be as agreed in the concession contract;

(c) [*Other circumstances that the enacting State might wish to add in the law*].

Model provision 45. Termination of the concession contract by the concessionaire (*see recommendation 64 and chap. V, paras. 28–33*)

The concessionaire may not terminate the concession contract except under the following circumstances:

(a) In the event of serious breach by the contracting authority or other public authority of their obligations in connection with the concession contract;

(b) If the conditions for a revision of the concession contract under model provision 40, paragraph 1, are met, but the parties have failed to agree on a revision of the concession contract; or

(c) If the cost of the concessionaire's performance of the concession contract has substantially increased or the value that the concessionaire receives for such performance has substantially diminished as a result of acts or omissions of the contracting authority or other public authorities, such as those referred to in model provision 28, subparagraphs (h) and (i), and the parties have failed to agree on a revision of the concession contract.

³¹⁸ The enacting State may wish to consider the possibility for the law to authorize a consensual extension of the concession contract pursuant to its terms, for reasons of public interest, as justified in the record to be kept by the contracting authority pursuant to model provision 26.

³¹⁹ Possible situations of a compelling reason of public interest are discussed in chapter V, "Duration, extension and termination of the project agreement", paragraph 27, of the *Legislative Guide*.

Model provision 46. Termination of the concession contract by either party
(see recommendation 65 and chap. V, paras. 34 and 35)

Either party shall have the right to terminate the concession contract in the event that the performance of its obligations is rendered impossible by circumstances beyond either party's reasonable control. The parties shall also have the right to terminate the concession contract by mutual consent.

3. Arrangements upon termination or expiry of the concession contract

Model provision 47. Compensation upon termination of the concession contract
(see recommendation 67 and chap. V, paras. 43–49)

The concession contract shall stipulate how compensation due to either party is calculated in the event of termination of the concession contract, providing, where appropriate, for compensation for the fair value of works performed under the concession contract, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

Model provision 48. Wind-up and transfer measures

(see recommendation 66 and chap. V, paras. 37–42 (for subpara. (a)) and recommendation 68 and chap. V, paras. 50–62 (for subparas. (b)-(d))

The concession contract shall provide, as appropriate, for:

- (a) Mechanisms and procedures for the transfer of assets to the contracting authority;
- (b) The compensation to which the concessionaire may be entitled in respect of assets transferred to the contracting authority or to a new concessionaire or purchased by the contracting authority;
- (c) The transfer of technology required for the operation of the facility;
- (d) The training of the contracting authority's personnel or of a successor concessionaire in the operation and maintenance of the facility;
- (e) The provision, by the concessionaire, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the contracting authority or to a successor concessionaire.

V. Settlement of disputes

Model provision 49. Disputes between the contracting authority and the concessionaire
(see recommendation 69 and chap. VI, paras. 3–41)

Any disputes between the contracting authority and the concessionaire shall be settled through the dispute settlement mechanisms agreed by the parties in the concession contract.³²⁰

³²⁰ The enacting State may provide in its legislation dispute settlement mechanisms that are best suited to the needs of privately financed infrastructure projects.

Model provision 50. Disputes involving customers or users of the infrastructure facility
(see recommendation 71 and chap. VI, paras. 43–45)

Where the concessionaire provides services to the public or operates infrastructure facilities accessible to the public, the contracting authority may require the concessionaire to establish simplified and efficient mechanisms for handling claims submitted by its customers or users of the infrastructure facility.

Model provision 51. Other disputes
(see recommendation 70 and chap. VI, para. 42)

1. The concessionaire and its shareholders shall be free to choose the appropriate mechanisms for settling disputes among themselves.

2. The concessionaire shall be free to agree on the appropriate mechanisms for settling disputes between itself and its lenders, contractors, suppliers and other business partners.

8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE AND AD HOC BODIES OF THE GENERAL ASSEMBLY

In addition to the matters concerning the International Law Commission and international trade law, discussed in the sections above, the Sixth Committee also considered additional items and submitted its recommendations thereon to the General Assembly at its fifty-eighth session. On 9 and 23 December 2003,³²¹ the General Assembly adopted, without a vote, 16 resolutions³²² and 2 decisions.

(a) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Sixth Committee

The Sixth Committee considered this item at its 21st meeting, held on 4 November 2003.³²³

Consideration by the General Assembly

In its resolution 58/73, the General Assembly, taking note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law³²⁴ and the guidelines and recommendations on future implementation of the Programme which were adopted by the Advisory Committee on the Programme and contained in Section III of the report, approved the guidelines and recommendations contained in section III of the report and authorized the Secretary-General to carry out

³²¹ General Assembly resolution 58/248 was adopted on 23 December 2003; all the other resolutions and the two decisions were adopted on 9 December 2003.

³²² Including the two resolutions under the agenda item on UNCITRAL and the one adopted in relation to the ILC.

³²³ A/C.6/58/SR.21. See also the report of the Sixth Committee, A/58/511.

³²⁴ A/58/446.

in 2004 and 2005 the activities specified in his report. The General Assembly decided to appoint twenty-five Member States, six from Africa, five from Asia, three from Eastern Europe, five from Latin America and the Caribbean and six from Western Europe and other States, as members of the Advisory Committee on the United Nations Programme of Assistance, for a period of four years beginning on 1 January 2004.³²⁵

(b) Convention on jurisdictional immunities of States and their property

*Ad Hoc Committee on Jurisdictional Immunities
of States and Their Property*

Pursuant to General Assembly resolution 57/16 of 19 November 2002, the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property reconvened, at Headquarters, from 24 to 28 February 2003 in order to make a final attempt at consolidating areas of agreement and resolving outstanding issues, with a view to elaborating a generally acceptable instrument based on the draft articles adopted by the International Law Commission at its forty-third session³²⁶ and also on the discussions of the open-ended working group of the Sixth Committee and the Ad Hoc Committee and their results,³²⁷ as well as to recommend a form for the instrument.

At its 6th plenary meeting, on 28 February 2003, the Ad Hoc Committee adopted its report containing the text of the draft articles on jurisdictional immunities of States and their property³²⁸ (annex I), together with understandings with regard to some of the provisions of the draft articles (annex II). At the same meeting, the Ad Hoc Committee decided to recommend that the General Assembly take a decision on the form of the draft articles. It also stated that, if and when the General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject.

Sixth Committee

The Sixth Committee considered this item at its 12th, 13th, 20th and 21st meetings, held on 21 and 23 October and 3 and 4 November 2003, respectively.³²⁹

³²⁵ The following States have been appointed members of the Advisory Committee on the Programme: Canada, Colombia, Cyprus, the Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, the Russian Federation, the Sudan, Trinidad and Tobago, Ukraine, the United Republic of Tanzania, the United States of America and Uruguay.

³²⁶ Yearbook of the International Law Commission, 1991, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), document A/46/10, chap. II, para. 28.

³²⁷ See A/C.6/54/L.12 and A/C.6/55/L.12. See also *Official Records of the General Assembly, Fifty-fourth Session, Sixth Committee*, 30th meeting (A/C.6/54/SR.30), and corrigendum; *ibid.*, *Fifty-fifth Session, Sixth Committee*, 30th and 31st meetings (A/C.6/55/SR.30 and 31), and corrigendum; *ibid.*, *Fifty-seventh Session, Supplement No. 22 (A/57/22)*; and *ibid.*, *Fifty-seventh Session, Sixth Committee*, 18th and 19th meetings (A/C.6/57/SR.18 and 19).

³²⁸ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22 (A/58/22)*.

³²⁹ A/C.6/58/SR.12, 13, 20 and 21. See also the report of the Sixth Committee, A/58/512.

Consideration by the General Assembly

The General Assembly, by its resolution 58/74, stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, decided that the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property should be reconvened, with the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property, which would contain the results already adopted by the Ad Hoc Committee. It also requested the Ad Hoc Committee to report to the General Assembly at its fifty-ninth session on the outcome of its work.

(c) Report of the Committee on Relations with the Host Country

Sixth Committee

The Sixth Committee considered this item at its 22nd meeting, held on 5 November 2003.³³⁰

Consideration by the General Assembly

In its resolution 58/78, the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 52 of its report³³¹ and considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities, which is an issue of great importance, are in the interest of the United Nations and all Member States, and requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions. By the same resolution, the General Assembly welcomed the decision of the Committee to conduct a detailed review of the implementation of the Parking Programme for Diplomatic Vehicles,³³² as recommended by the Legal Counsel in his opinion on 24 September 2002,³³³ with a view to addressing the problems experienced by some permanent missions during the first year of the Programme, and ensuring its proper implementation in a manner that is fair, non-discriminatory, effective and consistent with international law.

(d) International Criminal Court

Sixth Committee

The Sixth Committee considered this item at its 9th, 10th, 12th and 13th meetings, held on 20, 21 and 23 October 2003, respectively.³³⁴

³³⁰ A/C.6/58/SR.22. See also the report of the Sixth Committee, A/58/515.

³³¹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 26 (A/58/26)*.

³³² A/AC.154/355, annex.

³³³ A/AC.154/358, annex.

³³⁴ A/C.6/58/SR.9, 10, 12 and 13. See also the report of the Sixth Committee, A/58/516.

Consideration by the General Assembly

With the adoption of resolution 58/79, the General Assembly called upon all States that were not yet parties to the Rome Statute of the International Criminal Court, 1998,³³⁵ to consider ratifying it or acceding to it without delay, and encouraged efforts aimed at promoting awareness of the results of the Rome Conference,³³⁶ the provisions of the Statute and the process leading to the establishment of the International Criminal Court. It further called upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court, 2002,³³⁷ without delay. The General Assembly also took note of the establishment of the Special Working Group on the Crime of Aggression by the Assembly of States Parties to the Rome Statute and of the Permanent Secretariat of the Assembly of States Parties. By the same resolution, the General Assembly recognized the need for an orderly and smooth transition of work from the Secretariat of the United Nations to the secretariat of the Assembly of States Parties and invited the Secretary-General to take steps to conclude a relationship agreement between the United Nations and the International Criminal Court and to submit the negotiated draft agreement to the General Assembly for approval.

(e) Report of the Special Committee on the Charter of the United Nations
and on the Strengthening of the Role of the Organization

*Special Committee on the Charter of the United Nations and on
the Strengthening of the Role of the Organization*

Pursuant to General Assembly resolution 57/24 of 19 November 2002, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met, at Headquarters, from 7 to 16 April to continue to consider: all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations; the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter; proposals concerning the Trusteeship Council; ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. In addition, the Special Committee was also invited to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations and to keep on its agenda the question of the peaceful settlement of disputes between States.³³⁸

At its 244th meeting, on 16 April 2003, the Special Committee made recommendations to the General Assembly with regard to the items relating to the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and to the *Repertory*

³³⁵ United Nations *Treaty Series*, vol. 2187, p. 3.

³³⁶ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998.

³³⁷ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.E.

³³⁸ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33 (A/58/33)*.

*of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council.*³³⁹

Sixth Committee

The Sixth Committee considered this item at its 4th, 5th, 13th, 14th and 23rd meetings, held on 9, 10, 23 and 27 October and 6 November 2003, respectively.³⁴⁰

Consideration by the General Assembly

On 23 December 2003, by resolution 58/248, the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization³⁴¹ and requested the Committee to continue its consideration: of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations; the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter; proposals concerning the Trusteeship Council; and ways and means of improving its working methods and enhancing its efficiency. It also invited the Committee to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations and to keep on its agenda the question of the peaceful settlement of disputes between States. By the same resolution, the General Assembly encouraged the Secretary-General in his continuous efforts to eliminate the backlog in the publication of the *Repertory of Practice of United Nations Organs* and of the *Repertoire of the Practice of the Security Council*, including by exploring options involving cooperation with academic institutions as a means to achieve this aim without prejudice to the continuation of their timely publication. It further commended the Secretary-General for his initiative to make *Repertory* studies available on the Internet and requested him to make every effort towards making available electronically all versions of the *Repertory of Practice of United Nations Organs* as early as possible.

Under the same agenda item, "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", the General Assembly adopted resolution 58/80, entitled "Implementation of the provisions of the Charter of the United Nations related to the assistance to third States affected by the application of sanctions". By said resolution, the General Assembly renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance. It also took note of the most recent report of the Secretary-General on this question³⁴² and

³³⁹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33 (A/58/33)*, para. 14.

³⁴⁰ A/C.6/58/SR.4, 5, 13, 14 and 23. See also the report of the Sixth Committee, A/58/517.

³⁴¹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 33 (A/58/33)*.

³⁴² A/58/346.

requested him to pursue the implementation of resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157 and 56/87 and to ensure that the competent units within the Secretariat develop adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by third States and to explore innovative and practical measures of assistance to the affected third States.

(f) Measures to eliminate international terrorism

*Ad Hoc Committee established by General Assembly
resolution 51/210 of 17 December 1996*

The seventh session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 17 and 18 of General Assembly resolution 57/27 of 19 November 2002, and met at Headquarters from 31 March to 2 April 2003. Pursuant to resolution 57/27, the Committee was requested to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. At its 29th meeting, on 2 April 2003, the Ad Hoc Committee, bearing in mind General Assembly resolution 57/27, decided to recommend that the Sixth Committee, at the fifty-eighth session of the General Assembly, consider establishing a working group, if appropriate, to continue its work.³⁴³

Sixth Committee

During the fifty-eighth session of the General Assembly, the Sixth Committee, at its 2nd meeting, on 6 October 2003, established a Working Group to continue the work of the Ad Hoc Committee. The Working Group held three meetings on 6, 8 and 10 October.³⁴⁴ At its 3rd meeting, the Working Group decided to refer the consideration of its report to the Sixth Committee and, bearing in mind General Assembly resolution 57/27, to recommend to the Sixth Committee that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

The Sixth Committee considered this item at its 6th to 9th and 20th to 22nd meetings, held on 15, 17 and 20 October and 3 to 5 November 2003, respectively.³⁴⁵

³⁴³ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37 (A/58/37), para. 16.*

³⁴⁴ For the report of the Working Group, see A/C.6/58/L.10.

³⁴⁵ A/C.6/58/SR.6–9 and 20–22. See also the report of the Sixth Committee, A/58/518.

Consideration by the General Assembly

With the adoption of resolution 58/81 on measures to eliminate international terrorism, the General Assembly, having examined the report of the Secretary-General,³⁴⁶ the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996³⁴⁷ and the report of the Working Group of the Sixth Committee established pursuant to resolution 57/27,³⁴⁸ condemned all acts and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed. It also reiterated that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them and called upon all States to adopt further measures in accordance with the Charter of the United Nations and the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen cooperation in combating terrorism. By the same resolution, the General Assembly urged all States that had not yet done so to consider, as a matter of priority, and in accordance with Security Council resolution 1373 (2001), becoming parties to the relevant conventions and protocols and to enact, as appropriate, the domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional institutions to that end. It also decided to reconvene the Ad Hoc Committee to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, and that the work should continue, if necessary, during the fifty-ninth session of the General Assembly, within the framework of a working group of the Sixth Committee.

(g) Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Ad Hoc Committee on the Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Pursuant to paragraph 8 of General Assembly resolution 57/28 of 19 November 2002, the Ad Hoc Committee on the Scope of Legal Protection Under the Convention on the Safety of United Nations and Associated Personnel was reconvened, at Headquarters, from 24 to 28 March 2003, to continue the discussion on measures to enhance the existing protective legal regime for United Nations and associated personnel, including addressing the application of the Convention on the Safety of United Nations and Associated Personnel,

³⁴⁶ A/58/116 and Add.1.

³⁴⁷ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37 (A/58/37)*.

³⁴⁸ A/C.6/58/L.10.

1994,³⁴⁹ to all United Nations operations, taking into account the report of the Secretary-General³⁵⁰ and the previous discussions in the Ad Hoc Committee.

At its 4th plenary meeting, on 28 March 2003, the Ad Hoc Committee recommended that the General Assembly: (a) renew its mandate for 2004; and (b) request the Secretary-General to provide a report, in advance or at the beginning of the next session of the Ad Hoc Committee elaborating on his report on the implementation of the short-term measures agreed in General Assembly resolution 57/28, as well as on any measures undertaken on his own initiative to achieve the goals of the Convention, taking into account the discussion in the Ad Hoc Committee as reflected in its present report and including an assessment of the overall effectiveness of such measures.³⁵¹

Sixth Committee

During the fifty-eighth session of the General Assembly, the Sixth Committee, at its 1st meeting, on 29 September 2003, established a working group in order to continue the work of the Ad Hoc Committee. The Working Group held two meetings and a number of informal consultations from 13 to 17 October 2003 and recommended that the Ad Hoc Committee be reconvened with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, including, *inter alia*, by means of a legal instrument.³⁵²

The Sixth Committee considered this item at its 13th, 20th and 21st meetings, held on 23 October and 3 and 4 November 2003, respectively.³⁵³

Consideration by the General Assembly

The General Assembly, by its resolution 58/82, recalled the report of the Secretary-General³⁵⁴ on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, and the recommendations contained therein, and the further report of the Secretary-General³⁵⁵ on this issue. Furthermore, having considered the report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel,³⁵⁶ and the report of the Working Group of the Sixth Committee,³⁵⁷ it urged States to take all necessary measures, in accordance with their international obligations, to prevent crimes against United Nations and associated personnel from occurring and that States ensure that such crimes do not go unpunished and that the perpetrators are brought to justice. It also called upon all States to consider becoming parties to and to respect fully their obligations under the relevant international instruments, in particular the Convention on the Safety of United Nations and Associated Personnel, 1994. Furthermore, the General Assembly recommended that

³⁴⁹ United Nations *Treaty Series*, vol. 2051, p. 363.

³⁵⁰ A/55/637.

³⁵¹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 52 (A/58/52)*, para. 44.

³⁵² A/C.6/58/L.16 and Corr.1.

³⁵³ A/C.6/58/SR.13, 20 and 21. See also the report of the Sixth Committee, A/58/519.

³⁵⁴ A/55/637.

³⁵⁵ A/58/187.

³⁵⁶ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 52 (A/58/52)*.

³⁵⁷ A/C.6/58/L.16 and Corr.1.

the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention, including those regarding the prevention of attacks against members of the operation, the establishment of such attacks as crimes punishable by law and prosecution or extradition of offenders, in future as well as, if necessary, existing status-of-forces, status-of-mission and host country agreements negotiated between the United Nations and those countries, mindful of the importance of the timely conclusion of such agreements. By the same resolution, the General Assembly also recommended that, consistent with his existing authority, the Secretary-General advise the Security Council or the General Assembly, as appropriate, where in his assessment circumstances would support a declaration of exceptional risk for the purpose of article 1 (c) (ii) of the Convention. It also noted that he had prepared a standardized provision for incorporation into the agreements concluded between the United Nations and humanitarian non-governmental organizations or agencies for the purpose of clarifying the application of the Convention to persons deployed by those organizations or agencies. Moreover, the General Assembly also decided to reconvene the Ad Hoc Committee on the Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, established under resolution 56/89 of 12 December 2001, with a mandate to expand the scope of legal protection under the Convention, including, *inter alia*, by means of a legal instrument and that work should continue during the fifty-ninth session of the General Assembly within the framework of a working group of the Sixth Committee.

(h) Observer status in the General Assembly for: the International Institute for Democracy and Electoral Assistance, the Eurasian Economic Community, the GUUAM and the East African Community

Sixth Committee

The Sixth Committee considered these four agenda items at its 2nd and 4th meetings, held on 6 and 9 October 2003, respectively.³⁵⁸

Consideration by the General Assembly

With the adoption of resolutions 58/83, 58/84, 58/85 and 58/86, the General Assembly granted observer status in the General Assembly to the following four organizations, respectively: the International Institute for Democracy and Electoral Assistance, the Eurasian Economic Community, the GUUAM and the East African Community.

(i) Administration of justice at the United Nations

Sixth Committee

The Sixth Committee considered this item at its 9th and 12th meetings, held on 20 and 21 October, respectively.³⁵⁹

³⁵⁸ A/C.6/58/SR.2 and 4. See also the reports of the Sixth Committee on these items, A/58/522, A/58/523, A/58/524 and A/58/525, respectively.

³⁵⁹ A/C.6/58/SR.9 and 12. See also the report of the Sixth Committee, A/58/521.

Consideration by the General Assembly

The General Assembly, by its resolution 58/87, desiring to assist the United Nations Administrative Tribunal in carrying out its future work as effectively as possible, decided to amend article 3, paragraph 1, of the Statute of the Tribunal with effect from 1 January 2004, to read as follows:

“The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member’s national jurisdiction. Only three members shall sit in any particular case.”

- (j) Progressive development of principles and norms of international law relating to the new international economic order

Sixth Committee

The Sixth Committee considered this item at its 4th and 21st meeting, held on 9 October and 4 November 2003.³⁶⁰

Consideration by the General Assembly

The General Assembly adopted decision 58/522, under the agenda item “Progressive development of principles and norms of international law relating to the new international economic order”, in which it took note of the consideration of the agenda item and noted that the item could be considered in the future.

- (k) International convention against the reproductive cloning of human beings

Sixth Committee

At the fifty-eighth session, the Sixth Committee, at its 1st meeting, on 29 September 2003, pursuant to General Assembly decision 57/512, convened a working group to continue the work undertaken during the fifty-seventh session to consider the elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings, including a list of the existing international instruments to be taken into consideration and a list of legal issues to be addressed in the convention. The Working Group held five meetings from 29 September to 3 October 2003. At its 5th meeting, on 3 October, the Working Group decided to refer its report to the Sixth Committee for consideration and recommended that the Committee continue the consideration of the elaboration of a negotiation mandate during the current session, taking into account the discussions in the Working Group.³⁶¹

The Sixth Committee considered this item at its 10th to 12th, 19th and 23rd meetings, held on 20, 21 and 31 October and 6 November 2003, respectively.³⁶² During the debate, at its 23rd meeting, on 6 November, the representative of the Islamic Republic of Iran, on

³⁶⁰ A/C.6/58/SR.4 and 21. See also the report of the Sixth Committee, A/58/510.

³⁶¹ For the report of the Working Group, see A/C.6/58/L.9, para. 11.

³⁶² A/C.6/58/SR.10–12, 19 and 23. See also the report of the Sixth Committee, A/58/520.

behalf of the States members of the Organization of the Islamic Conference, moved, in accordance with rule 116 of the Rules of Procedure of the General Assembly, to adjourn the debate on the item under discussion until the sixtieth session of the General Assembly (see A/C.6/58/SR.23). At the same meeting, the motion to adjourn the debate on the item until the sixtieth session was carried by a recorded vote of 80 votes to 79, with 15 abstentions. Accordingly, the Sixth Committee recommended to the General Assembly that the item entitled “International convention against the reproductive cloning of human beings” be included in the provisional agenda of the sixtieth session of the General Assembly. No action was therefore taken on other proposals before the Committee.

Consideration by the General Assembly

With the adoption of decision 58/523, the General Assembly, in connection with the consideration of the report of the Sixth Committee,³⁶³ decided that the item entitled “International convention against the reproductive cloning of human beings” would be included in the provisional agenda of its fifty-ninth session. In doing so, it decided not to take action on the recommendation of the Sixth Committee, nor on a proposal submitted by Costa Rica in the plenary of the Assembly, contained in document A/58/L.37. No provision was made for meeting of the Ad Hoc Committee or the Working Group of the Sixth Committee in 2003.

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

The United Nations Institute for Training and Research (UNITAR) provided various training programmes and capacity-building activities in two main fields: management of international affairs and economic and social development.³⁶⁴ The first category included training programmes in multilateral diplomacy and international affairs management, peacekeeping and preventive diplomacy, international law, environmental law and a programme of Correspondence Instruction in Peacekeeping Operations. The second category included projects of capacity-building for sustainable development and programmes in the areas of chemicals and waste management, climate change, legal aspects of debt, financial management and negotiations and international trade. In 2003, under these programmes, individual courses included workshops on “Multilateral conference diplomacy and negotiation” (the Sudan), “Multilateral negotiation and diplomatic report writing” (Serbia and Montenegro), “International negotiation and mediation” (Sierra Leone) and training series in “International courts and tribunal”, “Principles in international environmental law” and “International trade law, trade dispute settlement and commercial arbitration” (Geneva). Other activities included several regional workshops on legal aspects of debt, financial management and negotiation, symposiums on issues related to the World Trade Organization, projects and workshops on chemical and waste management and climate change and activities related to the building of a legal framework for the information society.

³⁶³ A/58/520.

³⁶⁴ For detailed information, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 14 (A/59/14)*. See also the Report of the Secretary-General (A/58/183).

In 2003, the UNITAR Hiroshima Office for Asia and the Pacific (HOAP) was officially established and is mandated to provide training to government officials, scholars and members of civil society in the region.

Consideration by the General Assembly

At its fifty-eighth session, the General Assembly adopted, on the recommendation of the Second Committee, on 23 December 2003, without a vote, resolution 58/223 on “United Nations Institute for Training and Research”. The General Assembly took note of the report of the Secretary-General,³⁶⁵ reaffirmed the relevance of the Institute in view of the growing importance of training within the United Nations and the training requirements of States and the relevance of training-related research activities undertaken by the Institute within its mandate and welcomed the establishment of the Institute’s Hiroshima Office for Asia and the Pacific. It also requested the Board of Trustees of the Institute to continue to ensure fair and equitable geographical distribution and transparency in the preparation of the programmes and in the employment of experts and stressed that the courses should focus primarily on development issues and the management of international affairs and renewed its appeal to all governments, in particular those of developed countries, and to private institutions that had not yet contributed financially or otherwise to the Institute, to give it their generous financial and other support, and urged States that had interrupted their voluntary contributions to consider resuming them in view of the successful restructuring and revitalization of the Institute.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) Constitutional and procedural questions

Membership of the Organization

Timor-Leste became Member State of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 5 June 2003 and the United States resumed its membership with effect from 1 October 2003.

(b) International regulations

Entry into force of previously adopted instruments

During the period under review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

³⁶⁵ A/58/183.

*Instruments adopted by the General Conference of UNESCO at its 32nd session
(Paris, 29 September to 17 October 2003)*

1. Conventions and Agreements

Convention for the Safeguarding of the Intangible Cultural Heritage,³⁶⁶ adopted by the General Conference on 17 October 2003.

2. Recommendations

Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace,³⁶⁷ adopted by the General Conference on 15 October 2003.

3. Declarations

The following declarations were adopted in 2003:

Charter on the Preservation of Digital Heritage,³⁶⁸ adopted by the General Conference on 15 October 2003;

International Declaration on Human Genetic Data,³⁶⁹ adopted by the General Conference on 16 October 2003;

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage,³⁷⁰ adopted by the General Conference on 17 October 2003.

The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on UNESCO's website (www.unesco.org).

Proposals concerning the preparation of new instruments

1. Combating doping in sport

Having taking note of the report submitted by the Secretariat on the follow-up to the Round Table of Ministers and Senior Officials responsible for Physical Education and Sport (Paris, 9–10 January 2003), the General Conference decided that the question of combating doping in sport should be regulated by means of an international convention. The General Conference invited the Director-General to submit to it at its 33rd session a final report on the question, and a draft convention (32 C/Resolution 9).

2. Bioethics

Having examined the question of the possibility of elaborating universal norms on bioethics, the General Conference invited the Director-General to continue preparatory work on a declaration on universal norms on bioethics and to submit a draft declaration to it at its 33rd session (32 C/Resolution 24).

³⁶⁶ Doc. 32 C/26, annex III.

³⁶⁷ Doc. 32 C/75, annex I.

³⁶⁸ Doc. 32 C/28.

³⁶⁹ Doc. 32 C/73, annex.

³⁷⁰ Doc. 32 C/25.

3. Cultural diversity

The General Conference, having examined the question of the desirability of drawing up an international setting-instrument on cultural diversity, decided that the question of cultural diversity as regards the protection of the diversity of cultural contents and artistic expressions should be subject of an international convention. The General Conference invited the Director-General to submit to the General Conference at its 33rd session, a preliminary report setting out the situation to be regulated and the possible scope of the regulating action proposed, accompanied by the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions (32 C/Resolution 34).

(c) Examination of cases and questions concerning the exercise of human rights within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 1 to 3 April and from 10 to 12 September 2003 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its April 2003 session, the Committee examined 21 communications of which four were examined with a view to determining their admissibility or otherwise, nine were examined as to their substance, and eight were examined for the first time. One communication was declared inadmissible and three were removed from the list because they were considered as having been settled or did not, after examining their merits, appear to warrant further action. The examination of the remaining 17 communications was deferred. The Committee presented its report to the Executive Board at its 166th session.

At its September 2003 session, the Committee examined 22 communications of which nine were examined with a view to determining their admissibility, eight were examined as to their substance and five new communications were submitted to the Committee. One communication was removed from the list because it was considered as having been settled. The examination of the remaining 21 was deferred. The Committee presented its report to the Executive Board at its 167th session.

(d) Copyright activities

In 2003, UNESCO's activities in the field of copyright and related rights concentrated mainly on the following activities.

Information and public awareness activities

UNESCO ensures the permanent updating of its copyright web page at: <http://www.unesco.org/culture/copyright>.

e. Copyright Bulletin

UNESCO publishes an electronic version of its Copyright Bulletin (in Chinese, English, French and Spanish), as well as printed versions (quarterly, in Chinese and Russian). The Copyright Bulletin contains theoretical doctrines, articles, information on national laws

(new laws, revisions, updating), and information about UNESCO's activities in the field, (meetings reports, resumes of undertaken actions, etc.) participation of States in various conventions and new specialized books recently published in the world. During 2003 the e.Copyright Bulletin was mainly dedicated to the study of the nature and scope of limitations and exceptions to copyright and related rights with regard to general interest missions for the transmission of knowledge, problems of access to information and knowledge in the digital environment, and the challenges of collective management.

Arab version of the UNESCO basic Manual on copyright and neighbouring rights

UNESCO's basic Manual on copyright and neighbouring rights has been translated into Arabic and published by "King Faisal Centre for Research and Islamic Studies". The Manual is intended for specialists and students alike who deal with problems of copyright and neighbouring rights. This exhaustive tool will give to the Arab world a very real grasp of the law while helping specialists to be up to date and better equipt to tackle the more sensitive aspects of artistic production and activities of cultural life.

Supplement of the UNESCO basic Manual on copyright and neighbouring rights

With UNESCO's support, a supplement of the manual "Copyright and neighbouring rights" has been elaborated by Professor Delia Liszyc. This updated work, entitled "New items on copyright and related rights", covers all the challenges of digital technology that copyright has faced these last ten years and the legal and jurisprudential response to such challenges at international, regional and national levels. The book should be published in 2004.

Collection of National Copyright Laws

The new version of the Collection of National Copyright Laws in the World, comprising about 100 national copyright and related rights legislation of UNESCO Member States has been published online. This unique tool, essential for professionals, students and researchers, endeavours to provide access to legal texts and is constantly being updated and completed.

Training and teaching activities

The teaching of copyright has been pursued by UNESCO Copyright Chairs. UNESCO has also organized training courses and cooperated with other organizations to publish jurisprudence.

Studies and analyses

The global study on the exceptions and limitations to copyright protection in the digital era, particularly in the field of scientific research, education and culture undertaken by UNESCO in the light of the ever-evolving digital environment, was finalised in 2003.

UNESCO has further undertaken a survey on the economic and legal environment of music and artistic production in Palestine, with the aim of making a diagnosis to promote and strengthen copyright (offer legal assistance in the elaboration of a copyright law, support in training specialists and in building collective management infrastructures).

2. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) Conventions and agreements

On 4 November 2003, the Convention for the Unification of Certain Rules for International Carriage by Air,³⁷¹ done at Montreal on 28 May 1999, entered into force, having been ratified by 30 States. By the end of the year, the Convention had 34 parties.

(b) Other major legal developments

Work programme of the Legal Committee and legal meetings

Pursuant to a decision of the 170th Session of the Council, the General Work Programme of the Legal Committee was confirmed as follows:

- 1) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), of the establishment of a legal framework;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments; and
- 6) United Nations Convention on the Law of the Sea, 1982,—Implications, if any, for the application of the Convention on International Civil Aviation, 1944, its annexes and other international air law instruments.

Settlement of differences

Regarding the settlement of differences between the United States and 15 European States (2000) relating to the European “Hushkits” Regulation No. 925/1999, the President of the Council continued to act as Conciliator, with the consent of the Parties, and further negotiations led to a settlement. Under the settlement, the relevant parts of the Belgian Royal Decree of 14 April 2002, which in the view of the United States had re-enacted certain features of the “Hushkits” Regulation, were declared to be obsolete. The settlement was presented to the Council during its 170th Session and the Council recorded the solution agreed between the Parties, namely the discontinuance of the proceedings.

³⁷¹ United Nations *Treaty Series*, vol. 2242, p. 309.

Assistance in the field of aviation war risk insurance

Pursuant to its decision on 27 May 2002 to approve in principle the recommendation of the Special Group on Aviation War Risk Insurance (SGWI) for the establishment of a global aviation war risk insurance scheme ("Globaltime"), the Council tasked the Council Group on Aviation War Risk Insurance (CGWI) to work with the secretariat (LEB) to consider proposals for finalization of the Participation Agreement. The Group held 2 meetings: CGWI/73 (Montreal, 14 January 2003) and CGWI/4 (Montreal, 23 January 2003).

In consideration of the outcome of those meetings and in line with resolution A33-20: Coordinated approach in providing assistance in the field of aviation war risk insurance, the Council, on 13 March 2003 during the 13th meeting of its 168th Session, approved in principle the recommendations of CGWI and entrusted a sub-group ("review group") of the SGWI (SGWI-RG) with the task of reviewing Globaltime in light of the conditions of participation set by certain States and making any adjustments thereto and to the revised draft Participation Agreement. Contracting States were advised of these developments through State letter LE 4/64—03/36, dated 28 March 2003.

Upon recommendation of SGWI-RG/1 which met in Montreal on 30 April and 1 May 2003, the Council, on 9 June during the 11th meeting of its 169th Session, approved the amended draft Participation Agreement, subject to any final adjustments to be approved by the Council, and decided to retain Globaltime on a contingency basis. Subject to effective participation by States representing at least 51 percent of ICAO contribution rates (resolution A33-26 being used as the basis for determining the provision of guarantees to the scheme), Globaltime will be activated when there is a further failure of the commercial insurance market as determined by the ICAO Council, in which event the Insurance Entity shall commence its operations, possibly at short notice. Details of the Council Decision were conveyed to all Contracting States through State letter LE 4/64—03/65, dated 30 June 2003. To date, Contracting States representing 46.25 percent of annual contribution rates have indicated their intention to participate in Globaltime, some of which (35.08 percent) will participate under certain conditions. Accordingly, the 51 percent threshold of intentions to participate has so far not been reached.

3. WORLD HEALTH ORGANIZATION

(a) Constitutional developments

In 2003, no new Member State joined the World Health Organization (WHO). Thus at the end of 2003, there were 192 Member States and two Associate Members of WHO.

As at 31 December 2003, the amendments to articles 24 and 25 of the WHO Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase the membership of the Executive Board from thirty-two to thirty-four, had been accepted by 102 Member States; the amendment to article 7 of the WHO Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of Members practising racial discrimination, had been accepted by 84 Member States; and the amendment to Article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 79 Member States. Acceptance by two-thirds of the Member States, i.e., by 128 Members, is required for the amendments to enter into force.

(b) Other normative developments and activities

WHO Framework Convention on Tobacco Control

On 1 March 2003, during the 6th session of the Intergovernmental Negotiating Body in Geneva and after nearly three years of negotiations, Member States of WHO agreed on a text of the WHO Framework Convention on Tobacco Control (FCTC). On 21 May 2003, the 56th World Health Assembly, by resolution WHA56.1, unanimously adopted the FCTC and called upon all States and regional economic integration organizations entitled to do so to consider signing and becoming a party to the Convention to ensure its speedy entry into force.

The FCTC seeks to limit the harm to health caused by tobacco products by addressing issues as diverse as: tobacco advertising, promotion and sponsorship; packaging and labelling; regulation and disclosure of contents of tobacco products; illicit trade in tobacco products; price and tax measures; elimination of sales to and by young persons; government support for tobacco manufacturing and agriculture; treatment of tobacco dependence; passive smoking and smoke-free areas; surveillance research and exchange of information; provision of support for economically viable alternative activities; and scientific, technical and legal cooperation.

The FCTC was opened for signature for a period of one year from 16 June 2003 to 22 June 2003 at WHO Headquarters in Geneva, and thereafter at the United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004. By the end of 2003, the FCTC had attracted 90 signatures and five States had already become Contracting parties. The FCTC enters into force on the ninetieth day following the deposit of the fortieth instrument of ratification, acceptance, approval, accession, or formal confirmation. In 2003, WHO organized and supported a number of sub-regional awareness raising and capacity-building workshops to facilitate signature and ratification of, or accession to, the FCTC.

Article 24.3 of the FCTC provides that WHO functions as the interim Convention secretariat until such a time as a permanent secretariat is designated and established by the Conference of the Parties. The Health Assembly established, by its resolution WHA56.1, an open-ended intergovernmental working group to consider and prepare proposals on a number of issues identified in the FCTC, including the question of a permanent secretariat, for consideration and adoption, as appropriate, by the first session of the Conference of the Parties. Other such questions include: rules of procedure for the Conference of the Parties, including criteria for participation of observers at its sessions; financial rules for the Conference of the Parties and its subsidiary bodies, and financial provisions governing the functioning of the secretariat; a draft budget for the first financial period; and, a review of existing and potential sources and mechanisms of assistance to parties in meeting their obligations under the Convention. Furthermore, resolution WHA56.1 requested the Director-General to provisionally provide secretariat functions under the FCTC; to take appropriate steps to provide support to Member States, in particular developing countries and countries with economies in transition, in preparation for the entry into force of the Convention; to convene, as frequently as necessary, between 16 June 2003 and the first session of the Conference of the Parties, meetings of the open-ended intergovernmental working group; to continue to ensure that WHO plays a key role in providing technical advice, direction and support for global tobacco control; to keep the Health Assembly informed of progress made toward the entry into force of the Convention and of preparations under way for the first session of the Conference of the Parties. Finally, the resolution

calls upon the United Nations and invites other relevant international organizations to continue to provide support for strengthening national and international tobacco control programmes.

Other activities

By December 2003, 162 of WHO 192 Member States (84%) had reported to WHO on the implementation of the principles and aim of the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in 1981. Its implementation may include adoption of new—or revision or strengthening of existing—legislation, regulations, national codes, guidelines for health workers and distributors, agreements with manufacturers, and monitoring and reporting mechanisms. The global strategy for infant and young child feeding, endorsed by the Health Assembly by resolution WHA55.15 in May 2002, placed renewed emphasis on the International Code as one of the operational targets of the strategy. In 2003, three States, India, Malaysia and Pakistan, informed WHO of the adoption of new legislation in the implementation of the Code. Furthermore, WHO responded to requests for technical support from Australia, Bahrain, Cambodia, New Zealand, and Turkey.

During 2003, WHO continued to draft the Guidance document on Mental Health, Human Rights and Legislation, which underwent two systematic international reviews by over 200 experts. WHO established a network of consultants to support mental health legislative reform at country level and to facilitate training forums and workshops. To assist States with related legislative reforms, WHO organized an international training forum and a series of workshops at the regional, sub-regional and country levels.

The 56th World Health Assembly, by resolution WHA56.28 of 28 May 2003, decided to establish an intergovernmental working group open to all Member States and regional economic integration organizations, to review and recommend a draft revision of the International Health Regulations for consideration by the Health Assembly under article 21 of the WHO Constitution. The Health Assembly also requested the Director-General to complete the technical work required to facilitate reaching agreement on the revised International Health Regulations; to keep Member States informed about such technical work through the regional committees and other mechanisms; and to convene the intergovernmental working group at the appropriate time and on the agreement of the Executive Board at its 113th session. Pursuant to the foregoing request, the secretariat undertook to complete an initial proposed revision of the International Health Regulations.

In 2003, WHO also continued to administer the International Digest of Health Legislation and *Recueil international de Législation sanitaire* (available at <http://www.who.int/idhl/>), which contains a selection of national and international health legislation.

During 2003, Headquarters and Regional Offices of WHO provided technical cooperation to a number of Member States in connection with the development, assessment or review of various areas of health legislation.

4. INTERNATIONAL MONETARY FUND

(a) Membership issues

Accession to membership

No new members joined the International Monetary Fund (IMF) in 2003 and the total membership remained at 184 member States.

Status and obligations under article VIII or article XIV of the IMF Articles of Agreement

In 2003, three members—the Democratic Republic of the Congo, the Syrian Arab Republic, and Uzbekistan—formally accepted the obligations of article VIII, sections 2, 3, and 4, of the IMF Articles of Agreement. The total number of States that had accepted these obligations as at 31 December 2003 was 157.

Overdue financial obligations to IMF

With the clearance of Afghanistan's arrears in February 2003, by the end of December 2003, the number of members in protracted arrears (i.e., financial obligations that are overdue by six months or more) to IMF decreased from six to the following five: Iraq, Liberia, Somalia, the Sudan, and Zimbabwe.

Article XXVI, section 2(a), of IMF Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund." Of the five IMF members with protracted arrears, declarations of ineligibility under this article remained in effect by the end of December 2003 with respect to Liberia, Somalia, the Sudan, and Zimbabwe.

Suspension of voting rights and compulsory withdrawal

1. Liberia

Liberia's voting and related rights were suspended effective 5 March 2003 in accordance with article XXVI, section 2(b) of the IMF Articles of Agreement. The suspension remained in effect throughout 2003.

2. Zimbabwe

Zimbabwe's voting and related rights were suspended effective 6 June 2003. The suspension for Zimbabwe remained in effect throughout 2003, and on 3 December 2003, the IMF Executive Board decided that Zimbabwe had persisted in its failure to fulfil its obligations under the IMF Articles of Agreement after the expiration of a reasonable period following the decision of suspension taken pursuant to article XXVI, section 2(b), and indicated that it intended to initiate promptly the compulsory withdrawal procedure pursuant to article XXVI, section 2(c).

(b) Representation issues

1. Central African Republic

As of mid-September 2003, the new Government of the Central African Republic had not been recognized by IMF members representing a majority of the votes in IMF, nor by the international community in general. A number of delegates representing the Central African Republic were invited to attend the 2003 IMF-World Bank Annual Meetings as Special Invitees.

2. Iraq

As of mid-September 2003, there was no internationally recognized government in Iraq. A number of members of Iraq's Governing Council were invited to attend the 2003 IMF-World Bank Annual Meetings as Special Invitees.

3. Liberia

As a consequence of the suspension of Liberia's voting and related rights (as noted above), the Governor and Alternate Governor for IMF appointed by Liberia ceased to hold office pursuant to paragraph 3(a) of schedule L of the IMF Articles of Agreement. Accordingly, Liberia was not represented at the 2003 IMF-World Bank Annual Meetings.

4. Somalia

In October 1992, the IMF found that there was no effective government for Somalia with which IMF could carry on its activities, and the review of Somalia's overdue financial obligations was postponed to a date to be determined by the Managing Director when in his judgement there would once again be a basis for evaluating Somalia's economic and financial situation and the stance of its economic policies and cooperation with IMF. Since then, the Executive Board has granted similar postponements, the most recent being on 18 August 2003. Somalia had no Governor or Alternate Governor in 2003 and was not represented at the 2003 IMF-World Bank Annual Meetings.

5. Zimbabwe

As a consequence of the suspension of Zimbabwe's voting and related rights, as discussed above, the Governor and Alternate Governor for IMF appointed by Zimbabwe ceased to hold office pursuant to paragraph 3(a) of schedule L of the IMF Articles of Agreement. Accordingly, Zimbabwe was not represented at the 2003 IMF-World Bank Annual Meetings.

(c) Crisis resolution

There is increasing recognition in both the official sector and private markets that allowing States with clearly unsustainable debts to restructure in a fashion that preserves economic activity and asset values is to the benefit of all concerned. IMF has been working

to improve the management and resolution of financial crises by examining possible approaches to strengthening the mechanisms for the restructuring of sovereign debt.

Sovereign Debt Restructuring Mechanism (SDRM)

The SDRM proposal, an initiative launched in late 2001, and discussed over the following 18 month period, culminated in a presentation to the International Monetary and Financial Committee (IMFC) in April 2003 of a blueprint for the establishment of a new statutory framework to facilitate sovereign debt restructuring by amending the IMF Articles of Agreement.³⁷² The principal feature of the SDRM consisted in allowing a sovereign debtor and a qualified majority of its creditors to reach an agreement that would then be made binding on all creditors that were subject to the restructuring, paying due regard to seniority among claims and the diversity of creditor interests. The SDRM was intended only to be used to restructure debt that was judged to be unsustainable and would apply only to sovereign debt governed by foreign law or subject to the jurisdiction of foreign courts; sovereign debt subject to domestic law and jurisdiction would be excluded. The SDRM proposal contemplated the establishment of an independent dispute resolution forum to verify claims, to ensure the integrity of the voting process, to adjudicate disputes that might arise following activation of the SDRM, and to certify the debt restructuring agreement. In its Communiqué of 12 April 2003, the IMFC welcomed the work of IMF in developing the SDRM proposal, but recognized that it was not feasible at the time to move forward to establish it.

Collective Action Clauses (CACs)

IMF's examination and promotion of the use of CACs is part of its effort to strengthen the framework for crises resolution by developing and promoting effective tools to help make sovereign debt restructuring more orderly and predictable. CACs are contractual provisions in bond contracts that enable the sovereign and a qualified majority of its bondholders to take decisions on issues of enforcement and restructuring that become binding on all bondholders within the same issuance. In its Communiqué of 12 April 2003, the IMFC welcomed the inclusion of CACs by several sovereign debt issuers, noted its desire for the inclusion of CACs in international bond issues to become standard market practice, and called on IMF to promote the voluntary inclusion of CACs in the context of its surveillance. In April 2003, IMF's Executive Board welcomed the proposals to continue several forms of outreach to encourage the use of CACs. In response, an increasing number of emerging market States took steps to include CACs in their international sovereign bonds issued under New York law (where CACs had not previously been the market standard).

(d) Surveillance

Strengthening the framework for provision of information to IMF

While IMF relies on voluntary cooperation to obtain information, recent instances of reporting problems have prompted efforts on a number of fronts to improve the provision

³⁷² For the text of the document entitled "Proposed Features of a Sovereign Debt Restructuring Mechanism", see <http://www.imf.org>.

of data by members. In December 2003, the IMF Executive Board discussed proposals for making improvements to the legal framework for the provision of information, set out in article VIII, section 5, of the IMF Articles of Agreement. Specifically, the Board decided to strengthen the effectiveness of article VIII, section 5, through, *inter alia*: (i) expanding the categories of information that member States are required to report under article VIII, section 5, and (ii) establishing a new framework of procedures to address cases in which members have breached their obligations under article VIII, section 5. The additional information reporting requirements for members will come into effect on 1 January 2005.

Staff Monitored Programs (SMPs)

In recent years SMPs have emerged as a response to requests from members for the monitoring of their economic conditions and policies beyond article IV surveillance and outside of an IMF supported arrangement. Following the discussion of SMPs in the context of the 2002 biennial surveillance review, the Executive Board of the IMF considered the policy on SMPs and in January 2003, discontinued signalling SMPs. The Executive Board concluded that the signalling of SMPs may be misconstrued as carrying the IMF Executive Board's seal of approval.

(e) Fund facilities

Access policy in the credit tranches and under the Extended Fund Facility (EFF)

In February 2003, the IMF Executive Board decided to leave unchanged the long standing access limits applying in the credit tranches and under the EFF—100 percent of quota annually and 300 percent of quota cumulatively.

Exceptional Access Policy

IMF has developed policies on exceptional access to IMF resources (i.e., access above the normal limits). In February 2003, the IMF Executive Board approved a new policy framework to ensure that exceptional access remained exceptional, which strengthened the procedures for decision-making on such proposals. Under the new policy, to justify exceptional access in capital account crises, four criteria (as a minimum) would need to be met: (i) an exceptionally large balance of payments pressure on the capital account resulting in the need for IMF finance that cannot be met within the normal limits; (ii) a sustainable debt burden when evaluated under reasonable assumptions; (iii) good prospects of regaining access to private capital markets; and (iv) strong program design and reasonable prospects for its implementation. In addition, the new policy involves strengthened procedures for early consultation and decision-making at the Executive Board level, as well as ex-post evaluation.

Expiry of Contingent Credit Lines (CCL)

As part of its response to financial markets crises in Asia and elsewhere in 1997–98, IMF introduced the CCL to provide a precautionary line of defence for members with “first class” policies that may nevertheless be vulnerable to financial markets crises. The

CCL was intended to provide assurances of IMF financial support in the event of financial market pressures. The CCL remained unused and, after concluding a review of the CCL in November 2003, the IMF Executive Board decided not to extend the CCL facility past its November 2003 sunset date.

Eligibility under the Poverty Reduction and Growth Facility (PRGF)

The PRGF is IMF's low interest lending facility for eligible low-income countries. In 2003, three members, Papua New Guinea, Timor-Leste and Uzbekistan, were added to the list of PRGF eligible countries, and three members were removed, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Zimbabwe.

(f) Procedural changes to IMF financial operations

In April 2003, the IMF Executive Board, in order to update and align certain aspects of IMF's financial procedures with industry best practice, approved a number of procedural changes to IMF financial operations, specifically: (i) the adoption of a two-day value date for operations and transactions between IMF and its members, including the payment of charges, and a two-day valuation rule for exchanges of currency; (ii) the receipt by IMF of unscheduled or late payments will be valued on the day of receipt; and (iii) the adherence of a financial transaction cut-off time of 5.30 P.M. each business day.

5. UNIVERSAL POSTAL UNION

General review of the legal activities of the Universal Postal Union

In 2003, the Universal Postal Union (UPU) Council of Administration undertook the following actions:

1. The Council of Administration approved the International Bureau's comments and observations on the five reports submitted by the United Nations Joint Inspection Unit (JIU) for action, especially on recommendations 1 and 2 of JIU/REP/2002/9 entitled, "Managing information in the United Nations system organizations: management information systems".

2. The Council of Administration adopted a resolution concerning the invitation of Advisory Group members to the 23rd Congress, scheduled for 2004, and approved a draft Congress resolution concerning participation of Advisory Group members in the 23rd Congress.

3. The Council of Administration approved Congress proposals to amend the General Regulations concerning the elimination of the position of Assistant Director General and the biennial report on the work of the Union.

4. The Council of Administration approved two Congress proposals concerning the definition of certain terms to be included in new articles in the Constitution and the Universal Postal Convention, 1964. It further approved the proposal to include explanations of certain terms as commentaries to the Acts and proposals to amend the General Regulations and the Universal Postal Convention concerning the consideration of proposals between Congresses, conditions for approval of proposals concerning the

Convention and Regulations and the procedure for submitting proposals to the Postal Operations Council concerning the preparation of new Regulations in the light of decisions taken by Congress.

5. The Council of Administration approved the draft Congress decision concerning the entry into force of the Acts of the 2004 Bucharest Congress.

6. The Council of Administration decided to recommend to Congress approval of UPU's accession to the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, 1986.

7. The Council of Administration approved modifications to the Staff Regulations of the International Bureau aimed at the modernization and simplification of these Regulations. It took note of the changes to the Staff Rules planned by the International Bureau concerning the introduction of fixed-term appointments.

8. The Council of Administration approved the principles on which the future terminal dues system could be based.

9. The Council of Administration endorsed a draft Congress resolution to create a specific body under the Council, tasked with carrying out Universal Postal Service activities.

10. The Council of Administration approved the draft recast of the Postal Payment Services Agreement and instructed the International Bureau to distribute it to Union member States to enable them to formulate their proposals for submission to Congress.

11. The Council of Administration approved the idea of describing the election procedure to the Postal Operations Council in a commentary to the General Regulations, instead of successive Congresses adopting resolutions on this matter.

12. The Council of Administration endorsed proposals concerning the participation of the media in the 23rd Congress.

13. The Council of Administration adopted a resolution proposed by Japan on Extraterritorial Offices of Exchange (ETOE) (CA 2/2003).

14. The Council of Administration approved the drafting of UPU guidelines for cooperation with the private sector.

15. The Council of Administration acclaimed the intention of Timor-Leste to accede to the UPU (the accession of Timor-Leste became effective on 28 November 2003).

6. WORLD METEOROLOGICAL ORGANIZATION

Cooperation with the United Nations and other organizations

Agreements and working arrangements—2003

1. Agreement between the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO).

2. Memorandum of Understanding with the Economic and Social Commission for Asia and the Pacific (ESCAP).

3. Memorandum of Understanding with the Arab Organization for Agricultural Development (AOAD).

4. Memorandum of Understanding with the East African Community (EAC).

5. Memorandum of Understanding with the European Commission (EC).
6. Working Arrangement with the Permanent Inter-State Committee on Drought Control on the Sahel (CILSS) (EC-LV, 2003).

7. INTERNATIONAL MARITIME ORGANIZATION

(a) Membership

The Republic of Kiribati became a Member of the International Maritime Organization (IMO) in 2003. As at 31 December 2003, the membership of the Organization stood at 163.

(b) Review of legal activities

The Legal Committee (the Committee) held its 86th session from 28 April to 2 May 2003 and its 87th session from 13 to 17 October 2003.

The 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention

The International Conference on the Establishment of a Supplementary Fund for Compensation for Oil Pollution Damage took place at the Headquarters of IMO from 12 to 16 May 2003. The Conference was convened by decision of the Council at its twenty-first extraordinary session, which was endorsed by the Assembly at its twenty-second regular session by resolution A.906(22).

As a result of its deliberations, the Conference adopted a treaty instrument, the text of which is contained in document LEG/CONF. 14/20, entitled “Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992”.

The main objective of the Protocol is to ensure that victims of oil pollution damage are compensated in full for their loss or damage. The Protocol should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Civil Liability Convention and the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the 1992 Fund Convention), 1992, will be insufficient to pay established claims in full. The supplementary compensation regulated by the Protocol will be paid by the International Oil Pollution Compensation Supplementary Fund, 2003.

The Protocol was opened for signature at the Headquarters of the Organization on 31 July 2003 and will remain open for signature until 30 July 2004, and shall thereafter remain open for accession. It will enter into force three months following the date on which eight States have expressed their consent to be bound by it.

The Conference also adopted the following resolutions, the texts of which are contained in the attachment to the Final Act (LEG/CONF. 14/21) and also in document LEG/CONF. 14/22:

- (1) Resolution on financing of the International Conference to adopt a draft protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;
- (2) Resolution on Establishment of the International Oil Pollution Compensation Supplementary Fund; and
- (3) Resolution on review of the international compensation regime for oil pollution damage for possible improvement.

Draft convention on wreck removal (DWRC)

The Committee, at its 86th and 87th sessions worked on this item as a priority. The Committee based its consideration on a submission by the Netherlands, as lead country for inter-sessional consultations, which highlighted the major issues that required resolution by the Committee, namely: reporting requirements; exclusion of acts of terrorism; relationship to other liability instruments; safeguarding sovereign rights on the high seas and flag State consent.

With regard to reporting requirements, the Committee decided to delete the wording in square brackets in article 6, paragraph 1, and requested the Working Group to examine whether the obligation to report should be placed on the registered owner or whether it might be better for other parties, such as the operator or the manager of the ship, to assume this obligation. The Working Group was also directed to discuss whether to insert a time limit for reporting.

Concerning the exclusion of acts of terrorism, the Committee, after an initial consideration, decided that this issue required further consideration by the Working Group.

With regard to the relationship to other liability instruments, the Committee agreed in principle on the need to avoid double compensation for the location, marking and removal of wrecks and requested the Working Group to examine this further, taking into account that there may also be situations in which, although the matter might be within the scope of another liability convention, that convention might exclude the award of compensation.

Concerning safeguarding sovereign rights on the high seas, the Committee considered a proposal developed during the inter-sessional consultations. The Committee agreed that the proposed text reflected a general principle of treaty law, to the effect that States parties under the draft convention were not entitled to claim sovereign rights over any part of the high seas. However, given the diverse views expressed on the necessity to restate that principle in the DWRC, the Committee requested the Working Group to consider the matter further.

The Committee also considered a submission on the need to reconcile the DWRC with the United Nations Convention on the Law of the Sea (UNCLOS), 1982, particularly on the issue of flag State consent. In this connection, the co-sponsors proposed the addition of a new paragraph in article 10 to provide for flag State consent to the exercise of jurisdiction by a coastal State, where such jurisdiction is not provided for under other existing treaties.

Broad support was expressed in principle that the draft convention should include a provision on flag State consent to the effect that, by becoming a State party to the convention, a State would automatically give its consent (as a flag State) to the State party

whose interests are most directly threatened by the wreck to act under paragraphs 4 to 8 of article 10.

The Working Group met during the 86th and 87th sessions and the Chairman made an oral report to the Committee. The Committee agreed to the continuation of the inter-sessional Correspondence Group with the task of further refining the draft DWRC.

Review of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988,³⁷³ and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988³⁷⁴ (SUA Convention and Protocol)

The Committee, at its 86th and 87th sessions, continued its consideration of a draft protocol to the SUA Convention and Protocol submitted by the United States as lead country for an inter-sessional Correspondence Group.

Extensive consideration was given to a proposed draft article on new offences. The Committee supported the introduction in the *chapeau* of a terrorist motive as a condition for incrimination.

Several delegations questioned the notion of “transports” in several provisions of the draft as being too imprecise for the purposes of criminal prosecution which requires a high degree of precision. With respect to “environmental damage” there was a conflict of opinion within the Committee, with some delegations suggesting that environmental damage could be considered as part of the wider concept of damage to property. Other delegations insisted however that this notion should be maintained, so as to cover cases such as ecological terrorism, which exceeds the notion of damage to property.

The Committee unanimously reaffirmed its concerns about the safety of international shipping and the proliferation of weapons of mass destruction (WMD). The view was expressed, in particular, that the inclusion of this paragraph in the SUA treaties could result in undue restrictions on the concept of freedom of navigation. In this connection, there was a general recognition of the need to revise the treaties but, at the same time, to do this in a way that would attract a large number of ratifications. Some delegations which were ready to accept in principle the introduction of provisions on WMD suggested several modifications. Reference was made to the need to protect the master and crew who under normal circumstances would have no control over, and often be ignorant of the reasons for, the transport of substances carried on board, and who were themselves the subject of contractual obligations.

While there seemed to be general acceptance in the Committee on the need to include provisions concerning boarding in the draft protocol, it was clear that the present draft text would require substantial modification. It was also generally accepted that the principle of flag State jurisdiction must be respected to the utmost extent, recognizing that a boarding by another State on the high seas could only take place in exceptional circumstances.

In general there was support for adding a reference to human rights. However, further consideration was required. In particular, it was noted that the proposal required application of human rights law only under the law of the State in the territory of which

³⁷³ United Nations *Treaty Series*, vol. 1678, p. 201.

³⁷⁴ *Ibid.*

the person in custody is present, though in the draft protocol the issue might also arise in situations when a ship is boarded on the high seas.

The Committee briefly considered draft final clauses prepared by the secretariat and noted the need to take several decisions before deciding on a final text. In particular, a decision was needed on whether a tacit amendment process was appropriate for amending the annex in the draft protocol, and secondly on whether, if such a process was introduced, the process should be along the lines set out in the current draft or follow the formula used in other IMO conventions. The Committee noted that the tacit amendment process had been employed in IMO instruments for some time for amending technical matters, and, more recently, for amending limitation amounts in liability and compensation conventions.

Provision of financial security

1. Work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers

The Committee noted that only six replies had been received to the two questionnaires on the monitoring of the implementation of resolutions A.930(22) and A.931(22) and related Guidelines and that only one reply had been received to the questionnaire on reporting of incidents of abandonment since 1 January 2003.

The Committee noted that information received would be compiled and submitted by the Joint Secretariat to the fifth session of the Joint Working Group, scheduled to take place from 12 to 14 January 2004, while the information on incidents of abandonment would be circulated in the form of composite periodic reports.

The Committee further noted that the Joint Working Group at its fifth session would continue its examination of the issue of financial security for crew members and seafarers and their dependants with regard to compensation in cases of death, personal injury and abandonment. The Joint Working Group would also monitor and evaluate the scale of the problem and make suitable recommendations to the IMO Legal Committee and the Governing Body of the International Labour Organization (ILO).

2. Follow-up on the resolutions adopted by the International Conference on the Revision of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

- (i) *Resolution on Regional Economic Integration Organizations*

The Committee was satisfied with the information submitted by the secretariat in document LEG 87/6 and decided that it should be retained for use in future treaty instruments to be developed by the Organization.

- (ii) *Circulation of questionnaire on bareboat charterer registration*

The Committee noted that numerous responses were being received to the questionnaire circulated by both the IMO secretariat and the Comité Maritime International (CMI), and that a report would be submitted for the consideration of the Committee at its eighty-eighth session.

Places of refuge

1. Technical Guidelines

The Committee considered a draft Assembly resolution on guidelines on places of refuge for ships in need of assistance. The Committee provided its guidance on which international instruments, including those addressing liability and compensation, should be included in the preambular paragraphs and appendix I to the annex to the draft Assembly resolution. In this connection, the Committee recommended that the appendix should only include conventions which are in force and that the draft resolution should allow for the appendix to be kept up to date as other conventions come into force. The secretariat was requested to draft an appropriate sentence for inclusion in the text.

The Committee submitted the draft resolution to the twenty-third session of the Assembly for adoption. The Assembly approved resolution A.949(23) containing guidelines on places of refuge for ships in need of assistance.

2. Consideration of legal issues relating to liability and compensation

The Committee noted a report by the CMI on the answers to its questionnaire on the liability issues relating to places of refuge.

The Committee considered a submission by the delegation of Spain questioning whether the current liability and compensation regime adequately addressed all situations that might arise in connection with places of refuge.

It was noted in this connection that the 1992 International Oil Pollution Compensation (IOPC) Fund Assembly had established an Inter-sessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability and IOPC Fund conventions and that the questions raised during the session could be relevant to that Group's assessment. It was further noted that the questions could also be pertinent to the examination being undertaken by the CMI on the subject of places of refuge.

The Committee recognized that ultimately it would be responsible for reaching conclusions on whether the current liability and compensation regime was adequate to cover situations in which a ship in distress was granted or denied access to a place of refuge, and that this was reflected in the preamble to the draft Assembly resolution.

Treatment of persons rescued at sea

The Committee, at its eighty-seventh session, noted the information provided by the secretariat that no legal issue had yet been referred to it, and decided to remove this matter from its agenda.

Code of practice for the investigation of crimes of piracy and armed robbery at sea

The Committee, at its eighty-seventh session, noted that no submissions had been received and decided to remove this item from its agenda.

Measures to protect crews and passengers against crimes committed on vessels

The Committee noted an interim report by the CMI on its ongoing work to examine State practice on how crimes committed on vessels are handled in different jurisdictions. Preliminary indications were that many States did not consider the SUA Convention to apply to cases like the *Tajima*, where the crime was committed on the high seas and the alleged offender was not a citizen of the flag State. In these cases, the flag State would retain jurisdiction, though there might be concurrent jurisdiction with another State if the victim or alleged offender was a national of that State and the alleged offender was within that State's jurisdiction. Also, all States had universal jurisdiction over acts of piracy. It was noted that the CMI was undertaking further work on this subject, with the aim of having a final report for consideration at the Committee's eighty-eighth session.

Monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

The Committee noted a report by the delegation of the United Kingdom on the substantive progress made as a result of the Special Consultative Meeting of the HNS Correspondence Group that met in Ottawa from 3 to 5 June 2003. In particular, the Committee noted that the core work of the HNS Correspondence Group had been completed. The HNS Correspondence Group would nevertheless continue to monitor progress on the implementation of the HNS Convention and report to the Committee, as appropriate.

The Committee noted that the conclusions agreed by the Group provided valuable guidance on subjects such as insurance and insurance certificates, receivers, transshipments and reporting requirements.

Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee

The Committee took note of the information provided by the secretariat on the status of conventions and other treaty instruments adopted as a result of the work of the Committee.

Matters arising from the ninetieth session of the Council

The Committee noted the information on the outcome of the ninetieth session of the Council in document LEG 87/13 and in particular the draft guidelines on access of news media to the proceedings of institutionalized Committees and of their subsidiary bodies contained in the annex to that document. The Committee decided to review the draft guidelines at its next session, with a view to responding to the request of the Council.

Technical co-operation: subprogramme for maritime legislation

The Committee noted the progress report on the implementation of the subprogramme from January to June 2003.

*Report on the 2003 International Conference on the Establishment
of a Supplementary Fund to the 1992 Fund Convention*

The Committee noted the report on the outcome of the 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention, including the three Conference Resolutions.

*Designation of a Western European Particularly
Sensitive Sea Area (WE PSSA)*

The Committee considered a submission on legal implications of the proposal to designate a Western European PSSA and its associated protective measure. The Committee also noted the comments made by the Division for Ocean Affairs and the Law of the Sea of the United Nations (DOALOS) on the relationship of the PSSA designation and the UNCLOS, in particular article 211(6). The Committee noted that these comments were intended as a contribution to the debate and did not represent a conclusive opinion, as it was a matter for States to interpret the Convention.

Diverging views were expressed as to the validity of the WE PSSA, some agreeing that it exceeded the restrictive framework regulated by article 211(6) of UNCLOS, while others reaffirmed the validity of its designation.

Diverging views were also expressed with regard to the associated protective measure. In this connection, note was taken of the assurance given by some delegations to the effect that the 48 hours notification measure would not be used as a basis to prohibit legitimate use of the PSSA by shipping in accordance with the principle of freedom of navigation.

Several delegations noted the need for further study of the legal implications of the designation of the WE PSSA area, in particular in the light of the comments made by DOALOS. In this regard, it was noted that, while the Marine Environment Protection Committee had not referred the question to the Legal Committee, any delegation was free to bring questions of a legal nature to it, which would be dealt with under "Any other business".

(c) Amendments to treaties

*2003 (chapter V) amendments to the International Convention for
the Safety of Life at Sea (SOLAS Convention), 1974*³⁷⁵

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 by resolution MSC. 142(77). At the time of their adoption, the Maritime Safety Committee determined that these amendments shall be deemed to have been accepted on 1 January 2006 and shall enter into force on 1 July 2006 unless, prior to 1 January 2006, more than one-third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003 no notification of objection had been received.

³⁷⁵ United Nations *Treaty Series*, vol. 1566, p. 401.

*2003 (annex B) amendments to the Protocol of 1988 relating to the International Convention on Load Lines, 1966*³⁷⁶

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 by resolution MSC. 143(77). At the time of their adoption, the Maritime Safety Committee determined that these amendments shall be deemed to have been accepted on 1 July 2004 and shall enter into force on 1 January 2005 unless, prior to 1 July 2004, more than one-third of the parties to the Protocol of 1988 relating to the International Convention on Load Lines, 1966, or parties the combined merchant fleets of which constitute more than 50 percent of the gross tonnage of the merchant fleets of all parties, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the Guidelines on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers (resolution A.744(18) (under SOLAS 1974)

The amendments were adopted by the Maritime Safety Committee on 5 June 2003 under resolution MSC. 144(77). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2004 and shall enter into force on 1 January 2005 unless, prior to 1 July 2004, more than one-third of the Contracting Governments to the SOLAS Convention or Contracting Governments the combined merchant fleets of which constitute more than 50 percent of the gross tonnage of the world's merchant fleet have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (amendments to regulation 13G, addition of a new regulation 13H and consequential amendments to the Supplement to the International Oil Pollution Prevention (IOPP) Certificate of annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78))

The amendments were adopted by the Marine Environment Protection Committee on 4 December 2003 by resolution MEPC.1 11(50). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 4 October 2004 and shall enter into force on 5 April 2005 unless, prior to 4 October 2004, not less than one-third of the parties to MARPOL 73/78 or parties the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

2003 amendments to the Condition Assessment Scheme

The amendments were adopted by the Marine Environment Protection Committee on 5 December 2003 by resolution MEPC.1 12(50). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 4 October 2004 and shall enter into force on 5 April 2005 unless,

³⁷⁶ United Nations *Treaty Series*, vol. 640, p. 133.

prior to 4 October 2004 not less than 50 percent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2003, no notification of objection had been received.

8. WORLD INTELLECTUAL PROPERTY ORGANIZATION

In 2003, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States, the international registration of intellectual property rights, and intellectual property treaty formulation and normative development. WIPO also explored and promoted new intellectual property concepts, strategies and issues covering four areas, namely: genetic resources; traditional knowledge and folklore; small and medium-sized enterprises (SMEs) and intellectual property; and intellectual property enforcement issues and strategies.

(a) Cooperation for development activities

In 2003, WIPO's cooperation for development activities supported developing countries in optimizing their intellectual property systems for economic, social and cultural benefits. The main forms in which WIPO provided assistance to developing countries continued to be the development of human resources, the provision of legal advice and technical assistance for the automation of administrative procedures.

WIPO continued to provide legislative assistance to developing countries and least-developed countries (LDCs). Requests for delivery of legislative assistance to developing countries increased by 20 percent in 2003. WIPO prepared 19 draft laws, elaborated 42 comments on draft legislation and provided other forms of legislative advice in 3,231 cases.

Responding to the special needs of LDCs, particularly in assisting them in developing policies to effectively implement and use the intellectual property system to meet their development objectives, became an increasingly pressing task given the 2006 deadline for compliance with the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).

(b) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States. This is achieved through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights.

The establishment of common principles and rules governing intellectual property requires extensive consultations. Three WIPO Standing Committees on legal matters—one dealing with copyright and related rights, one with patents, and one with trademarks, industrial designs and geographical indications—help member States centralize the discussions, coordinate efforts and establish priorities in these areas.

Standing Committee on the Law of Patents (SCP)

In 2003, discussions were devoted to the harmonization of substantive aspects of patent law, as set out in the draft substantive patent law treaty (SPLT) and related Regulations and Practice Guidelines. Adoption of such provisions would ensure a more uniform system for the consideration of patent applications by patent offices, including the grant of higher quality patents, as well as helping to reduce duplication of patent examination work.

The Trilateral Patent Offices—the European Patent Office (EPO), the Japan Patent Office (JPO) and the United States Patent and Trademark Office (USPTO)—as well as a number of non-governmental organizations (NGOs), have initiated discussions aimed at limiting the scope of the draft SPLT to a number of issues relating to the harmonization of the prior art basis. The SCP will continue its deliberations on this issue in 2004.

Standing Committee on Trademarks (SCT)

In 2003, the SCT made progress towards the harmonization of rules and principles of the law of trademarks, industrial designs and geographical indications and the modernization of the Trademark Law Treaty (TLT), 1994.³⁷⁷ The SCT also discussed the possible introduction of provisions on trademark licenses into the TLT, and prepared a survey on trademark office practices. The SCT examined questions concerning the definition of geographical indications, and continued work on issues relating to conflicts between domain names and geographical indications, and between domain names and country names.

As regards the protection of geographical indications, the work of the SCT in 2003 focused on the promotion of a better understanding of the issues involved and of the characteristics of the existing systems of protection.

Standing Committee on Copyright and Related Rights (SCCR)

In 2003, the SCCR made substantial progress towards preparing the ground for a possible international instrument on the protection of broadcasting organizations. The Committee met twice, with discussions focused on economic rights, fixation, reproduction and distribution of fixations, re-broadcasting, simultaneous retransmission, making available of fixed broadcasts, deferred broadcasting and communication to the public. The delegates agreed that a consolidated text of treaty proposals from member States would be discussed at its 2004 session, as well as proposals on protection of non-original databases.

At the request of the General Assembly, the secretariat organized an *ad hoc* meeting of member States and other interested parties in November 2003 on issues relating to the protection of audiovisual performances and included a session focusing on personal experiences in performing and producing audiovisual works. It was decided that informal consultations with WIPO member States would be held in 2004 to decide on how to proceed.

Standing Committee on Information Technologies (SCIT)

In 2003, the Standing Committee on Information Technologies (SCIT) through its various meetings continued to serve as a forum to give policy guidance and technical advice

³⁷⁷ United Nations *Treaty Series*, vol. 2037, p 35.

on the overall information technology strategy of WIPO, including WIPO standards and the documentation aspects of intellectual property.

(c) International registration activities

Patents

The use of the Patent Cooperation Treaty (PCT), 1970,³⁷⁸ continued its growth throughout 2003. The number of international patent applications filed in 2003 using the PCT exceeded 110,000 for the third consecutive year. Applications from Japanese companies and inventors grew by over 20 percent, making it the second heaviest user of the system after the United States. The number of PCT Contracting States rose to 123.

Substantial work was undertaken throughout the year to ensure the implementation of the changes to the PCT Regulations that entered into force on 1 January 2004. In addition, internal procedures in the Office of the PCT were reviewed and updated, as were information and training materials in English, French, German and Spanish.

Filings of applications at the Receiving Office of the International Bureau (RO/IB) reached a new record with over 6,000 new applications filed in 2003.

Marks

During 2003, WIPO registered 21,847 new international trademark applications, bringing the total number of international registrations in force under the Madrid system to some 412,000. Since each international registration under this system includes roughly 12 Contracting parties in which the registration has effect, the number of international trademark registrations in force at the end of 2003 was equivalent to roughly 4.9 million national registrations. The number of renewals amounted to 6,637, a 10 percent increase over 2002.

Over the course of the year, membership of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), 1989,³⁷⁹ rose to 62, bringing the total membership of the Madrid Union to 74.

Industrial Designs

In 2003, 13,152 industrial designs, as contained in 2,474 international deposits, were registered under The Hague System for the International Deposit of Industrial Designs: a 37 percent decrease compared with 2002. However, the number of renewals increased by five percent to 3,463.

Following the deposit of the instruments of ratification of, or accession to, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, 1999,³⁸⁰ by Georgia, Kyrgyzstan, Liechtenstein and Spain, the Act entered into force on 23 December 2003. In addition, Belize and Gabon acceded to the Hague Act of

³⁷⁸ United Nations *Treaty Series*, vol. 1160, p 231. For the text of the treaty as amended and modified, see www.wipo.org.

³⁷⁹ WIPO Publication Number: 204.

³⁸⁰ WIPO Publication Number: 269.

28 November 1960 to the Hague Agreement, bringing the total membership of the Hague Union to 36 countries.

Appellations of Origin

In 2003, the WIPO International Bureau recorded six new registrations for appellations of origin under the Lisbon system. To date 849 appellations of origin have been registered, of which 779 are still in force. Membership in the Lisbon system remained stable at 20 countries.

(d) Intellectual property and global issues

Genetic Resources, Traditional Knowledge and Folklore

The fifth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was held in 2003. The session continued to discuss intellectual property issues that arise in the context of: (i) access to genetic resources and benefit-sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore. The work of the IGC was multifaceted, drawing together in one forum empirical surveys, policy debate, reports of national experience, exchange of experiences of local and indigenous communities, analysis of policy options and legal systems, the crafting of specific practical tools and discussion and coordination of capacity-building needs and initiatives in relation to intellectual property and genetic resources, traditional knowledge (TK) and traditional cultural expressions (TCEs).

Intellectual Property Enforcement Issues

The first session of the Advisory Committee on Enforcement (ACE) took place in Geneva from 11 to 13 June 2003. The Committee continued to focus on coordination with certain organizations and the private sector to combat counterfeiting and piracy, public education, technical assistance and exchange of information.

The Committee adopted a number of conclusions on issues pertaining to the enforcement of intellectual property rights stressing, in particular, the need for coordination, training and development of enforcement strategies.³⁸¹

The WIPO Arbitration and Mediation Center

In 2003, the Center received some 1,100 new cases under the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), which is comparable with the figures for 2002. The end of the year saw some 10,000 domain names covered by WIPO cases under the UDRP.

This activity is a truly global service, with procedures in 11 languages, domain names in a variety of scripts, and parties from 118 countries. With the addition in 2003 of seven

³⁸¹ ACE/1/7 Rev.

more countries, 36 national domain name registration authorities have adopted WIPO-administered dispute resolution policies.

(e) New members and new accessions

In 2003, there were 52 adherences and several other treaty actions in respect of treaties administered by WIPO, 51 percent of which (accessions or ratifications) came from countries in transition to a market economy, with 35 percent from developing countries and 14 percent from developed countries.

The following figures show the new State adherences to the treaties, with the second figure in brackets being the total number of States parties to the corresponding treaty by the end of 2003:

- Paris Convention for the Protection of Industrial Property, 1883: two (166);
- Berne Convention for the Protection of Literary and Artistic Works, 1886: three (152);
- Patent Cooperation Treaty, 1970: five (123);
- Madrid Agreement Concerning the International Registration of Marks, 1891: two (54);
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: six (62);
- Patent Law Treaty, 2000: two (7);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: two (72);
- Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: two (43);
- Strasbourg Agreement Concerning the International Patent Classification: one (54)
- WIPO Copyright Treaty, 1996: five (44);
- WIPO Performances and Phonograms Treaty, 1996: three (42);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: three (58);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: five (76);
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971: three (72);
- Hague Agreement concerning the International Deposit of Industrial Designs, 1925: four (29);
- Geneva Act of the Hague Agreement, 1999: four (11).

9. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(a) Membership

At its 26th session (19–20 February 2003), the Governing Council approved by resolution 129/XXVI the non-original membership in International Fund for Agricultural Development of Timor-Leste and decided to classify this State as member of List C (former Category III) in accordance with articles 3.2(b) and 13.1(c) of the Agreement Establishing IFAD and section 10 of the By-laws for the Conduct of the Business of IFAD.

(b) Cooperation agreements, memoranda of understanding and other agreements

At its 78th session (9–10 April 2003), the Executive Board authorized IFAD to establish a cooperation agreement with the Former Food and Agriculture Organization of the United Nations and other United Nations Staff Association (FFOA) (document EB 2003/78/R.41). The cooperation agreement was signed on 15 May 2003 and submitted to the Executive Board at its 79th session (10–11 September 2003) for information (document EB 2003/79/INF.3).

At its 79th session (10–11 September 2003), the Executive Board authorized IFAD to accede to the Strategic Partnership Agreement for Implementation of the Convention to Combat Desertification and Drought (UNCCD) in Central Asian Republics (document EB 2003/79/R.34). An addendum to the Memorandum of Understanding establishing the terms of adherence to the Strategic Partnership was signed on 23 October 2003 and submitted to the Executive Board at its eightieth session (17–18 December 2003) for information (document EB 2003/80/INF.3).

At its eightieth session (17–18 December 2003), the Executive Board authorized IFAD to establish a cooperation agreement with the secretariat of the New Partnership for Africa's Development (NEPAD) (document EB 2003/80/R.47).

(c) Legal developments

At its 26th session (19–20 February 2003), the Governing Council approved by resolution 130/XXVI document GC 26/L.24, entitled "Enabling the Rural Poor to Overcome their Poverty: Report of the Consultation on the Sixth Replenishment of IFAD's Resources (2004–2006)", and thus authorized the replenishment of the resources of IFAD as set forth in said resolution. This document summarizes the conclusions on the Consultation on the Sixth Replenishment of IFAD's resources concerning the Fund's strategic priorities and approaches and the focus of its programme of work for 2004–2006. It further articulates the level of resources needed to reach, in partnership with others, agreed objectives in rural poverty reduction during the Sixth Replenishment Period.

At its 26th session (19–20 February 2003), the Governing Council approved the establishment in IFAD of a performance-based allocation system (PBAS). The IFAD PBAS would contribute to further systematization of IFAD's activities by promoting development of the national and local conditions for sustained rural poverty reduction. Such a system had been previously recommended by the Consultation on the Sixth Replenishment of IFAD's Resources (2004–2006) in its report to the Governing Council (document GC 26/

L.4). The structure and operation of the PBAS for IFAD were approved by the Executive Board at its 79th session (10–12 September 2003) (documents EB 2003/79/R.2/Rev.1 and EB 2003/79/C.R.P.3).

At its 78th session (9–10 April 2003), the Executive Board adopted the IFAD Evaluation Policy (document EB 2003/78/R.17/Rev.1), which takes into account the guidelines and provisions contained in the Governing Council's document GC 26/L.4. In accordance with the Evaluation Policy, the Office of Evaluation and Studies (OE) reports directly to the Executive Board, independently of IFAD management and, as has been the case since 1994, of the President of IFAD.

At its 79th session (10–11 September 2003), IFAD's Grant Policy was introduced to the Executive Board (document EB 2003/79/R.30), in accordance with Governing Council document GC 26/L.4. At its eightieth session (17–18 December 2003), the Executive Board adopted IFAD Policy for Grant Financing (document EB 2003/80/R.5/Rev.1), based on the guidelines set in the previous document. The Policy takes into account the rise of the ceiling for the grant programme from 7.5 percent of the annual programme of work to 10 percent, starting from 2004.

At its 79th session (10–12 September 2003), the Executive Board reviewed document EB 2003/79/R.3, IFAD's Field Presence and In-Country Capacity, and authorized IFAD, supported by the Executive Board's Working Group on Field Presence, to submit to the December 2003 Executive Board a three year pilot programme to enhance in-country presence and capacity. That decision was the final step in a long process of reflection and discussion on the question of whether and how IFAD should enhance its presence in the field. Unlike most other development agencies and international financial institutions, the Fund never had formal representations in the borrowing countries before. The Executive Board adopted the Field Presence Pilot Programme at its eightieth session (17–18 December 2003) (document EB 2003/80/R.4).

10. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(a) Agreements, memoranda of understanding and joint communiqués with States

1. Argentina

Memorandum of understanding between the United Nations Industrial Development Organization and the Under Secretariat for Mining of the Argentine Republic. Signed on 7 February 2003.

2. Burundi

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Commerce and Industry of the Republic of Burundi. Signed on 9 April 2003.

3. Congo

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Industrial Development, Small- and

Medium-Scale Enterprises and Craft Industry of the Republic of Congo. Signed on 4 December 2003.

4 Côte d'Ivoire

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Industry and Development of the Private Sector of Cote d'Ivoire. Signed on 4 December 2003.

5 Ghana

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Trade, Industry and Presidential Special Initiatives of the Republic of Ghana. Signed on 2 December 2003.

6. India

Memorandum of understanding between the United Nations Industrial Development Organization and the Ministry of Small-Scale Industries of the Government of the Republic of India. Signed on 6 February 2003.

7. Madagascar

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the President of the Republic of Madagascar. Signed on 1 December 2003.

8. Niger

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Minister for Commerce and Promotion of Private Sector of Niger. Signed on 3 December 2003.

9. Sierra Leone

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Vice-President of Sierra Leone. Signed on 2 December 2003.

10. Timor-Leste

Memorandum of understanding between the United Nations Industrial Development Organization and the Government of Timor-Leste on the establishment of a framework for cooperation on sustainable industrial development. Signed on 2 December 2003.

11. Togo

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Delegate Minister to the Prime Minister responsible for the Private Sector of the Republic of Togo. Signed on 3 December 2003.

12. Uganda

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the President of the Republic of Uganda. Signed on 3 December 2003.

13. United Republic of Tanzania

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Prime Minister of the United Republic of Tanzania, signed on 2 December 2003.

*(b) Agreements with intergovernmental organizations**Central American Economic Integration Bank (BCIE)*

Cooperation framework agreement between the United Nations Industrial Development Organization and the Central American Economic Integration Bank on “Alliance to improve the industrial capacity and productivity in Central America”. Signed on 16 June 2003.

World Trade Organization (WTO)

Memorandum of understanding between the United Nations Industrial Development Organization and the World Trade Organization. Signed on 10 September 2003.

*(c) Agreements with other entities**D-8 Grouping (D-8)*

Joint communiqué between the Director-General of the United Nations Industrial Development Organization and the Director of the D-8 Grouping. Signed on 8 July 2003.

Dubai Development and Investment Authority (DDIA)

Memorandum of understanding between the United Nations Industrial Development Organization and the Dubai Development and Investment Authority. Signed on 18 February and 3 March 2003.

Federation of Egyptian Industries (FEI)

Memorandum of understanding between the United Nations Industrial Development Organization and the Federation of Egyptian Industries. Signed on 22 July 2003.

International Organization for Standardization (ISO).

Memorandum of understanding between the United Nations Industrial Development Organization and the International Organization for Standardization. Signed on 2 December 2003.

11. INTERNATIONAL ATOMIC ENERGY AGENCY

(a) Privileges and immunities

In 2003, Albania, Benin and the Democratic Republic of the Congo accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959,³⁸² bringing the total number of States parties to 73.

(b) Legal instruments

*Convention on the Physical Protection of Nuclear Material, 1979*³⁸³

In 2003, Afghanistan, Algeria, Colombia, Costa Rica, Equatorial Guinea, Madagascar, Malta, Marshall Islands, Mozambique, New Zealand, Oman, Senegal, Seychelles, Swaziland, Tonga, Uganda, the United Arab Emirates and Uruguay adhered to the Convention, bringing the total number of States parties to 97.

*Convention on Early Notification of a Nuclear Accident, 1986*³⁸⁴

In 2003, Albania, Bolivia, Colombia and Kuwait adhered to the Convention, bringing the total number of States parties to 91.

*Convention on Assistance in the Case of a Nuclear Accident
or Radiological Emergency, 1986*³⁸⁵

In 2003, Albania, Bolivia, Kuwait and Portugal adhered to the Convention, bringing the total number of States parties to 88.

*Vienna Convention on Civil Liability for
Nuclear Damage, 1963*³⁸⁶

In 2003, the status of the Convention remained unchanged with 32 States parties.

³⁸² INFCIRC/9/Rev.2.

³⁸³ INFCIRC/274/Rev.1.

³⁸⁴ INFCIRC/335.

³⁸⁵ INFCIRC/336.

³⁸⁶ INFCIRC/500.

*Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Civil Liability for Nuclear Damage, 1963*³⁸⁷

In 2003, the status of the Optional Protocol remained unchanged with two States parties.

*Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, 1988*³⁸⁸

In 2003, the status of the Protocol remained unchanged with 24 States parties.

*Convention on Nuclear Safety, 1994*³⁸⁹

In 2003, Uruguay adhered to the Convention, bringing the total number of States parties to 55.

*Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*³⁹⁰

In 2003, Australia, Japan and the United States adhered to the Convention, bringing the total number of States parties to 33.

*Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*³⁹¹

In 2003, Belarus adhered to the Protocol, bringing the total number of parties to five. Pursuant to its article 21.1, the Protocol entered into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval, i.e., on 4 October 2003.

*Convention on Supplementary Compensation for Nuclear Damage, 1997*³⁹²

In 2003, the status of the Convention remained unchanged with 3 Contracting States and 13 Signatories.

*African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—Second Extension, 1990*³⁹³

In 2003, Benin, the Central African Republic, Eritrea, Nigeria and Zambia accepted the Agreement, bringing the total number of States parties to 30.

³⁸⁷ INFCIRC/500/Add.3.

³⁸⁸ INFCIRC/402.

³⁸⁹ INFCIRC/449.

³⁹⁰ INFCIRC/546.

³⁹¹ INFCIRC/566.

³⁹² INFCIRC/567.

³⁹³ INFCIRC/377.

*Third Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA), 2001*³⁹⁴

In 2003, Australia, Singapore and Thailand accepted the Agreement, bringing the total number of States parties to 16.

*Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL), 1998*³⁹⁵

In 2003, the Dominican Republic signed the Agreement. By the end of the year, there were eight Contracting States and 19 Signatories.

*Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA), 2002*³⁹⁶

In 2003, Saudi Arabia accepted the Agreement, bringing the total number of States parties to six.

Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the International Atomic Energy Agency (RSA).

In 2003, Armenia, Benin and Kuwait concluded the RSA Agreement. By the end of the year, there were 98 States which had concluded the RSA Agreement with the Agency.

(c) Legislative assistance activities

As part of its technical co-operation programme for 2003, the International Atomic Energy Agency (IAEA) provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 13 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 14 fellows.

In addition, IAEA's legislative assistance activities in 2003 included the following:

(a) A Regional Workshop for French-speaking countries of the Africa region for the Development of a Legal Framework Governing the Safety of Radioactive Waste Management and the Safe Transport of Radioactive Material was held at IAEA Headquarters in Vienna, Austria, from 6 to 10 October 2003.

(b) A Regional Workshop for the countries of East Asia and the Pacific on the Effective Implementation of National Nuclear Energy Legislation was held in Bangkok, Thailand, from 27 to 31 October 2003.

(c) A Regional Workshop for the countries of Central and Eastern Europe on the Legal Aspects Relevant to Decommissioning Nuclear Facilities was held in Sacavem, Portugal, from 17 to 21 November 2003.

³⁹⁴ INFCIRC/167/Add.20.

³⁹⁵ INFCIRC/582.

³⁹⁶ INFCIRC/613/Add.1.

Furthermore, IAEA's *Handbook on Nuclear Legislation* which describes the overall character of nuclear law and the process by which it is developed and applied, was published in 2003. It is a tool to be used by legislators, government officials, technical experts, lawyers and users in general of nuclear technology in their work related to the development of nuclear legislation.

*Joint Convention on the Safety of Spent Fuel Management and
on the Safety of Radioactive Waste Management, 1997*³⁹⁷

The First Review Meeting pursuant to article 30 of the Convention was held at the Headquarters of the IAEA, being the secretariat under the Convention, from 3 to 14 November 2003.

*Convention on the Physical Protection of
Nuclear Material, 1979*³⁹⁸

In 2003, 15 additional States became parties to the Convention, which reflects the importance given to the CPPNM as part of the international nuclear security regime.

The open-ended group of legal and technical experts convened by the Director General to prepare a draft amendment aimed at strengthening the CPPNM (the Group) completed the task for which it was established. The Group met six times in Vienna; its first meeting was held in December 2001 and its final meeting in March 2003. On 14 March 2003, the Group adopted by consensus its Final Report and agreed to submit it to the Director General. The Director General distributed the Final Report, through a note verbale, to all States parties to the CPPNM for their consideration.

The Final Report of the Group set out possible amendments to be made to the CPPNM. The text prepared by the Group identified possible amendments that, *inter alia*, reflect the extension of the scope of the CPPNM to cover the physical protection of nuclear material used for peaceful purposes in domestic use, storage and transport and the protection of nuclear material and nuclear facilities used for peaceful purposes against sabotage; reflect the importance of national responsibility for the establishment, implementation and maintenance of a physical protection regime; cover the Physical Protection Objectives and Fundamental Principles; establish the basis for co-operation in case of a credible threat of sabotage of nuclear material and nuclear facilities or in case of sabotage thereof; and establish new offences relating to sabotage, nuclear smuggling, and contributing to and organizing or directing the commission of an offence. The text prepared by the Group, does, however, contain, in brackets, a number of clauses on which it was not able to reach agreement.

In his opening statement to the 47th Regular Session of the IAEA General Conference, the Director General urged States parties to the CPPNM to work rapidly towards consensus on these remaining issues, in order to have a diplomatic conference adopt the proposed amendments at an early date. In this context, the General Conference, in resolution GC (47)/RES/8, welcomed the finalization of the work of the Group and urged member States to act on that basis with a view to achieving a well-defined amendment of the Convention as soon as possible.

³⁹⁷ United Nations *Treaty Series*, vol. 2153, p. 303.

³⁹⁸ United Nations *Treaty Series*, vol. 1456, p. 101.

Safeguards Agreements

During 2003, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), 1968, with Burkina Faso³⁹⁹, Georgia⁴⁰⁰ and the United Arab Emirates⁴⁰¹ entered into force. Safeguards Agreement with Cuba, Mauritania and Tajikistan were signed, and the IAEA Board of Governors approved the conclusion of a Safeguards Agreement with Seychelles. These agreements have not entered into force yet.

Through an Exchange of Letters between Panama and the Agency⁴⁰², it was confirmed that the Safeguards Agreement concluded between Panama and the Agency⁴⁰³ pursuant to the Treaty on the Prohibition of Nuclear Weapons in Latin America and the Caribbean (the Tlatelolco Treaty), 1967, satisfies the obligation of Panama under article III of the NPT. The agreement reflected in the Exchange of Letters was approved by the Board of Governors on 20 November 2003, and entered into force on that date.

In 2003, Protocols Additional to the Safeguards Agreement between IAEA and Burkina Faso⁴⁰⁴, Chile⁴⁰⁵, Cyprus⁴⁰⁶, the Democratic Republic of the Congo⁴⁰⁷, Georgia⁴⁰⁸, Iceland⁴⁰⁹, Jamaica⁴¹⁰, Kuwait⁴¹¹, Madagascar⁴¹² and Mongolia⁴¹³ entered into force. Protocols Additional to the Safeguards Agreement with IAEA were signed by Cuba, El Salvador, the Islamic Republic of Iran, Malta, Mauritania, Paraguay, Tajikistan and Togo but have not still entered into force. The IAEA Board of Governors approved Protocols Additional to the Safeguards Agreement for Gabon, Kazakhstan and Seychelles. Furthermore, the Agency received notification that Denmark, France, Ireland and Italy had fulfilled their internal requirements for the entry into force of their additional protocols. By the end of 2003, all 15 member States of the European Union (EU) had fulfilled such requirements.

By the end of 2003, Safeguards Agreements were in force in 148 States (and Taiwan, China) and 82 States had signed an Additional Protocol. Of the 82, 38 had entered into force.

12. WORLD TRADE ORGANIZATION

(a) Membership

Applications for World Trade Organization (WTO) membership are the subject of individual working parties. Terms and conditions related to market access (such as tariff

³⁹⁹ INFCIRC/618.

⁴⁰⁰ INFCIRC/617.

⁴⁰¹ INFCIRC/622.

⁴⁰² INFCIRC/316/Mod.1.

⁴⁰³ INFCIRC/316.

⁴⁰⁴ INFCIRC/618/Add.1.

⁴⁰⁵ INFCIRC/476/Add.1.

⁴⁰⁶ INFCIRC/189/Add.1.

⁴⁰⁷ INFCIRC/183/Add.1.

⁴⁰⁸ INFCIRC/617/Add.1.

⁴⁰⁹ INFCIRC/215/Add.1.

⁴¹⁰ INFCIRC/265/Add.1.

⁴¹¹ INFCIRC/607/Add.1.

⁴¹² INFCIRC/200/Add.1.

⁴¹³ INFCIRC/188/Add.1.

levels and commercial presence for foreign service suppliers) are the subject of bilateral negotiations. The following is a list of the 29 governments for which a WTO working party was established (as at 31 December 2003):

Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia-Herzegovina, Cape Verde, Ethiopia, Kazakhstan, the Lao People's Democratic Republic, Lebanon, the Russian Federation, Samoa, Saudi Arabia, Serbia and Montenegro, Seychelles, the Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam and Yemen.

As of 31 December 2003, there were 146 members of the WTO, accounting for more than 90 percent of world trade. Many of the countries that remain outside the world trade system have requested accession to the WTO and are at various stages of a process that has become more complex due to WTO's more expansive coverage relative to its predecessor, the General Agreement on Tariff and Trade (GATT).

During 2003, the WTO received the following new members:

(1) Armenia by Protocol of Accession of 5 February 2003 (WT/L/506); Council decision WT/L/506;

(2) Former Yugoslav Republic of Macedonia by Protocol of Accession of 4 April 2003 (WT/L/494).

Cambodia

The accession of Cambodia was adopted by the Ministerial Conference in Cancun (WT/MIN(03)/18). Cambodia will become a full WTO member 30 days after it has notified the secretariat of ratification of its accession packages. In response to an official request, the General Council agreed to extend Cambodia's deadline for internal ratification to 30 September 2004 (WT/GC/M/85).

(b) Waivers under article IX of the WTO Agreement⁴¹⁴

In 2003, a number of waivers were granted from obligations under the WTO agreements (listed below):

Member	Type	Decision of	Expiry	Document
Argentina	Introduction of Harmonized system 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/523
El Salvador	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/525
Israel	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/531
Malaysia	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 and 25 July 2003	30 April 2004	WT/L/529

⁴¹⁴ United Nations *Treaty Series*, vol. 1867, p. 3.

Member	Type	Decision of	Expiry	Document
Morocco	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/530
Pakistan	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/528
Panama	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	30 April 2004	WT/L/524
Thailand	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/527
Venezuela	Introduction of Harmonized System 1996 changes into WTO Schedules of tariff concessions	24 July 2003	31 October 2003	WT/L/526
Israel	Introduction of Harmonized System 1996 changes into WTO schedules of tariff concessions	16 December 2003	30 April 2004	WT/L/554
Thailand	Introduction of Harmonized System 1996 changes into WTO schedules of tariff concessions	16 December 2003	31 October 2003	WT/L/555
Sri Lanka	Transposition of Schedules into the Harmonized System	24 July 2003	31 October 2003	WT/L/532
Australia, Brazil, Canada, Israel, Japan, Republic of Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates, United States, Bulgaria, Croatia, Czech Republic, European Communities, Hungary, Mauritius, Mexico, Norway, Romania; Separate customs Territory of Taiwan, Penghu, Kinmen and Matsu, Slovenia, Switzerland, Venezuela, Mexico	Kimberley Process Certification Scheme for rough diamonds ----- Covered by paragraph 3 of the Decision	15 May 2003	31 December 2006	WT/L/518

(c) Resolution of trade conflicts under the WTO Dispute Settlement Understanding

Overview

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).⁴¹⁵ The DSB, which met 20 times during 2003, has the sole authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of recommendations and rulings, and authorize suspension of concessions in the event of non-implementation of recommendations.

Appellate Body appointment and reappointments

On 7 November 2003, the DSB appointed Ms. Merit E. Janow of the United States to the seven-member Appellate Body for a four-year term, commencing 11 December 2003. Ms. Janow was appointed to fill the vacancy that arose with the completion in December 2003 of Mr. James Bacchus' (United States) second and final term on the Appellate Body. At the same time, the DSB appointed Messrs. Georges Michel Abi-Saab of Egypt, Arumugamangalam Venkatachalam Ganesan of India, and Yasuhei Taniguchi of Japan, to serve second four-year terms. Mr. Taniguchi's second term commenced on 11 December 2003, and the second terms of Messrs. Abi-Saab and Ganesan will commence on 1 June 2004.

Dispute settlement activities in 2003

In 2003, the DSB received 26 notifications from members of formal requests for consultations under the DSU. During this period, the DSB also established panels to deal with 19 new cases and adopted panel and/or Appellate Body reports in 15 cases, concerning eight distinct matters. In addition, mutually agreed solutions were notified in two cases. The following section briefly describes the procedural history and, where available, the substantive outcome of these cases. It also describes the implementation status of adopted reports where new developments occurred in the covered period. The cases are listed in order of their DS number. Additional information on each of these cases can be found on the WTO's website at <http://www.wto.org>.

1. *European Communities—Measures affecting meat and meat products (hormones), complaints by the United States and Canada (WT/DS26 and WT/DS48)*

At the DSB meeting on 7 November 2003, the European Communities stated that following the entry into force of its new Directive (2003/74/EC) regarding the prohibition on the use in stockfarming of certain hormones, there was no legal basis for the continued imposition of retaliatory measures by Canada and the United States. According to the European Communities, one of the reasons cited by the Appellate Body in its ruling against it was its failure to carry out a risk assessment within the meaning of articles 5.1 and

⁴¹⁵ United Nations *Treaty Series*, vol. 1869, p. 401 (annex 2).

5.2 of the Sanitary and Phytosanitary (SPS) Agreement.⁴¹⁶ Having commissioned such an assessment to be undertaken on its behalf by an independent scientific committee whose findings indicated that the hormones in question posed a risk for consumers, the European Communities considered that it had fulfilled its WTO obligations and was entitled to demand the immediate lifting of the sanctions imposed by Canada and the United States in accordance with the provisions of article 22.8 of the DSU. The United States stated that they had carefully reviewed the new European Communities Directive and did not share the view that it implemented the recommendations and rulings of the DSB. In its view, the new measure lacked any scientific basis and as such could not be justified under the SPS Agreement. Canada said that whilst prepared to discuss this matter further with the European Communities, it doubted whether the new studies presented any new scientific basis for the ban of hormone-treated beef, and was also not in a position to accede to the request of the European Communities.

At the DSB meeting on 1 December 2003, the European Communities stated that: (i) in light of the disagreement between the Parties to the dispute with regard to the European Communities compliance with the DSB's recommendations, the matter should be referred to the WTO for a multilateral decision; (ii) this situation was similar to other cases, which had been resolved in the past through recourse to article 21.5 of the DSU; (iii) Canada and the United States should initiate multilateral procedures to determine whether or not the European Communities was in compliance; and (iv) the European Communities were ready to discuss this matter with Canada and the United States. Canada stated that, although at the 7 November DSB meeting, Canada had put forward a suggestion for bilateral discussions concerning the justification for the European Communities' position regarding its compliance with the WTO ruling, the European Communities had not responded to this suggestion and that it was up to the European Communities to establish that it had complied with the ruling. Canada declared itself open to discussion with the European Communities regarding its justification for its position. However, at this stage, Canada did not see any basis for removal of its retaliatory measures nor wished to take any other action. The United States stated that it failed to see how the revised European Communities' measure could be considered to implement the DSB's recommendations. With regard to the European Communities' suggestion that multilateral proceedings be established to determine whether or not the European Communities was in compliance with the WTO ruling, the United States was ready to discuss this matter along with other outstanding issues in relation to the European Communities ban on United States beef.

2. *Canada—Measures affecting the importation of milk and the exportation of dairy products, complaints by the United States and New Zealand (WT/DS103 and WT/DS113)*

On 17 January 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body Report, which were circulated in this dispute following recourse to article 21.5 of the DSU for the second time.⁴¹⁷

Upon requests by the Parties for further suspension of the arbitration proceedings under article 22.6 of the DSU (initiated pursuant to a request for arbitration by Canada) the proceedings were suspended until 9 May 2003, when Canada and the United States,

⁴¹⁶ United Nations *Treaty Series*, vol. 1867, p. 493 (annex 1A).

⁴¹⁷ For further details of these reports, see Annual Report 2003, p. 95.

and Canada and New Zealand informed the DSB that they had reached a mutually agreed solution under article 3.6 of the DSU in disputes WT/DS103 and WT/DS113.

3. *United States—Tax treatment for “Foreign Sales Corporations”, complaint by the European Communities (WT/DS108)*

On 24 April 2003, the European Communities requested authorization to suspend concessions or other obligations under article 22.7 of the DSU and article 4.10 of the Subsidies and Countervailing Measures (SCM) Agreement.⁴¹⁸ At its meeting on 7 May 2003, the DSB granted the European Communities authorization to take appropriate countermeasures and to suspend concessions.

4. *United States—Anti-dumping Act of 1916, complaints by the European Communities and Japan (WT/DS136 and WT/DS162)*

As no legislation had been adopted to repeal the Anti-dumping Act of 1916 and to terminate the cases pending before the United States courts, on 19 September 2003, the European Communities requested the Arbitrators to reactivate the arbitration proceedings in dispute WT/DS136, which was resumed on the same day.

At the DSB meeting on 2 October 2003, the United States stated that legislation repealing the 1916 Act and terminating all pending cases had been introduced in both the United States Senate and the United States House of Representatives. The United States regretted that the European Communities had decided to request the resumption of the arbitration procedure in this dispute. Japan said that it remained gravely concerned about the lack of implementation by the United States and requested the United States to provide more detailed information in order to make it clear if and how the repealing bills introduced to the United States Congress were being addressed, and that it was still contemplating the possibility of reactivating the arbitration procedure.

At the DSB meeting on 1 December 2003, Japan stated that it was still contemplating the possibility of reactivating the arbitration procedure under article 22 of the DSU.

5. *European Communities—Anti-dumping duties on imports of cotton-type bed linen from India, recourse to article 21.5 of the DSU by India (WT/DS141)*

On 22 May 2002, the DSB agreed to refer this dispute, if possible, to the original panel pursuant to article 21.5 of the DSU. On 29 November 2002, the Panel circulated its report to the members, concluding that the European Communities had implemented the recommendation of the original panel and the Appellate Body, as adopted by the DSB, to bring its measure into conformity with its obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement).⁴¹⁹

On 8 January 2003, India notified the DSB of its decision to appeal the Panel report of 29 November 2002 and filed a Notice of Appeal with the Appellate Body. On 8 April 2003, the Appellate Body circulated its report to the members. The Appellate Body upheld the Panel’s finding that India’s claim under article 3.5 of the Anti-Dumping Agreement was not properly before the article 21.5 Panel. The Appellate Body reversed the Panel’s finding that the European Communities did *not* act inconsistently with articles 3.1 and 3.2 of the

⁴¹⁸ United Nations *Treaty Series*, vol. 1869, p. 14 (annex 1A).

⁴¹⁹ United Nations *Treaty Series*, vol. 1868, p. 201 (annex 1A). For further details regarding this Panel Report and India’s recourse to article 21.5 of the DSU, see Annual Report 2003, pp. 97–98.

Anti-Dumping Agreement. The Appellate Body found instead that in respect of import volumes attributable to exports or producers that were *not examined individually* in the investigation, the European Communities had failed to determine the “volume of dumped imports” on the basis of “positive evidence” and an “objective examination”, as required by articles 3.1 and 3.2. The Appellate Body found that the Panel had properly discharged its duties under article 17.6 of the Anti-Dumping Agreement and article 11 of the DSU. The Appellate Body recommended that the DSB request the European Communities to bring its measure into conformity with its obligations under the Anti-Dumping Agreement.

On 24 April 2003, the DSB adopted the report of the Appellate Body and the corresponding Panel report, as modified by the Appellate Body report.

6. *United States—Section 110(5) of the US Copyright Act, complaint by the European Communities (WT/DS160)*

Following a series of status reports presented at DSB meetings throughout 2003 that stated that the United States and the European Communities were committed to finding a positive and mutually acceptable solution to this dispute, the United States and the European Communities, on 23 June 2003, informed the DSB of a mutually satisfactory temporary arrangement.

7. *European Communities—Protection of trademarks and geographical indications for agricultural products and foodstuffs, complaints by the United States and Australia (WT/DS174 and WT/DS290)*

On 4 April 2003, the United States sent an additional request for consultations concerning the protection of trademarks and geographical indications for agricultural products and foodstuffs in the European Communities in dispute WT/DS174. This request did not replace but rather supplemented the 1999 request. The measures concerned are European Communities Regulation 2081/92, as amended, and its related implementing and enforcement measures. According to the United States, the European Communities Regulation limits the geographical indications that the European Communities will protect and limits the access of nationals of other members to the European Communities geographical indications procedures and protections provided under the Regulation. The United States claimed that the European Communities Regulation appeared to be inconsistent with articles 2, 3, 4, 16, 22, 24, 63 and 65 of the TRIPS Agreement and articles I and III: 4 of GATT 1994.⁴²⁰

On 17 April 2003, Australia requested consultations with the European Communities concerning the protection of trademarks and the registration and protection of geographical indications for foodstuffs and agricultural products in the European Communities. The measures at issue include Council Regulation (EEC) No. 2081/92 of 14 July 1992 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs* and related measures. Australia claimed that the European Communities' measure appeared to be inconsistent with various European Communities' obligations pursuant to the TRIPS Agreement, articles I and III of GATT 1994, article 2 of the Technical Barriers to Trade (TBT) Agreement⁴²¹ and article XVI: 4 of the WTO Agreement.

On 18 August 2003, the United States and Australia separately requested the establishment of a panel. At its meeting on 29 August 2003, the DSB deferred the

⁴²⁰ United Nations *Treaty Series*, vol. 1867, p. 154 (annex 1A).

⁴²¹ United Nations *Treaty Series*, vol. 1868, p. 120 (annex 1A).

establishment of the panels. Further to second requests to establish a panel from the United States and Australia, the DSB established a single panel at its meeting on 2 October 2003. Australia, Colombia, Guatemala, India, Mexico, New Zealand, Norway, Chinese Taipei and Turkey reserved their third-party rights. Subsequently, Argentina, Brazil, Canada and China also reserved their third-party rights.

8. *United States—Section 211 Omnibus Appropriations Act, complaint by the European Communities (WT/DS176)*

On 20 December 2002, the European Communities and the United States informed the DSB that they had mutually agreed to modify the reasonable period of time for the United States to implement the recommendations and rulings of the DSB, so as to expire on 30 June 2003. This time period was subsequently extended twice, until 31 December 2003 and 31 December 2004, respectively.

9. *United States—Anti-dumping measures on certain hot-rolled steel products from Japan, complaint by Japan (WT/DS184)*

At the DSB meeting on 7 November 2003, the United States stated that with respect to the United States anti-dumping statute, the administration was supporting the passage of specific amendments to the United States anti-dumping duty law in order to bring it into conformity with the DSB's recommendations and rulings. Japan said that the extended reasonable period of time for the implementation of the DSB's recommendations and rulings agreed to by the Parties was about to expire, yet the necessary statutory changes had not been introduced in the United States Congress. At its meeting on 10 December 2003, the DSB agreed to a request by the United States for an extension of the reasonable period of time for the implementation of the recommendations and rulings of the DSB.

10. *Chile—Measures affecting the transit and importation of swordfish, complaint by the European Communities (WT/DS193)*

On 12 November 2003, the Parties to the dispute informed the Chairman of the DSB that they had agreed to maintain the suspension of the process for the constitution of the panel.

11. *United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea, complaint by the Republic of Korea (WT/DS202)*

At the DSB meeting on 18 March 2003, the United States informed the meeting that its safeguard measure on line pipe imports from the Republic of Korea had been terminated on 1 March 2003.

12. *United States—Anti-dumping and countervailing measures on steel plate from India, complaint by India (WT/DS206)*

On 17 January 2003, the Parties informed the DSB that they had mutually agreed to modify the reasonable period of time for implementation of the recommendations and rulings of the DSB so as to expire on 31 January 2003. On 14 February 2003, the Parties informed the DSB that they had agreed on certain procedures under article 21 and 22 of the DSU. Pursuant to these agreed procedures, if India requests the establishment of a 21.5 compliance panel, the United States will not oppose it. India agrees not to request the authorization to suspend concessions under article 22 until the adoption of the compliance reports (Panel and Appellate Body, if any) and the United States agrees not to assert that

India is precluded from doing so given that the request would be made outside the 30-day period.

13. *Chile—Price band system and safeguard measures relating to certain agricultural products, complaint by Argentina (WT/DS207)*

This dispute concerns two distinct matters: Argentina had claimed that: (i) Chile's price band system applicable to imports of wheat, wheat flour, and edible vegetable oils, was inconsistent with article II: 1(b) of GATT 1994 and article 4.2 of the Agreement on Agriculture;⁴²² and (ii) Chile's provisional and definitive safeguard measures on imports of wheat, wheat flour and edible vegetable oils, as well as the extension of those measures, were inconsistent with article XIX of GATT 1994 and articles 2, 3, 4, 5, 6 and 12 of the Agreement on Safeguards.

On 6 December 2002, Chile informed the DSB that Chile and Argentina had been unable to agree on the length of the reasonable period of time for the implementation of the recommendations and rulings of the DSB and thus Chile requested that the determination of the reasonable period of time be the subject of binding arbitration in accordance with article 21.3(c) of the DSU.

On 17 March 2003, the Arbitrator circulated its award, in which he concluded that the "reasonable period of time" that should be extended to Chile to implement the recommendations and rulings of the DSB in the dispute was 14 months from the date of adoption of the Panel and Appellate Body reports by the DSB, and thus would run until 23 December 2003. At the DSB meeting on 2 October 2003, Chile stated that on 25 September 2003, Law No. 19.897 to establish a new price band system had been promulgated replacing Law No. 18.525. The new law would come into force on 16 December 2003, i.e., prior to the expiry of the reasonable period of time for compliance. At the DSB meeting on 1 December 2003, Chile said that it had already adopted a number of measures to comply with the DSB's recommendations. Argentina stated its view that the measures taken by Chile to comply with the recommendations did not constitute implementation in this case since the price band system would continue to be maintained and considered that it would be appropriate for the Parties to enter into negotiations on compensation before the expiry of the deadline for implementation. On 24 December 2003, Argentina and Chile informed the DSB that they had agreed on certain procedures under articles 21 and 22 of the DSU.

14. *United States—Countervailing measures concerning certain products from the European Communities, complaint by the European Communities (WT/DS212)*

On 10 November 2000, the European Communities requested consultations with the United States concerning the continued application by the United States of countervailing duties on a number of products. In particular, the European Communities claimed that the application of the "same person" methodology by the United States, and the continued imposition of duties based on it, were in breach of articles 10, 19 and 21 of the SCM Agreement, because there was no proper determination of a benefit to the producer of the goods under investigation, as required by article 1.1(b) of the SCM Agreement. On 8 August 2001, the European Communities requested the establishment of a panel in this dispute. The DSB established a panel on 10 September 2001.

On 31 July 2002, the Panel report was circulated to the members. The Panel concluded that where a privatization is at arm's length and for fair market value, the benefit from a

⁴²² United Nations *Treaty Series*, vol. 1867, p. 410 (annex 1A).

prior nonrecurring financial contribution bestowed upon the State-owned producer no longer accrues to the privatized producer. On 9 September 2002, the United States notified the DSB of its decision to appeal certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 9 December 2002, the Appellate Body report was circulated to the members. The Appellate Body reversed the Panel's finding that an arm's length, fair market value privatization *necessarily* extinguishes the benefits from previously-bestowed financial contributions. Nevertheless, the Appellate Body found that in the investigations and reviews at issue, the administering authority had employed the "same person" methodology and thus had failed to determine the continued existence of a benefit before imposing or continuing to impose countervailing duties. The Appellate Body therefore recommended that the DSB request the United States to bring its measures and administrative practice (the "same person" methodology) into conformity with its obligations under the SCM Agreement.

On 8 January 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. On 10 April 2003, the Parties notified the DSB that they had agreed on 10 months as a reasonable period of time for implementation of the recommendations and rulings of the DSB (from 8 January 2003 to 8 November 2003).

At the DSB meeting on 7 November 2003, the United States presented its first status report, in which it stated that on 23 June 2003, the United States Department of Commerce (USDOC) published a notice announcing a modification of the manner in which the Department would analyse the question of whether a subsidized, government-owned company remained subsidized after it was "privatized". The USDOC had also issued final revised determinations for each of the 12 countervailing determinations that were at issue on 24 October 2003. As a result of these measures, the United States considered that it had brought its measures into full conformity with the recommendations and rulings of the DSB. At the same meeting, the European Communities expressed concerns regarding some aspects of the United States' implementation of the DSB's recommendations and rulings.

15. *United States—Continued Dumping and Subsidy Offset Act of 2000, joint complaint by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Republic of Korea and Thailand (WT/DS217), and Canada and Mexico (WT/DS234)*

This dispute concerns the amendment to the Tariff Act of 1930 signed into law by the President of the United States on 28 October 2000, entitled "Continued Dumping and Subsidy Offset Act of 2000", usually referred to as the Byrd Amendment.

On 18 October 2002, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 16 January 2003, the Appellate Body circulated its report in which it upheld the Panel's finding that the United States Continued Dumping and Subsidy Offset Act of 2000 was a non-permissible specific action against dumping or a subsidy, contrary to article 18.1 of the Anti-Dumping Agreement and article 32.1 of the SCM Agreement. The Appellate Body reversed the Panel's finding that the Act of 2000 was inconsistent with article 5.4 of the Anti-Dumping Agreement and article 11.4 of the SCM Agreement and rejected the Panel's conclusion that the United States "may be regarded as not having acted in good faith" with respect to its obligations under those provisions.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, at its meeting on 27 January 2003.

On 14 March 2003, the complainants requested arbitration under article 21.3(c) of the DSU to determine the reasonable period of time for implementation by the United States of the recommendations and rulings of the DSB. On 13 June 2003, the Arbitrator issued its award to the Parties and concluded that the “reasonable period of time” for the United States to implement the recommendations and rulings of the DSB was 11 months from the date of the adoption of the Panel and Appellate Body reports in the dispute by the DSB. The reasonable period of time expired on 27 December 2003.

16. *European Communities—Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil, complaint by Brazil (WT/DS219)*

This dispute concerns the European Communities’ definitive anti-dumping duties imposed by Council Regulation (EC) No. 1784/2000 concerning imports of malleable cast iron tube or pipe fittings originating in Brazil. Brazil considered that the European Communities had infringed article VI of GATT 1994 and articles 1, 2, 3, 4, 5, 6, 9, 11, 12 and 15 of the Anti-Dumping Agreement. Further to a request by Brazil, the DSB established a panel at its meeting of 24 July 2001. Chile, Japan, Mexico and the United States reserved their third-party rights.

On 7 March 2003, the Panel circulated its report to the members. The Panel concluded that the European Communities had acted inconsistently with its obligations under: (i) article 2.4.2 of the Anti-Dumping Agreement in “zeroing” negative dumping margins in its dumping determination; and (ii) article 12.2 and 12.2.2 in that it was not directly discernible from the published provisional or definitive determination that the European Communities addressed or explained the lack of significance of certain injury factors listed in article 3.4.

The Panel ruled against Brazil on all other claims. On 23 April 2003, Brazil notified the DSB of its decision to appeal certain issues of law as well as certain legal interpretations developed by the Panel.

On 22 July 2003, the Appellate Body report was circulated to the members. Of the seven issues appealed by Brazil, the Appellate Body rejected Brazil’s claims with respect to six of them. The Appellate Body upheld the Panel’s findings that the European Communities did not act inconsistently with article VI: 2 of GATT 1994 or with articles 1, 2.2.2, 3.1, 3.2, 3.3, 3.4, or 3.5 of the Anti-Dumping Agreement. The Appellate Body also rejected Brazil’s claim that the Panel, contrary to its obligation under article 17.6(i) of the Anti-Dumping Agreement, failed to assess properly the facts of the matter before it when admitting into evidence the document referred to as Exhibit EC-12. The Appellate Body reversed the Panel’s finding with respect to one issue. The Appellate Body found, in contrast to the Panel, that the European Communities had acted inconsistently with articles 6.2 and 6.4 of the Anti-Dumping Agreement by failing to disclose to interested parties during the anti-dumping investigation certain information related to the evaluation of the state of the domestic industry, which was contained in document Exhibit EC-12.

On 18 August 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. On 1 October 2003, the European Communities and Brazil informed the DSB that they had agreed that the reasonable period of time for the European Communities to implement the DSB’s recommendations and rulings would be seven months, i.e., until 19 March 2004.

17. *Canada—Export credits and loan guarantees for regional aircraft, complaint by Brazil (WT/DS222)*

The report of the Panel, recommending that Canada withdraw the disputed subsidies, was adopted by the DSB at its meeting on 19 February 2002. The matter was subsequently referred to arbitration in accordance with article 22.6 of the DSU and article 4.11 of the SCM Agreement.

On 17 February 2003, the Arbitrator circulated its award, in which he determined that the suspension of concessions by Brazil covering trade in a total amount of US\$247,797,000 would constitute appropriate countermeasures within the meaning of article 4.10 of the SCM Agreement. On 6 March 2003, Brazil requested authorization to suspend concessions or other obligations under article 22.7 of the DSU and article 4.10 of the SCM Agreement. At its meeting on 18 March 2003, the DSB authorized the suspension of concessions.

18. *European Communities—Trade description of sardines, complaint by Peru (WT/DS231)*

On 14 April 2003, the Parties informed the DSB that they had reached an agreement to extend the reasonable period of time for implementation of the regulations and rulings of the DSB until 1 July 2003. On 25 July 2003, the European Communities and Peru informed the DSB that they had reached a mutually agreed solution pursuant to article 3.6 of the DSU.

19. *Argentina—Definitive safeguard measure on imports of preserved peaches, complaint by Chile (WT/DS238)*

This request, dated 6 September 2001, concerns a definitive safeguard measure which Argentina applied on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water. According to Chile, Argentina's definitive safeguard measure was inconsistent with articles 2, 3, 4, 5 and 12 of the Agreement on Safeguards,⁴²³ and article XIX: 1 of GATT 1994. At the DSB meeting on 18 January 2002, a panel was established. The European Communities, Paraguay and the United States reserved their third-party rights.

On 14 February 2003, the Panel circulated its report to the members. The Panel concluded that the Argentine measure was imposed inconsistently with certain provisions of the Agreement on Safeguards and GATT 1994. In particular, the Panel concluded that:

(i) Argentina acted inconsistently with its obligations under article XIX:1(a) of GATT 1994 by failing to demonstrate the existence of unforeseen developments as required;

(ii) Argentina acted inconsistently with its obligations under article XIX: 1(a) of GATT 1994 and articles 2.1 and 4.2(a) of the Agreement on Safeguards by failing to make a determination of an increase in imports, in absolute or relative terms, as required; and

(iii) Argentina acted inconsistently with its obligations under article XIX: 1(a) of GATT 1994 and articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards because the competent authorities, in their determination of the existence of a threat of serious injury did not: (a) evaluate all of the relevant factors having a bearing on the situation of the domestic industry; (b) provide a reasoned and adequate explanation of how the facts supported their determination; and (c) find that serious injury was clearly imminent. The

⁴²³ United Nations *Treaty Series*, vol. 1869, p. 154 (annex 1A).

Panel did not find that Argentina acted inconsistently with its obligations under articles 2.1 and 4.1(b) of the Agreement on Safeguards by basing a finding of the existence of a threat of serious injury on an allegation, conjecture or remote possibility. The Panel exercised judicial economy with respect to all other claims.

At its meeting on 15 April 2003, the DSB adopted the Panel report. On 27 June 2003, Argentina and Chile informed the DSB that they had agreed that the reasonable period of time to implement the DSB's recommendations would run until 31 December 2003.

20. *Argentina—Definitive anti-dumping duties on poultry from Brazil, complaint by Brazil (WT/DS241)*

This request, dated 25 February 2002, concerns definitive anti-dumping duties imposed by Argentina on imports of poultry from Brazil, classified under Mercosur tariff line 0207.11.00 and 0207.12.00.

At the DSB meeting on 17 April 2002, a panel was established. Canada, Chile, the European Communities, Guatemala, Paraguay and the United States reserved their third-party rights.

On 22 April 2003, the Panel circulated its report to the members. The Panel's report upheld (either fully or in part) 20 of the 41 claims brought by Brazil against Argentina's anti-dumping measure on imports of poultry from Brazil. The Panel rejected eight of Brazil's claims, and exercised judicial economy in respect of the remainder.

21. *United States—Rules of origin for textiles and apparel products, complaint by India (WT/DS243)*

This request, dated 7 May 2002, concerns United States rules of origin applicable to imports of textiles and apparel products as set out in section 334 of the Uruguay Round Agreements Act, section 405 of the Trade and Development Act of 2000 and the customs regulations implementing these provisions. The DSB established a panel at its meeting on 24 June 2002. Bangladesh, China, the European Communities, Pakistan and the Philippines reserved their third party rights.

On 20 June 2003, the Panel report was circulated to the members. The Panel found that:

- (i) India had failed to establish that section 334 of the Uruguay Round Agreements Act was inconsistent with articles 2(b) or 2(c) of the Agreement on Rules of Origin;
- (ii) India had failed to establish that section 405 of the Trade and Development Act was inconsistent with articles 2(b), 2(c) or 2(d) of the Agreement on Rules of Origin; and
- (iii) India had failed to establish that the customs regulations contained in 19 C.F.R. § 102.21 were inconsistent with articles 2(b), 2(c) or 2(d) of the Agreement on Rules of Origin.

At its meeting on 21 July 2003, the DSB adopted the Panel report.

22. *United States—Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, complaint by Japan (WT/DS244)*

This dispute concerns the final determinations of both the USDOC and the United States International Trade Commission (USITC) in the full sunset review of the anti-dumping duties imposed on imports of corrosion-resistant carbon steel flat products from Japan.

The DSB established a panel at its meeting on 22 May 2002. Brazil, Canada, Chile, the European Communities, India, the Republic of Korea, Norway and Venezuela reserved their third-party rights. On 5 August 2002, Venezuela withdrew as a third party from the panel proceedings.

On 14 August 2003, the Panel circulated its report to the members. The Panel rejected all of Japan's claims challenging various aspects of the United States laws and regulations regarding the conduct of "sunset" reviews of anti-dumping duties under United States law. The Panel found, *inter alia*, that the obligations pertaining to evidentiary standards for self-initiation and *de minimis* standards in investigations do not apply to sunset reviews. The Panel also rejected Japan's argument that the United States' *Sunset Policy Bulletin*—which, by its own terms, provides guidance on methodological or analytical issues not explicitly addressed by the United States statute and regulations—was a mandatory instrument that could be challenged as such in WTO dispute settlement. Rather, the Panel found that the *Bulletin* may be challenged only in respect of its application by the USDOC in a particular case. The Panel further found that the USDOC's determination of likelihood of continuation or recurrence of dumping in this particular case was not WTO-inconsistent. Accordingly, the Panel made no recommendation to the DSB.

On 15 September 2003, Japan notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 15 December 2003, the report of the Appellate Body was circulated to the members. It upheld three findings but reversed four of the Panel's legal findings. The Appellate Body reversed the Panel's findings that the *Bulletin* was not a mandatory legal instrument and thus was not a measure that was "challengeable", as such, under the Anti-Dumping Agreement or the WTO Agreement. However, the Appellate Body did not find any of the provisions of the *Bulletin* inconsistent with the Anti-Dumping Agreement or the WTO Agreement. Although its analysis of Japan's claims differed from that of the Panel in important respects, the Appellate Body did not find that the United States had acted inconsistently with its obligations under the Anti-Dumping Agreement or the WTO Agreement. In relation to certain of Japan's claims, the Appellate Body indicated that it did not have a sufficient factual basis to complete the analysis.

23. *Japan—Measures affecting the importation of apples,
complaint by the United States (WT/DS245)*

This dispute concerns restrictions allegedly imposed by Japan on imports of apples from the United States. At its meeting on 3 June 2002, the DSB established a panel. Australia, Brazil, Chinese Taipei, the European Communities and New Zealand reserved their third-party rights.

The Panel circulated its report to the members on 15 July 2003. The Panel found that Japan's phytosanitary measure imposed on imports of apples from the United States was contrary to article 2.2 of the SPS Agreement and was not justified under article 5.7 of the SPS Agreement and that Japan's 1999 Pest Risk Assessment did not meet the requirements of article 5.1 of the SPS Agreement.

On 28 August 2003, Japan notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 26 November 2003, the report of the Appellate Body was circulated. The Appellate Body rejected all four of Japan's claims on appeal and upheld the Panel's findings that Japan's phytosanitary measure at issue was inconsistent with Japan's obligations under

articles 2.2, 5.7, and 5.1 of the SPS Agreement. The Appellate Body also found that the Panel properly discharged its duties under article 11 of the DSU in the Panel's assessment of the facts of the case. The United States' sole claim on appeal challenged the authority of the Panel to make findings and draw conclusions with respect to apples other than "mature, symptomless" apple fruit. The Appellate Body rejected this claim, finding that the Panel did have the authority to make rulings covering all apple fruit that could possibly be exported from the United States to Japan, including apples other than "mature, symptomless" apples.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

24. *European Communities—Conditions for the granting of tariff preferences to developing countries, complaint by India (WT/DS246)*

On 5 March 2002, India requested consultations with the European Communities concerning the conditions under which the European Communities accords tariff preferences to developing countries under the scheme of generalized tariff preferences formulated under Council Regulation (EC) No. 2501/2001 (GSP scheme), pursuant to article 4 of the DSU, article XXIII: 1 of GATT 1994, and paragraph 4(b) of the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of the Developing Countries (the Enabling Clause).⁴²⁴

Upon India's request, the DSB established a panel at its meeting on 27 January 2003. During the meeting, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Peru, Sri Lanka, Venezuela, and the United States reserved their third-party rights. Subsequently, Bolivia, Mauritius, Nicaragua, Pakistan and Panama also reserved their third party rights. Upon India's request, the Director-General composed a Panel on 6 March 2003.

On 1 December 2003, the Panel report was circulated to the members. The Panel found that:

(i) India had demonstrated that the tariff preferences under the Special Arrangements to Combat Drug Production and Trafficking (Drug Arrangements) provided in the European Communities' GSP scheme were inconsistent with article I: 1 of GATT 1994;

(ii) the European Communities had failed to demonstrate that the Drug Arrangements were justified under paragraph 2(a) of the Enabling Clause, which requires that the GSP benefits be provided on a "non-discriminatory" basis; and

(iii) the European Communities had failed to demonstrate that the Drug Arrangements were justified under article XX(b) of GATT 1994 since the measure was not "necessary" for the protection of human life or health in the European Communities, nor was it in conformity with the chapeau of article XX. (One panelist presented a dissenting opinion that the Enabling Clause was not an exception to article I: 1 and that India had not made a claim under the Enabling Clause.)

⁴²⁴ Decision of 28 November 1979 (L/4903).

25. *United States—Definitive safeguard measures on imports of certain steel products, complaints by the European Communities (WT/DS248), Japan (WT/DS249), the Republic of Korea (WT/DS251), China (WT/DS252), Switzerland (WT/DS253), Norway (WT/DS254), New Zealand (WT/DS258) and Brazil (WT/DS259)*

This dispute concerns definitive safeguard measures imposed by the United States, effective as of 20 March 2002, in the form of an increase in duties on imports of certain carbon flat-rolled steel, tin mill products, carbon and alloy hot-rolled bar, carbon and alloy cold-finished bar, carbon and alloy rebar, carbon and alloy welded pipe, carbon and alloy fittings, flanges, and tool joints, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire, as well as in the form of a tariff rate quota on imports of slabs.

Further to individual requests for the establishment of a panel submitted by the eight Complainants, the DSB, at its meetings between 3 and 24 June, established a single Panel, in accordance with article 9.1 of the DSU and pursuant to an agreement between the Parties to the dispute. Members that had reserved their third-party rights before the various Panels, namely Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey and Venezuela, were also considered as third parties before the single Panel.

The Panel circulated its reports⁴²⁵ to the members on 11 July 2003. The Panel concluded that all ten of the United States' safeguard measures at issue were inconsistent with at least one of the following WTO pre-requisites for the imposition of a safeguard measure: lack of demonstration of (i) unforeseen developments; (ii) increased imports; (iii) causation; and (iv) parallelism. The Panel therefore recommended that the DSB request the United States to bring the relevant safeguard measures into conformity with its obligations under the Agreement on Safeguards and GATT 1994.

On 11 August 2003, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. On 10 November 2003, the Appellate Body report was circulated to the members. The Appellate Body upheld all the Panel's conclusions on all ten products for unforeseen development, increased imports and parallelism, but it reversed the Panel on one set of conclusions relating to the decision-making process of the USITC when dealing with tin mill and stainless steel wire. It also decided that it was not necessary to examine the other claims on causation. Therefore, these ten measures were found to be inconsistent with article XIX of GATT 1994 and the Safeguards Agreement on other grounds. The Appellate Body neither upheld nor reversed the Panel's findings on the causal link between increased imports and serious injury for seven of the ten safeguard measures, as it was unnecessary to do so to resolve this dispute.

⁴²⁵ Although all complaints made by the eight co-complainants were considered in a single panel process, the United States requested the issuance of eight separate panel reports, claiming that to do otherwise would prejudice its WTO rights, including its right to settle the matter with individual complainants. The complainants opposed this request, stating that to grant it would only delay the process. The Panel decided to issue its decisions in the form of "one document constituting eight Panel Reports". Thus, according to the Panel, for WTO purposes, this document is deemed to constitute eight separate reports, relating to each of the eight Complainants in this dispute. The document comprises a common cover page, a common descriptive part and a common set of findings. The document then contains conclusions and recommendations that are "particularized" for each of the Complainants, with a separate number (symbol) for each individual Complainant. In the Panel's view, this approach respected the rights of all Parties while ensuring the prompt and effective settlement of the dispute.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel reports, as modified by the Appellate Body report. At the same meeting, the United States informed the members that, on 4 December 2003, the President of the United States had issued a proclamation that terminated all of the safeguard measures, pursuant to section 204 of the United States Trade Act of 1974, subject to this dispute.

26. *United States—Final countervailing duty determination with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS257)*

This dispute concerns the final affirmative countervailing duty determination by the USDOC issued on 25 March 2002, with respect to certain softwood lumber from Canada. At its meeting on 1 October 2002, the DSB established a panel. The European Communities, India and Japan reserved their third-party rights.

On 29 August 2003, the Panel report was circulated to the members. The Panel upheld the USDOC's determination that the provision of "stumpage", or the right to harvest timber from Crown land, by the Canadian provinces, constituted a financial contribution by the Government, specifically in the form of the provision of a good. In addition, the Panel upheld the USDOC's finding that the provincial stumpage programs provided specific subsidies, within the meaning of article 2 of the SCM Agreement. However, the Panel found that the USDOC acted inconsistently with articles 14, 14(d), 10 and 32.1 of the SCM Agreement in determining the existence and amount of a benefit conferred, through the provincial stumpage programs, to the producers of the products under investigation. The Panel also found that the USDOC acted inconsistently with article 10 of the SCM Agreement and article VI: 3 of GATT 1994 by failing to analyze whether any subsidy was passed on by timber harvesters to unrelated sawmills and between sawmills and unrelated re-manufacturers. The Panel decided to apply judicial economy as regards other claims raised by Canada under article 19.4 of the SCM Agreement and article VI: 3 of GATT 1994 concerning the methodologies used to calculate the subsidy rate and its claims of violation of the procedural rules of evidence set forth in article 12 of the SCM Agreement.

On 2 October 2003, the United States notified the DSB of its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by it. However, on 3 October 2003, the United States withdrew its notice of appeal for scheduling reasons, although the withdrawal was conditional on the United States retaining the right to file a new notice of appeal within the time-frame permitted by the DSU. On 21 October 2003, the United States notified the DSB of its decision to re-file its appeal to the Appellate Body.

27. *Uruguay—Tax treatment on certain products, complaint by Chile (WT/DS261)*

On 18 June 2002, Chile requested consultations with Uruguay with regard to the tax treatment applied by the latter to certain products.

On 3 April 2003, Chile requested the DSB to establish a panel. Further to a second request by Chile, the DSB established a panel at its meeting on 19 May 2003. The European Communities, Mexico and the United States reserved their third-party rights. On 15 August 2003, the Chair of the Panel informed the DSB that both Parties had jointly requested the Panel to suspend its work for a period of 60 days, until 12 October 2003. Upon subsequent requests by the Parties, the Panel suspended its work until 10 January 2004 in order for the Parties to formalize a mutually agreed solution and to notify it to the DSB, in accordance with article 3.6 of the DSU.

Panels established by the DSB

Dispute	Complainant	Panel established
United States—Final dumping determination on softwood lumber from Canada (WT/DS264)	Canada	8 January 2003
European Communities—Export subsidies on sugar (WT/DS265), (WT/DS266) and (WT/DS283)	Australia, Brazil and Thailand	29 August 2003
United States—Subsidies on upland cotton (WT/DS267)	Brazil	18 March 2003
United States—Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina (WT/DS268)	Argentina	19 May 2003
European Communities—Customs classification of frozen boneless chicken cuts (WT/DS269) and (WT/DS286)	Brazil and Thailand	7 and 21 November 2003
Australia—Certain measures affecting the importation of fresh fruit and vegetables (WT/DS270)	Philippines	29 August 2003
Republic of Korea—Measures affecting trade in commercial vessels (WT/DS273)	European Communities	21 July 2003
Canada—Measures relating to exports of wheat and treatment of imported grain (WT/DS276)	United States	31 March 2003
United States—Investigation of the International Trade Commission in softwood lumber from Canada (WT/DS277)	Canada	7 May 2003
United States—Countervailing duties on imports of steel plate from Mexico (WT/DS280)	Mexico	29 August 2003
United States—Anti-dumping measures on imports of cement from Mexico (WT/DS281)	Mexico	29 August 2003
United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)	Mexico	29 August 2003
United States—Measures affecting cross-border supply of gambling and betting services (WT/DS285)	Antigua and Barbuda	21 July 2003
Australia—Quarantine regime for imports (WT/DS287)	European Communities	7 November 2003
European Communities—Measures affecting the approval and marketing of biotech products (WT/DS291), (WT/DS292) and (WT/DS293)	United States, Canada and Argentina	29 August 2003

Requests for consultations

Dispute	Complainant	Date of Request
Mexico—Certain measures preventing the importation of black beans from Nicaragua (WT/DS284)	Nicaragua	17 March 2003
South Africa—Definitive anti-dumping measures on blanketing from Turkey (WT/DS288)	Turkey	9 April 2003
Czech Republic—Additional duty on imports of pig-meat from Poland (WT/DS289)	Poland	16 April 2003

Dispute	Complainant	Date of Request
United States—Laws, regulations and methodology for calculating dumping margins (“Zeroing”) (WT/DS294)	European Communities	12 June 2003
United States—Countervailing duty investigation on dynamic random access memory semiconductors (DRAMs) from Korea (WT/DS296)	Republic of Korea	30 June 2003
Croatia—Measure affecting imports of live animals and meat products (WT/DS297)	Hungary	9 July 2003
Mexico—Certain pricing measures for customs valuation and other purposes (WT/DS298)	Guatemala	22 July 2003
European Communities—Countervailing measures on dynamic random access memory chips from Korea (WT/DS299)	Republic of Korea	25 July 2003
Dominican Republic—Measures affecting the importation of cigarettes (WT/DS300)	Honduras	28 August 2003
European Communities—Measures affecting trade in commercial vessels (WT/DS301)	Republic of Korea	3 September 2003
Dominican Republic—Measures affecting the importation and internal sale of cigarettes (WT/DS302)	Honduras	8 October 2003
Ecuador—Definitive safeguard measure on imports of medium density fibreboard (WT/DS303)	Chile	24 November 2003
India—Anti-dumping measures on imports of certain products from the European Communities (WT/DS304)	European Communities	8 December 2003
Egypt—Measures affecting imports of textile and apparel products (WT/DS305)	United States	23 December 2003
India—Anti-dumping measure on batteries from Bangladesh (WT/DS306)	Bangladesh	28 January 2004

(d) Legal activities in the General Council

The following section lists the legal activities of the councils and committees of the WTO.

The General Council has held 6 meetings since the period covered by the previous survey. The minutes of these meetings and Special Sessions, which remain the record of the General Council’s work, are contained in documents WT/GC/M/80–85. The General Council considered the following items at its meetings:

- (1) Trade Negotiation Committee (TNC), (WT/GC/M/80, 81, 82 and 83)

The General Council considered the following:

- Reports of Committee of Trade Negotiation (WT/GC/M/80, 81, 82, 83);
- Report by the Chairman of the TNC (WT/GC/M/83);
- Negotiations on improvements and clarifications of the DSU—Extension of timeframe—Statement by the Chairman (WT/GC/M/81).

- (2) Chairmanships of the WTO bodies under the TNC—Statement by the Chairman, (WT/GC/M/82 and 83).
- (3) Committee on Budget, Finance and Administration, (WT/GC/M/80, 81, 82 and 83).

The General Council considered the following:

- Report of the Committee on Budget, Finance and Administration (WT/BFA/63 and 65);
 - Recommendations of the Meetings Committee on Budget, Finance and Administration held on 11 July and 14 August 2003 (WT/BFA/67);
 - Report by the Chairman of the Committee on the Committee's review of methodologies for future pay adjustments for WTO staff (WT/BFA/64).
- (4) Work Programme on Special and Differential Treatment, (WT/GC/M/80 and 81).

The General Council considered the following:

- Report by the Chairman of the Special Session of the Committee on Agriculture (TN/AG/11);
 - Report by the Chairman of the Special Session of the Dispute Settlement Body to the TNC (TN/DS/9);
 - Report by the Chairman of the Special Session of the Council for Trade in Services (TN/S/12);
 - Report of the Committee on Agriculture (G/AG/17);
 - Report by the Chairman of the Committee on Sanitary and Phytosanitary Measures (G/SPS/27);
 - Report by the Chairman of the Committee on Trade-Related Investment Measures (G/L/638);
 - Report to the General Council concerning the review by the Safeguards Committee of the African Group's S&D proposal on article 9 of the Safeguards Agreement (G/SG/64);
 - Report by the Chairman of the Negotiating Group on Rules (TN/RL/7-G/L/640) on proposals on special and differential treatment referred to the Group by the Chairman of the General Council.
- (5) Work Programme on Small Economies, (WT/GC/M/80, 81, 83 and 84).

The General Council considered the following:

- Report by the Chairman of the Dedicated Sessions of the Committee on Trade and Development (WT/GC/M/80, 81, 83 and 84);
- Report of the Committee on Trade and Development in Dedicated Sessions to the General Council (WT/COMTD/SE/1).

- (6) Working Group on the Relationship between Trade and Investment, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on the Relationship between Trade and Investment (WT/WGTI/7).

- (7) Working Group on the Interaction between Trade and Competition Policy, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on the Interaction between Trade and Competition Policy (WT/WGTCP/7).

- (8) Working Group on Transparency in Government Procurement, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Transparency in Government Procurement (WT/WGTGP/7).

- (9) Council for Trade in Goods on Trade Facilitation, (WT/GC/M/81).

The General Council considered the following:

- Report of the Council for Trade in Goods on Trade Facilitation (G/L/637).

- (10) Working Group on Trade, Debt and Finance, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Trade, Debt and Finance (WT/WGTDF/2).

- (11) Working Group on Trade and Transfer of Technology, (WT/GC/M/81).

The General Council considered the following:

- Report of the Working Group on Trade and Transfer of Technology (WT/WGTTT/5).

- (12) Council for Trade-Related Aspects of Intellectual Property Rights, (WT/GC/M/81).

The General Council considered the following:

- Report by the Chairman on examination of scope and modalities for non-violation and situation complaints under Article XXIII of GATT 1994 (WT/GC/M/81), (IP/C/27 and Add.1).

- (13) Committee on Trade and Environment, (WT/GC/M/81).

The General Council considered the following:

- Report to the 5th Session of the Ministerial Conference in Cancún, pursuant to paragraphs 32 and 33 of the Doha Ministerial Declaration (WT/CTE/8).

- (14) Work Programme on Electronic Commerce—Reports from subsidiary bodies and on the dedicated discussions on cross-cutting issues under the auspices of the General Council, (WT/GC/M/81).

The General Council considered the following:

- Council for Trade in Goods—Report to the General Council on the Work Programme on Electronic Commerce (G/L/635);
- Council for Trade in Services—Note by the Chairman of the Council for Trade in Services to the General Council (S/C/18);
- Council for Trade-Related Aspects of Intellectual Property Rights—Report to the General Council (IP/C/29);
- Committee on Trade and Development—Work on Electronic Commerce in the Committee on Trade and Development since the Doha Ministerial Conference (WT/COMTD/47);
- Report on the Dedicated Discussions under the auspices of the General Council on Cross-Cutting Issues related to Electronic Commerce (WT/GC/W/505 and Corr.1).

- (15) Committee on Agriculture—Implementation-related issues, (WT/GC/M/81).

The General Council considered the following:

- Report by the Committee on Agriculture to the General Council (G/AG/16).

- (16) Rules of Origin—Harmonization Work Programme—Statement by the Chairman, (WT/GC/M/81).

- (17) Committee on Customs Valuation, (WT/GC/M/81).

The General Council considered the following:

- Report on the identification and assessment of practical means to address Members' concerns regarding accuracy of declared values pursuant to paragraph 8.3 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/GC/M/81).

- (18) Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration, (WT/GC/M/81).

The General Council considered the following:

- Report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/MIN(03)/3).

- (19) Issues affecting least-developed countries, (WT/GC/M/81).

The General Council considered the following:

- Report by the Director-General on implementation of the commitment by Ministers to facilitate and accelerate accession of least-developed countries (WT/MIN(03)/2).

(20) Updates to the 2002 Annual Reports, (WT/GC/M/81).

The General Council considered the following updates to the 2002 Annual Reports:

- General Council (WT/GC/W/504);
- Dispute Settlement Body (WT/DSB/34);
- Trade Policy Review Body (WT/TPR/134);
- Sectoral Councils (G/L/637, S/C/17/Rev.1 and IP/C/27/Add.1);
- Committee on Trade and Development (WT/COMTD/46);
- Committee on Balance-of-Payments Restrictions (WT/BOP/R/70);
- Committee on Budget, Finance and Administration (WT/BFA/66);
- Committee on Regional Trade Agreements (WT/REG/12);
- Committee on Trade and Environment (WT/CTE/9);
- Committees under the Plurilateral Trade Agreements (WT/GC/70 and Add.1).

(21) Kimberley Process Certification Scheme for Rough Diamonds, (WT/GC/M/80).

The General Council considered the following requests and adopted the draft decision:

- Requests for a waiver from Australia, Brazil, Canada, Israel, Japan, Republic of Korea, Philippines, Sierra Leone, Thailand, the United Arab Emirates and the United States (G/C/W/431 and Corr.1 and 2);
- Draft decision (G/C/W/432/Rev.1).

(22) Marrakesh Ministerial Decision concerning the possible negative effects of the reform programme on least-developed and net food-importing developing countries, (WT/GC/M/80).

The General Council considered the following:

- Proposal for follow-up to the recommendation of the Inter-Agency Panel on examining the feasibility of the revolving fund operating as an ex-ante financing mechanism, by Bangladesh, Cuba, Egypt, Jordan, Kenya, and Sri Lanka on behalf of the WTO net food-importing countries and the least developed countries (G/AG/58 and Corr.1).

(23) Review of progress on the implementation issues referred to WTO bodies under the Decision of 14 November 2001 on Implementation-Related issues and Concerns—Review of progress on development-related issues of the Doha Work Programme, (WT/GC/M/80).

The General Council considered the following:

- Communication from India (WT/GC/W/494);
- Communication from Tanzania on behalf of the Informal Group of Developing Countries (WT/GC/W/495).

- (24) Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration, (WT/GC/M/82).

The General Council considered the following:

- Report by the Director-General pursuant to paragraph 41 of the Doha Ministerial Declaration (WT/MIN(03)/3).

- (25) Issues affecting least-developed countries, (WT/GC/M/82).

The General Council considered the following:

- Report by the Director-General pursuant to paragraph 43 of the Doha Ministerial Declaration (WT/MIN(03)/1).

- (26) Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, (WT/GC/M/82).

The General Council adopted the following draft decision:

- Draft Decision (IP/C/W/405).

- (27) Preparations for the Fifth Session of the Ministerial Conference, (observer status for intergovernmental organizations), (WT/GC/M/81).

- (28) Draft Ministerial Text—Statement by the Chairman of the TNC, (WT/GC/M/81 and 82).

The General Council considered the following:

- Report by the Chairman of the Trade Negotiations Committee to the General Council (TN/C/3).

- (29) Attendance by intergovernmental organizations as observers at the Fifth Session of the Ministerial Conference, (WT/GC/M/80 and 82).

- (30) Attendance of observers at the Fifth Session of the Ministerial Conference—Requests by the Governments of Niue, Cook Islands and Afghanistan, (WT/GC/M/82).

The General Council invited, upon their request, the following States to attend the Fifth Session of the Ministerial Conference as observes:

- Niue (WT/L/534);
- Cook Islands (WT/L/535);
- Afghanistan (WT/L/538).

- (31) Follow-up to the Cancun Ministerial Conference, (WT/MIN(03)/20), (WT/GC/M/84).

The General Council considered the following:

- Report by the Chairman and the Director-General (WT/GC/M/84).

- (32) Chairmanship of the Committee on Trade and Development, (WT/GC/M/80).

- (33) Poverty reduction: Sectoral initiative in favour of cotton—Joint proposal by Benin, Burkina Faso, Chad and Mali, (WT/GC/M/82).

- (34) Trade in textiles and clothing—Developing members' concerns about potential reduction in market (quota) access in 2003, (WT/GC/M/81, 83 and 84).

The General Council considered the following:

- Communication from Bangladesh; Brazil; Costa Rica; Egypt; Guatemala; Hong Kong, China; India; Indonesia; Macao, China; Maldives; Pakistan; People's Republic of China; Sri Lanka; Thailand and Vietnam (WT/GC/W/503).

- (35) Review of the exemption provided under paragraph 3 of GATT 1994, (WT/GC/M/83).

- (36) Accession Matters—Iran (Islamic Republic of)—Request for Accession, (WT/GC/M/80, 81, 82, 83, 84 and 85).

The General Council considered the following:

- Communication from Iran (Islamic Republic of) (WT/ACC/IRN/1).

- (37) Waivers under Article IX of the WTO Agreement, (WT/GC/M/81 and 84).

The General Council considered the following:

- Israel—Schedule XLII—Draft Waiver Decision (G/C/W/468);
- Sri Lanka—Establishment of a new schedule VI—Extension of Time-Limit—Draft Waiver Decision (G/C/W/469);
- Thailand—Introduction of harmonized system 1996 changes into WTO Schedules of tariff concessions—Schedule LXXIX—Draft Waiver Decision (G/C/W/470).

(For a list of the waivers granted during 2003, see the table above.)

- (38) International Trade Centre UNCTAD/WTO, (WT/GC/M/81).

The General Council considered the following:

- Report of the Joint Advisory Group of the International Trade Centre UNCTAD/WTO (JAG) on its Thirty-sixth Session (ITC/AG(XXXVI)/195).