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## CONTENTS

FOREWORD .....	xix	
ABBREVIATIONS .....	xxi	
<b>Part One. Legal status of the United Nations and related intergovernmental organizations</b>		
CHAPTER I. LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS		
1. Peru		
Legislative Decrees Nos. 549, 550 and 551 .....	3	
CHAPTER II. TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS		
A. TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS		
1. Convention on the Privileges and Immunities of the United Nations. Approved by the General Assembly of the United Nations on 13 February 1946 .....		10
2. Agreements relating to installations and meetings		
(a) Agreement between the United Nations and the Gov- ernment of Denmark establishing the United Nations information centre for the Nordic countries in Copenhagen. Signed at New York on 31 January 1989 .....	10	
(b) Agreement between the United Nations Transition As- sistance Group and the Government of Namibia con- cerning the status of UNTAG to Namibia. Signed at New York on 10 March 1989 .....	14	
(c) Agreement between the United Nations and the Gov- ernment of Colombia regarding arrangements for the twelfth session of the United Nations Commission on Human Settlements to be held at Cartagena de Indias. Signed at Cartagena de Indias on 24 April 1989 .....	24	
(d) Agreement between the United Nations and the Gov- ernment of Egypt regarding arrangements for the fif- teenth session of the United Nations World Food Coun- cil. Signed at Cairo on 26 April 1989 .....	31	

(e)	Memorandum of Understanding between the United Nations and the Government of Australia on the Fifth International Training Course on use of Remote Sensing Systems in Hydrological and Agrometeorological Applications, held at Canberra by the United Nations, the Food and Agricultural Organization of the United Nations, the World Meteorological Organization and the European Spacial Agency, and the first International Training Course on the Use of the MicroBRIAN Image Processing System, held at Brisbane. Signed at New York on 12 May 1989 .....	37
(f)	Protocol between the United Nations Transition Assistance Group and the Government of Angola on the tasks to be fulfilled by UNTAG in Angolan territory, and Additional Protocol on the status of UNTAG personnel in the territory of the People's Republic of Angola. Signed at Lubango on 9 June 1989 .....	42
(g)	Agreement between the United Nations and the Government of Cuba on the United Nations Workshop on Space Communications for Development, Current and Future Developments, Rural Communications, Search and Rescue Missions and Disaster Relief, to be held at Havana. Signed at New York on 15 June 1989 .....	44
(h)	Agreement between the United Nations and the Government of the German Democratic Republic relating to the Second United Nations International Training Course on Remote Sensing Applications to Geological Sciences, to be held at Potsdam from 5 to 20 October 1989. Signed at New York on 18 September 1989 .....	48
(i)	Exchange of letters between the United Nations and the Government of Nicaragua constituting an agreement on the status and privileges and immunities of the United Nations Observer Group in Central America. Signed at New York on 10 November 1989 and at Managua on 7 August 1990 .....	53
3. Agreements relating to the United Nations Development Programme		
(a)	Agreement between the United Nations Development Programme and the Government of Denmark relating to the headquarters of the Inter-Agency Procurement Services Unit in Copenhagen. Signed at New York on 25 January 1989 .....	55

(b)	Agreement between the United Nations Development Programme and the Government of Ecuador concerning assistance by UNDP to the Government of Ecuador. Signed at Quito on 8 March 1989 .....	63
(c)	Agreement between the United Nations Development Programme and the Government of Pakistan on the oceanographic space information systems. Signed at New York on 28 June 1989 .....	73
B.	TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS	
1.	Convention on the Privileges and Immunities of the Specialized Agencies. Approved by the General Assembly of the United Nations on 21 November 1947 .....	78
2.	International Monetary Fund	
	Executive Agency Agreement between the United Nations Development Programme and the International Monetary Fund. Signed at Noordwijk, Netherlands, on 16 July 1989 .....	78
3.	United Nations Industrial Development Organization	
(a)	Memorandum of Understanding concerning the integration of the United Nations Industrial Development Organization field service within the United Nations Development Programme field office. Signed at New York on 5 April 1989 and at Vienna on 12 April 1989.	85
(b)	Cooperation Agreement between the United Nations Industrial Development Organization and the World Health Organization. Signed at Geneva on 19 April 1989	90
(c)	Cooperation Agreement between the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization. Signed at Paris on 22 April 1989 and at Vienna on 5 June 1989.	93
(d)	Agreement between the United Nations Industrial Development Organization and the Government of China on the establishment of a UNIDO Centre for International Industrial Cooperation. Signed at Vienna on 21 November 1989 .....	97

4. International Atomic Energy Agency	
Agreement between the International Atomic Energy Agency and the Government of the United States of America regarding the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. Signed at Vienna on 17 February 1989 .....	102

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

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

A. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS	
1. Disarmament and related matters .....	113
2. Other political and security questions .....	123
3. Environmental, economic, social, humanitarian and cultural questions .....	125
4. Law of the sea .....	152
5. International Court of Justice .....	153
6. International Law Commission .....	168
7. United Nations Commission on International Trade Law .....	169
8. Legal questions dealt with by the Sixth Committee of the General Assembly and by ad hoc legal bodies .....	171
9. United Nations Decade of International Law .....	181
10. Respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations .....	181
B. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS	
1. International Labour Organization .....	182
2. Food and Agriculture Organization of the United Nations .....	183
3. United Nations Educational, Scientific and Cultural Organization .....	187

4.	International Civil Aviation Organization .....	191
5.	World Health Organization .....	195
6.	World Bank .....	196
7.	International Monetary Fund .....	198
8.	Universal Postal Union .....	201
9.	International Maritime Organization .....	204
10.	International Fund for Agricultural Development .....	208
11.	United Nations Industrial Development Organization .....	216
12.	International Atomic Energy Agency .....	218
CHAPTER IV. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS		
A. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUS- PICES OF THE UNITED NATIONS		
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Done at Basel on 22 March 1989 .....		229
B. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUS- PICES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS		
1. International Labour Organization		
Convention concerning Indigenous and Tribal Peoples in Independent Countries. Adopted by the General Con- ference of the International Labour Organization at Geneva on 27 June 1989 .....		257
2. International Maritime Organization		
International Convention on Salvage. Done at London on 28 April 1989 .....		269
3. World Intellectual Property Organization		
Treaty on Intellectual Property in respect of Integrated Cir- cuits. Done at Washington on 26 May 1989 .....		280

CHAPTER V. DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. DECISIONS OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

1. Judgement No. 440 (17 May 1989): *Shankar v. the Secretary-General of the United Nations*  
Rescission of the decision compensating, rather than reinstating, the staff member for his separation vitiated by lack of good faith and of due process—Commitment to renew appointment must be based on conclusive proof—Article 9 of Administrative Tribunal statute—Question of compensation—Confidential, adverse documents not shown to staff member must be removed from his official status file ..... 290
2. Judgement No. 441 (18 May 1989): *Shaaban v. the Secretary-General of the International Civil Aviation Organization*  
Denial by ICAO of reimbursement of income tax imposed by United States authorities—Entitlement governed by letter of appointment, ICAO Service Code and established administrative practice—Special circumstances do not establish an administrative practice or reflect unlawful discrimination—Effect of incorrect informal advice—Human rights complaints versus conditions of service governing contracts of employment 291
3. Judgement No. 443 (22 May 1989): *Sarabia and De Castro v. the Secretary-General of the United Nations*  
Discriminatory treatment with regard to the payment of daily subsistence allowance on mission—Competency of Tribunal—Question of an injury—Infringement of the principle of equality ..... 293
4. Judgement No. 444 (23 May 1989): *Tortel v. the Secretary-General of the United Nations*  
Non-promotion to D-2—Special commitment to a staff member might imply discriminatory treatment as to other staff members—Question of a commitment to promote staff member to Director—Commitment versus promise of priority—Effect of omission of delegation of authority in administrative instruction—Question of reasonableness of reliance on verbal commitments of the Under-Secretary-General—Organization should honour commitments on which staff members had relied in good faith—Responsibility of Organization when a decision is made not to promote a staff member to whom commitments had been made—Issue of “penalty box” jobs 294

5. Judgement No. 447 (25 May 1989): Abbas vs. the Secretary-General of the United Nations  
 Non-selection of D-2 post—Vacancy announcements should be advertised—Question of adequate consideration for appointment to post—Requirement of a suitable examination of and report on allegations of prejudice and discrimination before Tribunal can make a decision ..... 297
6. Judgement No. 455 (31 October 1989): Denig v. the Secretary-General of the United Nations  
 Question of a binding contract for one-year appointment—No entitlement to salary for performing no work—Question of fulfilment of condition before formation of valid employment contract—Significance of invalid contractual requirement—Staff member placed at financial disadvantage by the Administration ..... 298
7. Judgement No. 456 (2 November 1989): Kioko v. the Secretary-General of the United Nations  
 Termination of permanent appointment for unsatisfactory performance—Importance of notification and opportunity to respond to recommendation for termination—Clarification of delegation of authority in five-year reviews of permanent appointments—Question of strict adherence to administrative instruction regarding preparation of performance reports—Generous treatment by the staff member’s department negates claim of prejudice—Issue of delays by Joint Appeals Board ..... 301
8. Judgement No. 457 (7 November 1989): Anderson v. the Secretary-General of the United Nations  
 Rejection of recommendation of the rebuttal panel to upgrade performance evaluation report—Question of an administrative decision—Question of Tribunal’s competency in matter—Issue of truthful performance reports—Importance of warning of poor performance to staff member—Charge of prejudice negated by careful appraisal of rebuttal panel report and positive statements about staff member ..... 304
9. Judgement No. 461 (10 November 1989): Zafari v. the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East  
 Termination—Competency of Tribunal in matter—Importance of opportunity of judicial recourse against administrative decision—Question of renunciation of right to

	seek compensation for improper dismissal—Termination under regulation 9.1 must be justified .....	306
10.	Judgement No. 465 (15 November 1989): Safavi v. the Secretary-General of the United Nations Non-renewal of fixed-term appointment—Question of legal expectancy of renewal—Proof of prejudice or improper motivation—Importance of staff member being given opportunity to respond to charges of unsatisfactory performance—Post facto presentations of documents are not normally an adequate substitute for contemporaneous performance records .....	308
B.	DECISIONS OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION	
1.	Judgement No. 958 (27 June 1989): In re El Boustani (No. 3) v. United Nations Educational, Scientific and Cultural Organization Non-promotion to head of section—Competency of Tribunal in matter—Proof of personal prejudice—Question of indicating reasons for ranking of candidates—Weight of factors in selection process—Question of providing an explanation in an administrative decision—Ability of staff member to defend his or her rights—Corroboration of plea by citing other cases	310
2.	Judgement No. 972 (27 June 1989): In re Unninar v. World Meteorological Organization Non-renewal of contract—Standard for review of decision—Exhaustion of internal means of redress—Question of reviewing all facts before making a decision—Standard for retention in the Organization—Importance of opportunity to answer charges—Question of a remedy .....	312
3.	Judgement No. 975 (27 June 1989): In re Nowak v. European Patent Organisation Request to substitute certified sick leave for maternity leave so as to preserve full period of maternity leave entitlement— <i>Expressio unius exclusio alterius</i> —Significance of recommendation from the Appeals Committee—Effect of a previous misinterpretation of the rules in a subsequent similar situation—Question of equality of treatment .....	314

4. Judgement No. 977 (27 June 1989): In re Ratteree v. International Labour Organization Non-selection to posts—Question of receivability—Authority of Director-General to assign staff—Question of arbitrary and unfair treatment of staff member	315
5. Judgement No. 978 (27 June 1989): In re Meyler v. United Nations Educational, Scientific and Cultural Organization Withdrawal of recurrent benefits upon marriage—Question of receivability—Effect of discriminatory staff rule—Applications to intervene in case .....	317
C. DECISIONS OF THE WORLD BANK ADMINISTRATIVE TRIBUNAL	
1. Decision No. 78 (5 May 1989): Charlotte Robinson v. International Bank for Reconstruction and Development Complaint against advice received from Bank regarding United States tax liability on commuted pension payments—Question of jurisdiction of the Tribunal—Advice to staff members given by Bank must be reasonable .....	319
2. Decision No. 81 (22 September 1989): Trent John Bertrand v. International Bank for Reconstruction and Development Non-selection to a post during 1987 Bank reorganization—Question of time limits regarding Applicant's reply—Tribunal's competency in the matter—Appropriateness of considering policy views of staff member in selection process—Importance of factual support for factor given negative weight in selection process—Detailed allegations and factual support of Applicant's case shifted burden to the Respondent to disprove—Assessment of damages .....	322
3. Decision No. 84 (22 September 1989): Maysoon Abbas Sukkar v. International Bank for Reconstruction and Development Question of an obligation to retain staff member after external training authorized by the Bank—Question of an implied obligation .....	324
4. Decision No. 85 (22 September 1989): Pierre De Raet v. International Bank for Reconstruction and Development Non-selection during 1987 reorganization—Relationship of Appeals Committee to the Tribunal—Necessity of	

establishing a prima facie case—Error of terminating staff member on redundancy ground for poor performance instead of for lack of skills for redesigned position—Principle 2.1 of the Staff Employment—Competency of Tribunal in review of staff member’s performance report .....	326
---	-----

CHAPTER VI. SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. LEGAL OPINIONS OF THE SECRETARIAT OF THE UNITED NATIONS (ISSUED OR PREPARED BY THE OFFICE OF LEGAL AFFAIRS)

**Claims and liability issues**

1. Legal basis for instituting claims against troop-contributing Governments to compensate the United Nations for loss of, or damage to, United Nations property—Legal principles concerning negligent acts as applied to members of the staff and members of military contingents of United Nations peacekeeping operations—Liability of troop-contributing Governments for gross negligence of members of their military contingents—Definition of gross negligence .....	331
2. Liability of United Nations under road projects executed by the Office for Project Services—Employer and employment of personnel engaged in to work on a United Nations Development Programme Project .....	338
3. Liability of the United Nations for parking facilities—Article III, section 7(b), of the Headquarters Agreement—“Garages and Parking Places” section of the New York General Obligations Law .....	341

**Commercial issues**

4. Issue whether it is legally proper for the United Nations to distribute advertising material with the United Nations publications—Guidelines and safeguards to be followed in accepting advertising in a United Nations publication .....	343
--	-----

**Contracts**

5. Government execution as a policy for implementation of United Nations Development Programme projects—Role of the UNDP field office .....	346
---	-----

**Copyright**

6. Copyright of the United Nations *Treaty Series* and related publications—Administration instruction ST/AI/189/Add.9/Rev.2 ..... 349

**Personnel issues**

7. Legal status of individuals under special service agreements—Section 26 of the Convention on Privileges and Immunities of the United Nations—Experts on mission ..... 350

**Privileges and immunities**

8. Exemption from excise duties and taxes—Section 8 of the Convention on the Privileges and Immunities of the United Nations ..... 352
9. Payment of employment injury contributions and contributions under the national pension scheme—Section 7(a) of the Convention on the Privileges and Immunities of the United Nations ..... 353
10. United Nations Commission on International Trade Law Arbitration Rules—Section 2 of the Convention on the Privileges and Immunities of the United Nations ..... 354
11. Exemption from Customs Duty for a National Committee for UNICEF—Section 7 of the Convention on the Privileges and Immunities of the United Nations—Relationship between a National Committee for UNICEF and UNICEF ..... 355
12. Commercial rent tax imposed by the City of New York on rents paid—Section 7 of the Headquarters Agreement ..... 356
13. Accreditation of diplomatic status—Article 37(2) of the Vienna Convention on Diplomatic Relations—Distinction between career and non-career administrative and technical staff of permanent missions ..... 358
14. Interpretation of the term “public utility”—Exemption from wharfage charges ..... 359
15. Exemption from taxes relating to the purchase of aviation gas—Sections 7 and 8 of the Convention on the Privileges and Immunities of the United Nations ..... 360

**Procedural and institutional issues**

- 16. Meaning of the term “subsidiary body”—Question whether the Governing Council of the United Nations Development Programme is a subsidiary body of the General Assembly or of the Economic and Social Council ..... 361
- 17. Constitution of appointment and promotion bodies—Role of the staff unions ..... 363
- 18. Subcommission on Prevention of Discrimination and Protection of Minorities—Conditions of participation of States—Observers ..... 364
- 19. Interpretation of rules of procedure by the Subcommission on Prevention of Discrimination and Protection of Minorities—Rule 69—Right of reply of observer States ..... 366
- 20. Status of the United Nations Institute for Training and Research—Designation of an executing agency of the United Nations Development Programme regarding eligibility for support cost flexibility arrangements ..... 367

**Secretariat**

- 21. Toponym “Persian Gulf”—Practice of the Secretariat on terminology issues ..... 369

**Treaties**

- 22. Signatures affixed to the original of a treaty deposited with the Secretary-General elsewhere than the place provided for under the provisions of the Treaty—Discretion of depositary ..... 370

**B. LEGAL OPINIONS OF THE SECRETARIATS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS**

**United Nations Industrial Development Organization (Legal opinions issued or prepared by the Legal Service)**

- 1. Membership in UNIDO—Possible request by Palestine ..... 372
- 2. Commercialization of UNIDO’s technologies ..... 373
- 3. Question of attributing authorship to staff members—Ranking system of rules of UNIDO—Authority to amend the rules and the form of such amendment ..... 375

**Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations**

CHAPTER VII. DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

International Court of Justice

Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations (request for advisory opinion) .....	383
--	-----

CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS

Mexico

Ministry of Foreign Affairs

Communiqué to the President of the Special Federal Conciliation and Arbitration Board No. 14 .....	395
--	-----

**Part Four. Bibliography**

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL

1. General .....	400
2. Particular questions .....	404

B. UNITED NATIONS

1. General .....	405
2. Particular organs .....	407
General Assembly .....	407
International Court of Justice .....	407
Regional commissions .....	411
Secretariat .....	411
Security Council .....	412
United Nations Forces .....	412

3. Particular questions or activities .....	413
Collective security .....	413
Commercial arbitration .....	414
Definition of aggression .....	418
Diplomatic relations .....	418
Disarmament .....	419
Environmental questions .....	421
Financing .....	425
Friendly relations and cooperation among States .....	426
Human rights .....	426
International administrative law .....	434
International criminal law .....	435
International economic law .....	437
International terrorism .....	438
International trade law .....	440
International waterways .....	442
Intervention .....	442
Law of the sea .....	443
Law of treaties .....	449
Law of war .....	451
Maintenance of peace .....	459
Membership and representation .....	460
Namibia .....	460
Narcotic drugs .....	461
Natural resources .....	461

Non-governmental organizations .....	464
Outer space .....	465
Peaceful settlement of disputes .....	468
Political and security questions .....	470
Progressive development and codification of international law (general) .....	472
Recognition of states .....	473
Refugees .....	473
Right of asylum .....	475
Rule of law .....	476
Self-defence .....	476
Self-determination .....	477
Social defence .....	478
State responsibility .....	479
State sovereignty .....	480
State succession .....	482
Technical cooperation .....	482
Trade and development .....	482
Trusteeship .....	483
Use of force .....	483
C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS	
Food and Agriculture Organization of the United Nations ..	484
General Agreement on Tariffs and Trade .....	484
International Atomic Energy Agency .....	485
International Centre for Settlement of Investment Disputes	486
International Civil Aviation Organization .....	486

International Labour Organization .....	487
International Monetary Fund .....	487
International Telecommunication Union .....	488
United Nations Educational, Scientific and Cultural Organi- zation .....	488
Universal Postal Union .....	488
World Bank .....	488
World Intellectual Property Organization .....	489

## FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and, by its resolution 3006 (XXVII) of 18 December 1972, the General Assembly made certain changes in the outline of the *Yearbook*.

Chapters I and II of the present volume—the twenty-seventh of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1989. Decisions given in 1989 by the international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations. Each organization has prepared the section which relates to it.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon their entry into force. In the case of treaties too voluminous to fit into the format of the *Yearbook*, an easily accessible source is provided.

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1989.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.



## ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
ONUC	United Nations Operation in the Congo
ONUCA	United Nations Observer Group in Central America
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRO	Office of the United Nations Disaster Relief Coordinator
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNTAG	United Nations Transition Assistance Group
UPU	Universal Postal Union
WFC	World Food Council
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization



**Part One**

**LEGAL STATUS OF THE  
UNITED NATIONS  
AND RELATED INTERGOVERNMENTAL  
ORGANIZATIONS**



## Chapter I

### LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOV- ERNMENTAL ORGANIZATIONS

#### Peru

##### LEGISLATIVE DECREES<sup>1</sup>

Legislative Decree No. 549—Providing that the sale of locally produced vehicles to diplomatic missions is subject to tax-free treatment with diplomatic exemption from customs duties (24-XI-89)

Pursuant to article 188 of the Political Constitution of Peru, the Congress of the Republic, by Act No. 25078, delegated to the Executive Branch the power to issue by legislative decree rules providing for certain changes in tax exemptions and benefits;

With the approval of the Council of Ministers;

With instructions to report to the Congress of the Republic;

Has issued the following Legislative Decree:

*Article 1.* The sale of locally produced vehicles to diplomatic and consular missions and their agents, to international organizations and their officers, and to experts of Governments and international organizations who provide technical assistance in the country is subject to the same tax-free treatment as vehicles imported with diplomatic exemption from customs duties, in the quantities and on the terms outlined below:

(a) *Category A:* Heads of mission holding the rank of nuncio, ambassador and minister plenipotentiary:

—A maximum of two vehicles, to replace the same number authorized to be imported free of duty for diplomats;

(b) *Categories B and C:* Chargés d'affaires of cabinet rank, diplomatic agents who are not heads of mission, consular agents; armed forces and police attachés and their deputies; resident representatives, high-ranking officers, directors and officers of international organizations who stay in Peru for more than one year; commercial, cultural and other advisers and attachés:

— One vehicle in addition to the one they are entitled to import.

(c) *Category D:* Experts of Governments and international organizations who provide technical assistance and stay for more than one year:

— One vehicle to replace the one they are entitled to import, during their entire stay;

(d) *Category E:* Foreign administrative personnel of embassies and consulates, and military, naval, air and police assistants and adjutants with the rank of non-commissioned officer:

— One vehicle to replace the one they are entitled to import, during their entire stay, provided that the accrediting Government grants a similar concession to Peruvian personnel of the same status in its country.

*Article 2.* Vehicles referred to in this Legislative Decree shall not be sold before two (02) years have elapsed from the date of registry with the Directorate of Privileges and Immunities, except in the event of termination of functions or transfer, in which case 1/24 of the total tax payable for a similar vehicle, as priced at the same time of the transfer, shall be reimbursed for each month remaining until the completion of the two-year period (02 years).

*Article 3.* The vehicles referred to in article 1 may be driven, prior to their transfer, only by the beneficiary of the privileges, his/her direct dependants or the person who has been hired to drive them, whose name and driver licence number must be reported to the Ministry of Foreign Affairs. Any infringement of this article shall be subject to application of the tax code.

*Article 4.* The provisions relating to the regime for vehicles set forth in Supreme Decree No. 0007-82-RE and any other rules that are not consistent with this Legislative Decree are hereby abrogated.

*Article 5.* This legislative Decree shall be signed by the President of the Council of Ministers and Minister for Foreign Affairs, by the Minister of Economic Affairs and Finance and by the Ministry of Industry, Domestic Commerce, Tourism and Integration.

*Article 6.* This Legislative Decree shall enter into force on the day following its publication in the official gazette *El Peruano*.

Lima, 23 November 1989

Minister of Transport and Communication in charge of Industry, Domestic Commerce, Tourism and Integration

Legislative Decree No. 550 — Establishing annual quotas for the FOB value of movable and consumer goods imported with diplomatic exemption from customs duties for the exclusive use of diplomatic agents and others (24-XI-89)

Pursuant to article 188 of the Political Constitution of Peru, the Congress of the Republic, by Act No. 25078, delegated to the Executive Branch the power to issue by legislative decree rules providing for certain changes in tax exemptions and benefits;

With the approval of the Council of Ministers;

With instructions to report to the Congress of the Republic;

Has issued the following Legislative Decree:

*Article 1.* The FOB value of movable and consumer goods, except vehicles which are imported with diplomatic exemption from customs duties for the exclusive use of diplomatic and consular agents, officers of international organizations and experts of international organizations and Governments who provide technical assistance shall not exceed the annual quotas set forth below:

(a) Heads of mission holding the rank of nuncio, ambassador and minister plenipotentiary: US\$15,000.

(b) Chargés d'affaires of cabinet rank and diplomatic agents holding the rank of minister, minister-counsellor and counsellor; military, naval, air and police attachés; career consuls-general; resident representatives, high-ranking officers and directors of international organizations; commercial, cultural and other advisers and attachés: US\$10,000.

(c) Diplomatic agents holding the rank of first, second and third secretary, paid consuls and vice-consuls; military, naval, air and police deputy attachés; commercial, cultural and other attachés, accredited officers of international organizations who stay for more than one (01) year: US\$8,000.

(d) Duly registered experts of Governments and international organizations who provide technical assistance and stay for more than (01) year: US\$6,000.

(e) Non-resident foreign administrative personnel of diplomatic missions and consular offices, and military, naval, air and police assistants and adjutants with the rank of non-commissioned-officer, provided that the Government of the sending State grants a similar concession to Peruvian personnel of the same status in its country: US\$4,000.

The FOB value of the aforementioned goods must be consistent with the price lists used by the Office of the National Superintendent of Customs and shall be verified by the Directorate of Privileges and Immunities.

*Article 2.* All diplomatic quotas shall be cleared as a matter of course by the Ministry of Foreign Affairs upon the completion of one year from the date of accreditation of the officer, and quotas or balances relating to one year may not be carried over and added to quotas relating to the following year.

*Article 3.* The duty-free importation of alcoholic beverages for the exclusive use of diplomatic and consular agents, officers of international organizations and experts of Governments and international organizations who provide technical assistance, besides being included in the pertinent annual quotas referred to in article 1, shall be subject to the following limits:

(a) Heads of mission holding the rank of nuncio, ambassador and minister plenipotentiary:

Whisky	Up to 675 litres
Assorted spirits	Up to 117 litres
Sparkling wines	Up to 360 litres
Wines and beers	Up to 720 litres
Cigarettes	Up to 20,000 units

(b) Chargés d'affaires of cabinet rank and diplomatic agents holding the rank of minister, minister-counsellor and counsellor; military, naval, air and police attachés; career consuls-general; resident representatives, high-ranking officers and directors of international organizations; commercial, cultural and other advisers:

Whisky	Up to 324 litres
Assorted spirits	Up to 072 litres
Sparkling wines	Up to 135 litres
Wines and beers	Up to 495 litres
Cigarettes	Up to 10,000 units

(c) Diplomatic agents holding the rank of first, second and third secretary, paid consuls and vice-consuls; military, naval, air and police deputy attachés; commercial, cultural and other attachés; accredited officers of international organizations who stay for more than one (01) year:

Whisky	Up to 135 litres
Assorted spirits	Up to 027 litres
Sparkling wines	Up to 054 litres
Wines and beers	Up to 135 litres
Cigarettes	Up to 5,000 units

(d) Duly registered experts of Governments and international organizations who provide technical assistance and stay for more than one (01) year:

Whisky	Up to 090 litres
Assorted spirits	Up to 018 litres
Sparkling wines	Up to 036 litres
Wines and beers	Up to 135 litres
Cigarettes	Up to 5,000 units

(e) Non-resident foreign administrative personnel of diplomatic missions and consular offices, and military, naval, air and police assistants and adjutants with the rank of non-commissioned officer, provided that the Government of the sending State grants a similar concession to Peruvian personnel of the same status in its country:

Whisky	Up to 090 litres
Assorted spirits	Up to 018 litres
Sparkling wines	Up to 036 litres
Wines and beers	Up to 135 litres
Cigarettes	Up to 5,000 units

*Article 4.* The provisions relating to the importation of movable and consumer goods set forth in Supreme Decree No. 0007-82-RE and any other rules that are not consistent with this legislative Decree are hereby abrogated.

*Article 5.* The Ministry of Foreign Affairs is hereby authorized to draw up a single harmonized text of Supreme Decree No. 0007-82-RE — Regulations on Diplomatic Privileges and Immunities.

*Article 6.* This legislative Decree shall be signed by the President of the Council of Ministers and Minister for Foreign Affairs and by the Minister of Economic Affairs and Finance.

*Article 7.* This Legislative Decree shall enter into force on the day following its publication in the official gazette *El Peruano*.

Lima, 23 November 1989

Legislative Decree No. 551 — Granting authorization to import vehicles to foreign officers of diplomatic and consular missions and of the offices of international organizations (29-XI-89)

Pursuant to article 188 of the Political Constitution of Peru, the Congress of the Republic, by Act No. 25078, delegated to the Executive Branch the power to issue by legislative decree rules providing for certain changes in tax exemptions and benefits;

With the approval of the Council of Ministers;

With instructions to report to the Congress of the Republic;

Has issued the following Legislative Decree:

*Article 1.* Foreign officers of diplomatic and consular missions and of the offices of international organizations who are duly accredited with the Government of Peru shall enjoy the benefit of importing vehicles with diplomatic exemption from customs duties, in the quantities and with the characteristics outlined below:

(a) Category A: Heads of mission holding the rank of nuncio, ambassador and minister plenipotentiary:

— One vehicle of any kind, with no limitation as to cylinder capacity;

— A second vehicle, up to 2,000 cm<sup>3</sup>.

(b) Category B: Chargés d'affaires of cabinet rank and diplomatic officers holding the rank of minister, minister counsellor and counsellor; military, naval, air and police attachés; career consuls-general; resident representatives, high-ranking officers and directors of international organizations; commercial, cultural and other advisers:

— One vehicle, up to 2,500 cm<sup>3</sup>.

(c) Category C: Diplomatic officers holding the rank of first, second and third secretary; paid consuls and vice-consuls; military, naval, air and policy deputy attachés; commercial, cultural and other attachés; accredited officers of international organizations who stay in Peru for more than one (01) year:

— One vehicle, up to 2,000 cm<sup>3</sup>.

(d) Category D: Duly registered experts of international organizations and Governments who provide technical assistance and stay for more than one (01) year:

— One vehicle, up to 2,000 cm<sup>3</sup>.

(e) category E: Foreign administrative personnel of embassies and consulates, and military, naval, air and police assistants and adjutants with the rank of non-commissioned officer, provided that the Government of the sending State grants a similar concession to Peruvian personnel of the same status in its country:

— One vehicle, up to 1,600 cm<sup>3</sup>.

*Article 2.* The Ministry of Foreign Affairs, through the Directorate of Privileges and Immunities, shall be responsible for authorizing the importation of vehicles with diplomatic exemption from customs duties, as provided for in the previous article, together with vehicles for official use by the missions and offices, taking into account the requirements and the number of the staff concerned.

*Article 3.* Officers belonging to category A may import, with diplomatic exemption from customs duties, and may transfer a maximum of four (04) vehicles during their stay in Peru. Officers belonging to categories B and C may import, with diplomatic exemption from customs duties, and may transfer a maximum of two vehicles during their stay. Officers belonging to categories D and E may import, with diplomatic exemption from customs duties, and may transfer only one vehicle during their stay. In no case shall the Ministry of Foreign Affairs authorize the duty-free importation of vehicles whose cylinder capacity exceeds that established for the category concerned.

*Article 4.* Vehicles imported with diplomatic exemption from customs duties may be transferred, without payment of customs duties, to persons who do not enjoy such privileges only after four years have elapsed, in the case of missions and offices, and after three (03) years in the case of persons who do enjoy such privileges. The period shall be reckoned from the date of the decision to grant the exemption and shall end on the date of the note requesting authorization to sell. In exceptional cases, the transfer may be authorized subject to payment of customs duties, before the expiry of the time limit, if the beneficiary is transferred or if his/her functions are terminated. In such cases, 1/36 of 150 per cent. of the CIF value in United States dollars, calculated on the basis of the values shown in the price list of imported vehicles used by the office of the National Superintendent of Customs, shall be paid for each month remaining before the three (03) years have elapsed. If the vehicle is transferred to someone who has privileges, the officer purchasing the vehicle may not accumulate to his/her credit the time elapsed before the transfer; in such cases, the aforementioned time limit shall begin on the date of the note authorizing the transfer.

*Article 5.* Vehicles imported with diplomatic exemption from customs duties may be driven, prior to their transfer, only by the beneficiary of the privileges, his/her direct dependants or the person who has been hired to drive them, whose name and driver licence number must be reported to the Ministry of Foreign Affairs. In no case may the aforesaid vehicles be used, before a transfer is authorized, by anyone other than the persons mentioned above; non-observance of this provision constitutes an infringement of the pertinent customs and tax regulations.

*Article 6.* When a beneficiary of privileges is transferred or his/her functions are terminated, he/she must transfer or re-export the vehicle or vehicles that he/she imported with diplomatic exemption from customs duties, before submitting to the Ministry of Foreign Affairs a request for permission freely to remove from the country his/her household goods and personal effects.

*Article 7.* Anyone enjoying privileges who on the date of this Legislative Decree has purchased more than the number of vehicles allowed under article 1 may, if appropriate, transfer such vehicles, provided that the relevant customs duties are paid, when he/she is transferred or his/her functions are terminated.

*Article 8.* The provisions relating to the regime for vehicles set forth in Supreme Decree No. 0007-82-RE, of 07 July 1982, and any other rules that are not consistent with this Legislative Decree are hereby abrogated.

*Article 9.* This Legislative Decree shall be signed by the President of the Council of Ministers and Minister for Foreign Affairs and by the Minister of Economic Affairs and Finance.

*Article 10.* This Legislative Decree shall enter into force on the day following its publication in the official gazette *El Peruano*.

Lima, 28 November 1989

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NOTES

<sup>1</sup>*Normas Legales*, 1989.

## Chapter II

### TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERN- MENTAL ORGANIZATIONS

#### A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF  
THE UNITED NATIONS.<sup>1</sup> APPROVED BY THE GENERAL AS-  
SEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946<sup>2</sup>

In 1989, no State became party to the Convention. The number of States parties remains at 124.<sup>3</sup>

#### 2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

- (a) Agreement between the United Nations and the Government of Denmark establishing the United Nations information centre for the Nordic countries in Copenhagen. Signed at New York on 31 January 1989.<sup>4</sup>

The Government of Denmark and the Secretary-General of the United Nations,

*Considering* that the Government of Denmark (hereinafter referred to as “the Government”) and the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”) agreed in 1946 to establish an information Centre for the Nordic countries in Copenhagen (hereinafter referred to as “the Centre”).

*Considering* that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as “the Convention”) applies to the branch or field offices of the Department of Public Information which are an integral part of the Secretariat of the United Nations,

*Considering* that it is desirable to conclude an agreement, supplementary to the Convention regarding the Centre,

*Have agreed* as follows:

*Article I*

DEFINITION

In the present Agreement, the expression “officials of the Centre” means the Director and all members of the staff of the Centre, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

*Article II*

FUNCTIONS OF THE CENTRE

The Centre is to carry out the functions assigned to it by the Secretary-General within the framework of the Department of Public Information.

*Article III*

STATUS OF THE CENTRE

1. The premises of the Centre and residence of its Director shall be inviolable.
2. The Government shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff.
3. The appropriate Danish authorities shall make every possible effort to secure, upon the request of the Director of the Centre, the public services needed by the Centre, including, without limitation by reason of this enumeration, postal, telephone, and telegraph services and power, water and fire protection services. Such public services shall be supplied on equitable terms.

*Article IV*

FACILITIES AND SERVICES

The Government, subject to parliamentary approval, makes an annual contribution to provide rent-free premises to the Centre and towards the cost of heating the Centre.

*Article V*

OFFICIALS OF THE INFORMATION CENTRE

1. Officials of the Centre shall:
  - (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
  - (b) Be immune from seizure of their personal and official baggage;

(c) Be immune from inspection of official baggage, and if the person is the Director of the Centre, be immune from inspection of personal baggage;

(d) Be exempt from taxation on salaries and all other remuneration paid to them by the United Nations;

(e) Be immune from national service obligations;

(f) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(g) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to Denmark;

(h) Be given, together with their spouses and relatives dependent on them, and other members of their household, the same repatriation facilities in time of international crisis as diplomatic envoys;

(i) Have the right to import free of duty their furniture, personal effects and all household appliances, including one automobile, intended for personal use free of duty when they come to reside in Denmark, which privilege shall be valid for a period of one year from the date of arrival in Denmark.

2. Officials of the Centre, except those who are locally recruited staff in the General Service or related categories, shall furthermore enjoy the following privileges and immunities:

(a) Have the right to import free of custom and excise duties limited quantities of certain articles intended for personal consumption (food products, beverages, etc.) in accordance with a list to be approved by the Government;

(b) Have the right, once every three years, to import one motor vehicle free of custom and excise duties, including value added taxes, it being understood that permission to sell or dispose of the vehicle in the open market will normally be granted two years after its importation only. It is further understood that the customs and excise duties will become payable in the event of the sale or disposal of such motor vehicle within three years after its importation to a person not entitled to this exemption.

3. In addition to the immunities and privileges specified in paragraphs 1 and 2 above, the Director of the Centre shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law. His name shall be included in the list of international organizations and offices in Copenhagen issued by the Danish Ministry of Foreign Affairs.

4. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations Regulations and Rules.

5. The privileges and immunities for which provision is made in this Agreement are granted solely for the purpose of carrying out effectively the aims and purposes of the United Nations. The Secretary-General may waive the immunity of any staff member whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

*Article VI*

SETTLEMENT OF DISPUTES

Any dispute between the Centre and the Government concerning the interpretation or application of this Agreement or of any supplementary agreement or arrangement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Government, one to be chosen by the Director of the Centre, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Secretary-General of the United Nations or the Government.

*Article VII*

GENERAL PROVISIONS

1. The provisions of this Agreement shall be considered supplementary to the provisions of the Convention. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary whenever possible; both of them shall be applied and neither shall restrict the force of the other.

2. This Agreement shall be construed in the light of its primary purpose of enabling the Centre fully and efficiently to discharge its responsibilities and fulfil its purpose.

3. Consultations with respect to amendments to this Agreement shall be entered into at the request of either party and such amendments shall be made by mutual consent. If the consultations do not result in an understanding within one year the present Agreement may be terminated by either party on giving two years' notice.

4. This Agreement shall enter into force upon signature.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in two copies, each in English.

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- (b) Agreement between the United Nations Transition Assistance Group and the Government of Namibia concerning the status of UNTAG to Namibia. Signed at New York on 10 March 1989<sup>5</sup>

#### I. DEFINITIONS

1. For the purposes of this Agreement the following definitions shall apply:
  2. "UNTAG" means the United Nations Transition Assistance Group established pursuant to Security Council resolution 435 (1978) consisting of:
    - (a) The "Special Representative" appointed by the Secretary-General of the United Nations pursuant to Security Council resolution 431 (1978). Any reference to the Special Representative in this Agreement shall, except in paragraph 31, include any member of UNTAG to whom he delegates a specified function or authority;
    - (b) A "civilian section" composed of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative;
    - (c) A "military section" composed of military and civilian personnel assigned by Participating States to serve as part of UNTAG.
  3. "member of UNTAG" means any member of the civilian or military section but unless specifically stated otherwise does not include locally recruited personnel.
  4. "Participating State" means a State contributing personnel to the military section of UNTAG.
  5. "Territory" means Namibia (South West Africa).
  6. "Government" means the Government of the Republic of South Africa including the Administrator-General of the Territory, as well as all competent local authorities.
  7. "Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

#### II. APPLICATION OF THIS AGREEMENT

8. Unless specifically provided otherwise the provisions of this Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNTAG or any member thereof apply in the Territory only.

#### III. APPLICATION OF THE CONVENTION

9. The Convention shall apply to UNTAG, subject to the special provisions specified in this Agreement.
10. Article II of the Convention shall also apply to the property, funds and assets of Participating States used in connection with UNTAG.

#### IV. STATUS OF UNTAG

11. Members of UNTAG shall refrain from any activity of a political nature in the Territory and from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. The Special Representatives shall take all appropriate measures to ensure the observance of these obligations.

12. The Government undertakes to respect the exclusively international nature of UNTAG.

##### *Premises*

13. The premises referred to in section 3 of the Convention shall include those made available to UNTAG pursuant to paragraph 25 of this Agreement, and any other premises actually occupied or used by UNTAG.

##### *Taxation*

14. The Government undertakes to exempt UNTAG from general sales tax paid on all official UNTAG purchases for its own use, excluding those for resale in commissaries.

##### *United Nations flag; vehicle markings*

15. UNTAG shall display the United Nations flag at or on its headquarters, camps and other premises, vehicles, vessels and otherwise as agreed to in consultation between the Special Representative and the Government. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Special Representative. The display of such flags or pennants shall be subject to prior consultation with the Government.

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

##### *Communications*

17. UNTAG shall enjoy the facilities in respect to communications provided in article III of the Convention only for the purpose of executing its task as laid down in Security Council resolution 435 (1978).

18. Subject to the provisions of paragraph 17, UNTAG shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the Territory, United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network; provided that the satellite systems shall only be installed and operated by UNTAG after consultation with the Government. The telecommunication services shall be operated in accordance with the International Telecommunication Convention<sup>6</sup> and Regulations and the frequencies on which any such station may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

19. Subject to the provisions of paragraph 17 UNTAG shall enjoy, within the Territory, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNTAG, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations, provided that land lines and cables between premises of UNTAG shall only be laid after consultation and agreement with the Government and provided further that the frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of the telegraphs, telex and telephone may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be at rates and under conditions not less favourable than those applicable to comparable users.

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

#### *Travel and transport*

21. UNTAG and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement within the Territory. The Special Representative shall consult in advance with the Government with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within the Territory. The Government undertakes to supply UNTAG, where necessary, with maps and other information that may be useful in facilitating its movements.

22. Vehicles, including all military vehicles, vessels and aircraft of UNTAG, shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third party insurance required by relevant legislation.

23. UNTAG may use roads, bridges, canals and other waters, port facilities and airfields without payment of dues, tolls or charges other than charges for services rendered.

#### *Imports, exports and local purchases by or for UNTAG*

24. (a) UNTAG may in terms of relevant legislation import into the Territory, or into South Africa for direct transport to the Territory along routes prescribed by the Government, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNTAG or for resale in the commissaries provided for in paragraph 46.

(b) UNTAG may also in terms of relevant legislation clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNTAG or for resale in the commissaries provided for in paragraph 46.

(c) All such equipment as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of the Territory or to an entity nominated by them, shall be exported from the Territory and from South Africa on completion of UNTAG's task.

(d) To the end that such importation, clearances and exportation may be effected with the least possible delay a mutually satisfactory procedure, including documentation, shall be agreed between UNTAG and the Government.

## V. FACILITIES FOR UNTAG

25. The Government undertakes to assist UNTAG as far as possible in obtaining and making available, where applicable, premises, water, electricity and other facilities required at rates, dues or charges not less favourable than those charged to comparable consumers or users and in the case of interruption or threatened interruption of service to give as far as is within its power the same priority to the needs of UNTAG as to essential Government services. Amounts due by UNTAG in this regard shall be settled on a basis to be agreed with the Government. UNTAG shall be responsible for the maintenance and upkeep of facilities so provided.

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

### *Provisions, supplies and services; sanitary arrangements*

27. The Government shall assist UNTAG as far as possible in obtaining equipment, provisions, supplies and other goods and services from sources within the Territory and, if necessary, within South Africa, required for its subsistence and operations. In making purchases on a local market, UNTAG shall take the necessary steps to avoid any adverse effect on the local economy.

28. UNTAG and the Government shall cooperate with respect to sanitary services and shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases in accordance with international conventions.

### *Recruitment of local personnel*

29. UNTAG may recruit locally such personnel as it requires. In the recruitment of such personnel, UNTAG shall at all times act in close consultation with the Government. The Government undertakes, upon the request of the Special Representative, to assist UNTAG in the recruitment of such personnel. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Special Representative.

### *Currency*

30. The Government undertakes to make available to UNTAG, against reimbursement in mutually acceptable currency, South African currency required for the use of UNTAG, including the pay of its members, and the rate of exchange most favourable to UNTAG that is officially recognized by the Government.

## VI. MEMBERS OF UNTAG

### *Status*

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

32. Officials of the United Nations assigned to the civilian section of UNTAG and whose names are for that purpose notified to the Government by the Special Representative shall be considered as officials within the meaning of section 17 of the Convention.

33. Other persons assigned to the civilian section of UNTAG as well as civilian personnel assigned to the military section whose names are for the purpose notified to the Government by the Special Representative shall be considered as experts within the meaning of article VI of the Convention.

34. Military personnel assigned to the military section of UNTAG shall have the status especially provided for in this Agreement.

35. Locally recruited personnel shall enjoy only privileges and immunities especially provided for them in this Agreement.

### *Entry, residence and departure*

36. The Special Representative and members of the civilian section shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Territory, and as required for that purpose to travel in direct transit through South Africa from agreed points of entry and exit. The Special Representative shall notify the Government, and whenever possible in advance, of the movement of any such member in transit to and from the Territory.

37. Members of the military section of UNTAG shall be exempt from passport and visa regulations and immigration inspection and restriction on entering into or departing from the Territory, and as required for that purpose transiting South Africa from agreed points of entry and exit along agreed routes and on agreed conditions provided that the Special Representative shall notify the Government in advance of the movement to or from the Territory of any such member. They shall be exempt from any regulations governing the residence of aliens in the Territory, including registration, but shall not be considered as acquiring any right to permanent residence in the Territory. For the purpose of such entry or departure or transiting of South Africa such members shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority

of a Participating State, and (b) a personal identity card issued in accordance with paragraph 38 of this Agreement, except in the case of first entry when the personal identity card issued by the appropriate authorities of a Participating State shall be accepted in lieu of the said UNTAG identity card.

#### *Identification*

38. The Special Representative shall issue to each member of UNTAG before or as soon as possible after such member's first entry into the Territory, as well as to all locally recruited personnel, a numbered UNTAG identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided in article VII of the Convention or in paragraph 37 of this Agreement, such identity card shall be the only document required of a member of UNTAG.

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

#### *Uniform and Arms*

40. Military members of UNTAG shall wear, while performing official duties, the national military uniform of their respective States with standard United Nations accoutrements. The wearing of civilian dress by military members of UNTAG may be authorized by the Special Representative at other times.

Military members of UNTAG, members of the civilian police element of UNTAG and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

#### *Permits and licences*

41. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for operation by any member of UNTAG including locally recruited personnel, of any UNTAG transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of UNTAG; provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

42. Without prejudice to the provisions of paragraph 40, the Government further agrees to accept as valid, without tax or fee, a permit or permit licence issued by the Special Representative to a member of UNTAG for the carrying or use of firearms or ammunition in connection with the functioning of UNTAG.

#### *Taxation*

43. Members of UNTAG shall be exempt from taxation on the pay and emoluments received from the United Nations or from the Participating State and any income received from outside the Territory.

They shall also be exempt from all other direct taxes, except the general sales tax and municipal rates for services, and from all registration fees and charges.

### *Customs and fiscal regulations*

44. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of the Territory and of South Africa by the members of UNTAG, in accordance with this Agreement.

45. Members of UNTAG shall in terms of relevant legislation have the right to import free of duty their personal effects in connection with their arrival in the Territory. They shall be subject to the laws and regulations of the Territory and, as appropriate, of South Africa, governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the Territory with UNTAG. Special facilities for entry and exit shall be granted by the Government to regularly constituted units of the military section, provided that it has been notified sufficiently in advance. On departure from the Territory, members of UNTAG may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a Participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of these provisions in the interests of the Government and the members of UNTAG.

46. For the benefit of the members of UNTAG, but not of locally recruited personnel, UNTAG may establish, maintain and operate commissaries at its headquarters and in camps. Such commissaries may provide goods of a consumable nature and other customary articles of small value. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of UNTAG, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries.

### *Military police; arrest and transfer of custody; mutual assistance*

47. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNTAG as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of UNTAG and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it insofar as such employment is necessary to maintain discipline and order among members of UNTAG.

48. The military police of UNTAG shall have the power of arrest over the military members of UNTAG. The personnel mentioned in paragraph 47 above may also take into custody any other person on the premises of UNTAG. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

49. Subject to provisions of paragraph 31 and 33 officials of the Government may take into custody any member of UNTAG:

- (a) When so requested by the Special Representative; or
- (b) When such a member of UNTAG is apprehended in the commission or attempted commission of a criminal offence. Such person shall be deliv-

ered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNTAG whereafter the provisions of paragraph 54 shall apply *mutatis mutandis*.

50. When a person is taken into custody under paragraph 48 or paragraph 49(b), UNTAG or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

51. UNTAG and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of things connected with an offence. The handing over of any such things may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 48, 49 and 50.

52. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to UNTAG or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

#### *Jurisdiction*

53. All members of UNTAG including locally recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by UNTAG and after the expiration of the other provisions of this Agreement.

54. Should the Government consider that any member of UNTAG has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it.

Subject to the provisions of paragraph 31:

(a) If the accused person is a member of the civilian section or a civilian member of the military section the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government on whether the United Nations should institute disciplinary proceedings or the Government institute prosecution. Failing such agreement, the question shall be resolved as provided in paragraph 59 of this Agreement;

(b) Military members of the military section of UNTAG shall be subject to the exclusive jurisdiction of their respective Participating States in respect of any criminal offences which may be committed by them in the Territory.

55. If any civil proceeding is instituted against a member of UNTAG before any court of the Territory the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member.

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 57 of this Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNTAG is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of UNTAG that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNTAG shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

#### *Deceased members*

56. The Special Representative shall have the right to take charge of and dispose of the body of a member of UNTAG who dies in the Territory, as well as that member's personal property located within the Territory, in accordance with United Nations procedures.

### VII. SETTLEMENT OF DISPUTES

57. Except as provided in paragraph 59 any dispute or claim of a private law character to which UNTAG or any member thereof is a party, and over which the courts of the Territory do not have jurisdiction because of any provision of this Agreement, shall be settled by a standing Claims Commission to be established for that purpose. One member of the Commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a Chairman jointly by the Secretary-General and the Government. If no agreement as to the Chairman is reached within 30 days of the appointment of the first member of the Commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the Chairman. Any vacancy on the Commission shall be filled by the same method prescribed for the original appointment provided that the 30-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The Commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of 30 days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the Commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a Tribunal established in accordance with paragraph 59. The awards of the Commission shall be notified to the parties and, if against a member of UNTAG, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

58. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

59. Any other dispute between UNTAG and the Government, and any appeal that both of them agree to allow from the award of the Claims Commission established pursuant to paragraph 57 shall, unless otherwise agreed by the

parties, be submitted to a Tribunal of three arbitrators. The provisions relating to the establishment and procedures of the Claims Commission shall apply, *mutatis mutandis*, to the establishment and procedures of the Tribunal. The decisions of the Tribunal shall be final and binding on both parties.

#### VIII. SUPPLEMENTAL ARRANGEMENTS

60. The Special Representative and the Government may conclude supplemental arrangements to this Agreement.

61. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

#### IX. NATURE AND DURATION OF AGREEMENT

62. This Agreement is concluded for the sole purpose of assisting in the implementation of Security Council resolution 435 (1978), and has no bearing upon the respective positions of the parties concerning the status of the Territory.

63. This Agreement shall enter into force upon signature by or for the Secretary-General of the United Nations and the Government.

64. This Agreement shall remain in force until the departure of the final element of UNTAG from the Territory except that:

(a) The provisions of paragraphs 53 and 59 shall remain in force;

(b) The provisions of paragraph 57 shall remain in force until all claims have been settled that arose prior to the termination of this Agreement and were submitted prior to or within three months of such termination.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in two copies in English.

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#### MEMORANDUM OF UNDERSTANDING

In the course of the negotiations between the United Nations and South Africa relating to the Agreement regarding the Status of the United Nations Transition Assistance Group in Namibia, understandings were reached between the Parties concerning the interpretation and application of certain provisions of the Agreement. Those understandings are set forth in the present memorandum.

##### *In relation to paragraph 29*

In regard to the recruitment of local personnel, it is understood that UNTAG will engage in the direct recruitment of local staff on as wide a basis as possible, having regard to the need to secure the highest standards of efficiency, competence and integrity, in accordance with the Secretary-General's responsibility under Article 101 of the Charter of the United Nations. In this connection UNTAG will consult, *inter alia*, with the South African Government, which may assist it to obtain appropriately qualified local staff.

*In relation to paragraph 54*

- (i) In regard to the exercise of jurisdiction under paragraph 54(b) by the Participating States in respect of any criminal offences, the United Nations will obtain in its relationship agreement with each Participating State which assigns such members to UNTAG an undertaking that it is able and willing to exercise the required jurisdiction. Should a Participating State fail within a reasonable time to take steps to exercise the required jurisdiction in any particular case including arrest and detention when appropriate and should the accused remain in the Territory he shall become subject to local criminal jurisdiction.
  - (ii) The Special Representative shall, within a reasonable period, inform the Government whether a Participating State has exercised jurisdiction in a particular case and if so he shall inform the Government of the outcome thereof.
  - (iii) A Participating State may at any time request the Government through the Special Representative to exercise criminal jurisdiction in general in all cases or in a particular case.
  - (iv) In any case where a member of UNTAG is subject to local criminal jurisdiction the Special Representative shall make such member available for any criminal proceedings that may be instituted against such member.
- (c) Agreement between the United Nations and the Government of Colombia regarding arrangements for the twelfth session of the United Nations Commission on Human Settlements (Habitat), to be held at Cartagena de Indias. Signed at Cartagena de Indias on 24 April 1989<sup>7</sup>

Whereas the Chairman of the Commission on Human Settlements, after consultations with the Secretary-General of the United Nations, in accordance with the decision of the Commission at its eleventh session, accepted the invitation of the Government of Colombia (hereinafter referred to as “the Government”) to hold the twelfth session of the Commission on Human Settlements (hereinafter referred to as “Session”) in Cartagena de Indias;

Whereas the General Assembly, in section I, paragraph 5, of its resolution 40/243 of 18 December 1985, decided that United Nations bodies may hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray, after consultation with the Secretary-General as to their nature and possible extent, the actual additional costs directly or indirectly involved;

Now therefore the Government and the United Nations hereby agree as follows:

*Article I*

DATE AND PLACE OF THE SESSION

The twelfth session of the Commission on Human Settlements shall be held at Cartagena de Indias, Colombia, and the Government of Colombia shall act as the host Government to the Session, the duration of which has been determined by the Commission as 24 April to 3 May 1989.

## *Article II*

### PARTICIPATION IN THE SESSION

1. Participation in the Session shall be open to the following upon designation or invitation by the United Nations:

(a) Representatives of Member States of the Commission on Human Settlement;

(b) Representatives of Member States of the United Nations or of any specialized agency;

(c) Representatives of the United Nations Council for Namibia;

(d) Representatives designated by intergovernmental organizations, national liberation movements and other organizations entitled as of the date of the Commission Session to attend sessions of the General Assembly of the United Nations or that of the Economic and Social Council;

(e) The executive heads, or their representatives, of the specialized agencies of the United Nations, of IAEA, as well as the appropriate officials or officers of other United Nations bodies, programmes and organizations;

(f) Observers designated by a non-governmental organization in consultative status with the Economic and Social Council or designated by other intergovernmental and non-governmental organizations or institutions invited by the Commission.

2. The Secretary-General of the United Nations shall designate the officials of the United Nations assigned to attend the Session for the purpose of servicing it.

## *Article III*

### PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide at its cost such conference rooms and offices as will be necessary for the holding of the Session at Cartagena Convention Centre. They shall include four conference rooms as follows: two to accommodate the meetings of the Plenary and a Committee of the Whole, respectively, and two to accommodate the meetings of the regional groups.

2. The Government further agrees to provide at its cost such facilities as are necessary for the carrying out of the special audio-visual presentation portions of the Commission's agenda. Such facilities shall meet the requirements set out in the document entitled "Guidelines for special presentations" to be circulated to Governments by UNCHS in January 1989.

3. The Government shall also provide at its cost suitable offices furnished and equipped for officials of the United Nations, as well as for personnel provided by the Government to perform functions in connection with the Session. These facilities shall include a lounge and areas equipped for typing, reproduction and distribution of documents. The facilities to be provided by the Government are detailed in the Annex to this Agreement. The Government shall also assist representatives of information media in obtaining suitable working areas.

4. To the extent required by the United Nations, the aforementioned premises shall remain at the disposition of the United Nations twenty-four hours a day one week prior to the Session until a maximum of one week after the clos-

ing of the Session. The United Nations shall, however, notify the Government at any time during the specified period if it no longer requires all or part of the premises.

5. The Government shall furnish, equip and maintain at its expense all the aforementioned rooms, offices and working areas in a manner adequate for the effective conduct of the Session. The conference rooms for the sessions of the Plenary and the Committees of the Whole shall be equipped for simultaneous interpretation in the six languages of the Session and shall have facilities for sound recording, as well as for press, television, radio and film operations. Two of the rooms assigned for group meetings shall have interpretation facilities for three languages.

6. The Government shall at its expense adequately furnish and maintain such equipment as photocopying and other duplicating machines, typewriters, tape recorders, microcomputers and other equipment and local staff as is necessary for the effective conduct of the Session. To the extent that the Government cannot provide any of this equipment and local staff, the United Nations shall provide it at the Government's cost. A list of the required equipment appears in the annex to this Agreement.

7. The Government shall provide, within the conference area, an information desk, a documents distribution desk, postal and banking facilities, a travel bureau, domestic and international telephones, telex and cable facilities for information media.

8. The Government shall provide all necessary utility services, including official telephone communication of the Secretariat of the Session within Cartagena and communications by telex and telephone between the Secretariat of the Session and United Nations Headquarters in New York and the United Nations Centre for Human Settlements headquarters in Nairobi. The long-distance telephone and telex communications will be made only by persons designated by the Executive Director of the United Nations Centre for Human Settlements.

9. The Government shall pay for the transport, insurance and maintenance charges for shipment from Nairobi and New York to Cartagena de Indias and return of all United Nations supplies and equipment required for the adequate functioning of the Session.

#### *Article IV*

##### MEDICAL FACILITIES

1. Medical facilities for adequate first-aid and emergencies shall be provided by the Government within the conference area.

2. For serious emergencies, the Government shall arrange to ensure immediate access and admission to hospital. The Government shall also ensure that the transport necessary for this purpose is constantly available at the conference site.

*Article V*

ACCOMMODATION

The Government undertakes that sufficient and adequate accommodation at reasonable commercial rates shall be available for all persons referred to in article II. The Government shall provide information to delegations, the staff of the United Nations and other participants in the Session for obtaining hotel reservations and other accommodation for the duration of the Session.

*Article VI*

TRANSPORT

The Government shall provide transport between the Cartagena airport and the conference area and principal hotels for the member of the United Nations Secretariat servicing the Conference upon their arrival and departure. The Government shall also ensure regular transport services between the site of the Session and the principal hotels not in the immediate vicinity thereof.

*Article VII*

LOCAL PERSONNEL

1. The Government shall appoint a Liaison Officer who shall be responsible, in consultation with the United Nations Centre for Human Settlements, for making and coordinating the administrative and personnel arrangements required for the organization and functioning of the Session, as well as for all other matters connected with the implementation of the present Agreement.

2. The Government shall recruit and provide an adequate number of secretaries, typists, clerks, personnel for the reproduction and distribution of documents, assistant conference officers, ushers, messengers, bilingual receptionists, telephone operators, cleaners and workmen required for the proper functioning of the Session. The exact requirements in this respect will be established by the United Nations in consultation with the Government. Some of the persons shall be available at least one week before the opening of the Conference and until a maximum of six days after its close, as required by the United Nations.

*Article VIII*

SECURITY

The Government shall furnish at its expense such police protection and security measures as may be required to ensure a proper atmosphere of tranquility and safety. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with the designated senior United Nations official.

## *Article IX*

### FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial responsibility provided for in annex I to this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Session in Cartagena de Indias rather than at United Nations Centre for Human Settlements headquarters. Such costs, which are provisionally estimated at approximately US\$197,000, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretariat to attend the Session, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for the travel of United Nations officials requested to service the Session and of the shipment of supplies and equipment not available locally shall be made by the Secretariat in accordance with the Staff Regulations and Rules of the United Nations and related administrative practices regarding travel standards.

2. The Government shall, as soon as possible but not later than 24 February 1989, deposit with the United Nations the sum of US\$197,000 representing the total estimated costs referred to in paragraph 1 above.

3. If necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

4. The deposit referred to in paragraph 2 above shall be used only to pay the obligations of the United Nations in respect of the Session.

5. After the Session is over, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs incurred by the United Nations as a result of the change of venue of the meeting from Nairobi to Cartagena de Indias to be borne by the Government pursuant to paragraph 1 above. These costs shall be expressed in United States dollars using the United Nations official rate of exchange at the time the other payments are made. The United Nations, on the basis of this detailed set of accounts, will refund to the Government any funds unspent out of the deposit referred to in paragraph 2 above. Should the actual additional costs exceed the deposit, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations. The final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the Board of Auditors.

## *Article X*

### LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (a) injury to person or damage to or loss of property in the premises referred to in article III above; (b) injury to person or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI above; (c) the employment for the Conference/Meeting of the personnel by the Government under article VIII above.

2. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand, except if it is agreed by the parties hereto that such injury, loss or damage was caused by gross negligence or wilful misconduct of United Nations personnel, in which case the provisions of the Convention on the Privileges and Immunities of the United Nations which pertain to this matter shall apply.

### *Article XI*

#### PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which the Government acceded on 6 August 1974, shall be applicable to the Session.

2. Representatives of States and of the United Nations Council for Namibia participating in the Session shall enjoy the privileges and immunities accorded under article IV of the Convention.

3. Officials of the United Nations performing official duties at the Session shall enjoy the privileges and immunities provided by article V and article VII of the Convention and experts on mission for the United Nations in connection with the Session shall enjoy the privileges and immunities provided under article VI of the Convention.

4. The representatives or observers referred to in article II(d) and (f) shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in connection with their participation in the Session.

5. Representatives or officials of the specialized agencies or the International Atomic Energy Agency participating in the Session shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the United Nations or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency,<sup>8</sup> as appropriate.

6. Without prejudice to the preceding paragraphs of the present article, the persons referred to therein shall enjoy the necessary privileges, immunities and facilities in connection with their participation in the Session.

7. The Government undertakes to ensure that local personnel assigned to the United Nations to perform functions in connection with the Session shall be able to do so without let or hindrance and without impediment to the exercise of their functions under the authority of the United Nations.

8. All persons referred to in article II above shall have the right of entry into and exit from Colombia, and no impediment shall be imposed on their transit to and from conference areas. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. Arrangements will also be made to ensure that visas for the duration of the Session are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival.

9. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified in article III, paragraph 1, above, shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Session, including the preparatory stage and the winding-up.

10. The participants in the Session, representatives of information media and officials of the secretariat of the Session shall have the right to take out of Colombia at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Colombia in connection with the Session at the rate at which they had originally been converted.

*Article XII*

IMPORT DUTIES AND TAX

1. The Government shall allow the temporary importation tax- and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Session.

2. The Government hereby waives import and export permits for the supplies needed for the Session and certified by the United Nations to be required for official use at the Session.

*Article XIII*

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

*Article XIV*

FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the Government and the United Nations.

2. This Agreement shall enter into force when signed on behalf of the Government and the United Nations and shall remain in force for the duration of the Session and for a period thereafter, should it be necessary, for the settlement of matters related to the Session and to this Agreement.

- (d) Agreement between the United Nations and the Government of Egypt regarding arrangements for the fifteenth session of the United Nations World Food Council. Signed at Cairo on 26 April 1989<sup>9</sup>

*Whereas* the President of the World Food Council, after consultation with States Members of the World Food Council and the Secretary-General of the United Nations, accepted the invitation of the Government of Egypt to hold the fifteenth session of the World Food Council at Cairo, and

*Whereas* the General Assembly, in paragraph 5 of its resolution 40/243 of 18 December 1985, decided that meetings of United Nations bodies may be held away from the established headquarters when the Government issuing the invitation for a meeting to be held in its country has agreed to defray, after consultation with the Secretary-General as to their nature and possible extent, the actual additional costs directly or indirectly involved,

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

#### *Article I*

##### DATE AND PLACE OF THE SESSION

The session shall be held at Cairo from 22 to 25 May 1989.

#### *Article II*

##### PARTICIPATION IN THE SESSION

1. Participation in the session shall be open to the following upon designation or invitation of the Secretary-General:

(a) Representatives/observers of States (members of the appropriate United Nations bodies);

(b) Representatives/observers of the United Nations Council for Namibia;

(c) Observers for national liberation movements invited by the United Nations to attend the session;

(d) Representatives of the United Nations specialized agencies or the International Atomic Energy Agency;

(e) Representatives/observers for other intergovernmental organizations invited by the United Nations to the session;

(f) Representatives of other appropriate United Nations bodies invited to attend the session;

(g) Observers for non-governmental organizations invited by the United Nations to attend the session;

(h) Other persons invited by the United Nations to attend the session.

2. Attendance at the public meetings of the session shall be open to representatives of information media accredited by the United Nations at its discretion after consultation with the Government.

### *Article III*

#### PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide, for as long as required for the session referred to in article I above, the necessary premises, including conference rooms, office space, working areas and other related facilities. The Government shall at its expense furnish, equip and maintain in good repair all the aforementioned premises and facilities in a manner adequate for the effective conduct of the session. One conference room shall have the capacity to accommodate plenary meetings with a seating capacity of 300 participants. One conference room shall have a capacity to accommodate committee or working group meetings with a capacity to seat approximately 50 participants. The main conference room shall be equipped for reciprocal simultaneous interpretation between eight languages and shall have facilities for sound recording in these eight languages as well as facilities for press, television, radio and film operations to the extent required by the United Nations. The conference rooms shall be equipped and at the disposition of the United Nations 24 hours a day from 21 May 1989 through the end of the session. Office space, working areas and other related facilities shall be at the disposition of the United Nations according to a schedule to be provided by the World Food Council secretariat.

2. The Government shall provide, if possible within the conference area, bank, post office, telephone and cable facilities, as well as a travel agency.

3. The Government shall bear the cost of all necessary utility services including local telephone communications of the secretariat of a session and its communications by telex or telephone with the United Nations (Headquarters in New York and Rome or other) when such communications are authorized by the chief official of such secretariat or by officials delegated by him.

4. The Government shall bear the cost of transport and insurance charges from any established United Nations Office to the site of the session and return of all United Nations supplies and equipment required for the adequate functioning of the session. The United Nations shall determine the mode of shipment of such equipment and supplies.

### *Article IV*

#### ACCOMMODATION

1. The Government shall ensure that adequate accommodation in hotels or residences is available at reasonable commercial rates for persons participating in or attending the session.

2. The Government will provide and pay directly to the hotel for the accommodation of all officials of the United Nations Secretariat performing functions in connection with the session during their stay in Cairo. Consequently, in accordance with United Nations rules and regulations, the daily subsistence allowance of these officials will be reduced to 34 per cent. of the prevailing rate. The Executive Director of the WFC shall provide the Government with a list of such United Nations officials. The Government shall pay them the corresponding amount in respect of the daily subsistence allowance for the duration of their official stay in Cairo. This is the basis for the financial estimates included in article IX.

*Article V*

MEDICAL FACILITIES

1. Medical facilities adequate for first aid in emergencies shall be provided by the Government within the conference area.
2. For serious emergencies, the Government will ensure immediate transportation and admission to a hospital.

*Article VI*

TRANSPORT

1. The Government shall issue, at the request of the Executive Director, return air tickets for the United Nations secretariat officials performing functions in connection with the session, in line with United Nations standards of travel.
2. The Government shall provide transport between the Cairo Airport and the conference area and principal hotels for the members of the United Nations secretariat serving the session upon their arrival and departure.
3. The Government shall ensure the availability of transport for all participants and those attending the session between the Cairo Airport, the principal hotels and the conference area.

*Article VII*

POLICE PROTECTION

The Government shall furnish at its expense such police protection as may be required to ensure the efficient functioning of the session in an atmosphere of security and tranquility free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with the designated senior officials of the United Nations.

*Article VIII*

LOCAL PERSONNEL

The Government shall appoint a Government coordinator who shall be responsible in consultation with the United Nations for making and carrying out the administrative and personnel arrangements for the session as required under this Agreement.

*Article IX*

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial arrangements responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the session in Cairo rather than at World Food Council headquarters in Rome. Such costs which are provisionally estimated at approximately US\$23,447.62 and 112,497.75 Egyptian pounds,

shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the secretariat to attend the session, as well as the costs of shipment of equipment and supplies not available locally. Arrangements for the travel of United Nations officials required to service the session and for the shipment of supplies and equipment not available locally shall be made by the secretariat in accordance with the Staff Regulations and Rules of the United Nations regarding travel standards, baggage allowances, subsistence payments and terminal expenses, and its related administrative practices. The secretariat shall endeavor to utilize to the maximum extent possible tickets that will be issued by the Government as per article VI.

2. The Government shall deposit the sum of US\$23,447.62 into the United Nations account as follows:

(a) For the United States dollars portions:

Chemical Bank  
United Nations Office Branch 15  
New York, N.Y. 10017, U.S.A.

United Nations General Trust Funds Account No. 015-004473 (in favour of WFC Trust Fund)

This sum shall be deposited by 19 May 1989.

(b) For the Egyptian pounds portion:

The 34 per cent. of the prevailing daily subsistence allowance (DSA) shall be paid directly to entitled staff upon their arrival in Cairo. Tickets for the WFC secretariat will be provided and paid for directly by the Government.

3. If necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

4. The deposit and the advances referred to in paragraphs 2 and 3 above shall be used only to pay obligations to the United Nations in respect of the session.

5. After the session is over, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs incurred by the United Nations as a result of the change of venue of the session from Rome to Cairo, to be borne by the Government pursuant to paragraph 1 above. These costs shall be expressed in United States dollars using the United Nations official rate of exchange at the time the payments are made. The United Nations, on the basis of this detailed set of accounts, will refund to the Government any funds unspent out of the deposit and the advances referred to in paragraphs 2 and 3 above. Should the actual additional costs exceed the deposit, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the Board of Auditors.

*Article X*

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel and arising out of:

(a) Injury to person or damage to or loss of property in the premises referred to in article III above;

(b) Injury to person or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI above;

(c) The employment for the session of the personnel provided by the Government under article VIII above.

2. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

*Article XI*

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the session. In particular, the representatives of States and of the United Nations Council for Namibia referred to in article II(a) and (b) shall enjoy the privileges and immunities provided under article IV, the officials of the United Nations performing functions in connection with the session shall enjoy the privileges and immunities provided under articles V and VII and experts on mission for the United Nations in connection with the session shall enjoy the privileges and immunities provided under article VI of the Convention.

2. The representatives/observers referred to in article II(c), (e) and (g) shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the session.

3. The personnel provided by the Government under article VIII above shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the session.

4. The representatives of the specialized agencies or of the International Atomic Energy Agency, referred to in article II(d), shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies<sup>10</sup> or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

5. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the session and all those invited to the session shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the session.

6. All persons referred to in article II, all United Nations officials serving the session and all experts on mission for the United Nations in connection with the session shall have the right of entry into and exit from Egypt, and no impediment shall be imposed on their transit to and from the conference areas. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the session. If the application for the visa is not made at least two and a half weeks before the opening of the session, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the session are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the session.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the session premises shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the session including the preparatory stage and winding-up.

8. The participants in the session and the representatives of information media, referred to in article II above, and officials of the United Nations serving the session, and experts on mission for the United Nations in connection with the session, shall have the right to take out of Egypt at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Egypt in connection with the session at the United Nations official rate of exchange prevailing when the funds were brought in.

9. The Government shall allow the temporary importation tax- and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the session. It shall issue without delay any necessary import and export permits for this purpose.

## *Article XII*

### SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed

by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

### *Article XIII*

#### FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force immediately when signed by the Parties and shall remain in force for the duration of the session and for such a period thereafter as is necessary for all matters relating to any of its provisions to be settled.

(e) Memorandum of Understanding between the United Nations and the Government of Australia on the Fifth International Training Course on use of Remote Sensing Systems in Hydrological and Agrometeorological Applications, held at Canberra by the United Nations, the Food and Agricultural Organization of the United Nations, the World Meteorological Organization and the European Space Agency, and the first International Training Course on the Use of the MicroBRIAN Image Processing System, held at Brisbane. Signed at New York on 12 May 1989<sup>11</sup>

The United Nations and the Government of Australia (hereinafter called “the Government”), desiring to give effect to the provision of General Assembly resolution 37/90 of 10 December 1982 concerning the promotion of greater cooperation in space science and technology and the organization of training courses on advanced space science applications and new system developments, have reached the following understanding:

### *Section I*

#### THE COURSES

1. The Fifth United Nations/FAO/WMO/ European Space Agency (ESA) International Training Course on the Use of Remote Sensing Systems in Hydrological and Agrometeorological Applications (hereinafter called “the Remote Sensing Course”) and the First International Training Course on the Use of the MicroBRIAN Image Processing System (hereafter called “the MicroBRIAN Course”) will be held in Australia in two separate sessions.

2. The location and duration of the Remote Sensing Course will be in Canberra from 15 May to 2 June 1989.

3. The location and duration of the MicroBRIAN Course will be in Brisbane from 5 to 16 June 1989.

4. The official language of the courses will be English only.
5. The objective of these courses is to provide the participants with:
  - (a) An understanding of the capabilities of remote sensing technology and of the current satellite, airborne and ground-based data acquisition systems in relation to applications in hydrology and agrometeorology;
  - (b) Practical experience from image analysis exercises on coastal resources, land-use/cover, agrometeorology, forestry, agriculture and hydrology.

### *Section II*

#### PARTICIPATION IN THE REMOTE SENSING COURSE

1. Participation in the Remote Sensing Course will be open to candidates from the Economic Commission for Asia and the Pacific (ESCAP) region as indicated below:
  - (a) Suitably qualified persons nominated by governments of developing countries in the ESCAP region, accepted and invited for participation in the course by the United Nations;
  - (b) Experts invited by the United Nations and the other co-sponsors of the course to serve as lecturers/instructors at the course;
  - (c) Experts invited by the Government to serve as lecturers/instructors at the course;
  - (d) Officials of the United Nations and the specialized agencies invited to attend the course.
2. The number of participants from developing countries as referred to in paragraph 1(a) above shall be limited to not less than eighteen and not more than twenty-four.

### *Section III*

#### PARTICIPATION IN THE MICROBRIAN COURSE

Participation in the MicroBRIAN Course will be by invitation only, to be issued jointly by the United Nations and the Government, and will be limited to a maximum of 10 in number to be chosen from those attending the Remote Sensing Course who have the professional background to utilize and disseminate the MicroBRIAN technology in their own countries.

### *Section IV*

#### SERVICES TO BE PROVIDED BY THE UNITED NATIONS

1. The United Nations will disseminate the necessary information to the groups and individuals identified in sections II and III for participation in the Remote Sensing Course and the MicroBRIAN Course as well as issue invitations to the speakers identified in the programme.
2. The United Nations will provide, at its own cost, the services of up to two members of the Outer Space Affairs Division of the United Nations Secretariat; these officials will be responsible for the organization of the Remote Sensing Course and assist in the organization of preparatory activities of the MicroBRIAN Course.

3. The United Nations, in accordance with the provisions of General Assembly resolution 37/90, will use funds of its Space Applications fellowship budget as well as the funds provided by the co-sponsors of the Remote Sensing Course for that purpose, to:

(a) Cover the cost of round-trip air travel (economy class) to Canberra, Australia, for those in need among the participants referred to in paragraph 1(a) of section II.

(b) Provide a subsistence allowance to cover room and board for the participants identified in subparagraph (a) above for the duration of the Remote Sensing Course.

4. The United Nations shall make arrangements as necessary to provide for the Remote Sensing Course the services of the lecturers/instructors identified in paragraph 1(b) of section II.

### *Section V*

#### CONTRIBUTIONS BY THE GOVERNMENT TO THE REMOTE SENSING COURSE AND THE MICROBRIAN COURSE

1. The Government will act as host to the Remote Sensing Course and the MicroBRIAN Course and will operate through the Commonwealth Scientific and Industrial Research Organization (hereinafter called "CSIRO") for that purpose.

2. The Government will designate an official of CSIRO as liaison officer between the United Nations and the Government for making the necessary arrangements concerning the contributions of the Government described in paragraph (3) below.

3. The Government will provide and, by itself or through grant to CSIRO by ESCAP, defray the costs of:

(a) Appropriate premises and equipment (including duplication facilities and consumables) for the holding of the Remote Sensing Course and the MicroBRIAN Course;

(b) Appropriate premises for the offices and for the other working areas of the United Nations Secretariat staff responsible for the Remote Sensing Course and the MicroBRIAN Course, the liaison officer and the local personnel mentioned below;

(c) Adequate furniture and equipment for the premises referred to in (a) and (b) above to be installed prior to the start of both courses and maintained by appropriate personnel for the duration of those courses as well as equipment for the field trips;

(d) Amplification and audio-visual projection equipment as well as tape recorders and tapes as necessary and technicians to operate them for the training courses;

(e) The local administrative personnel required for the proper conduct of both courses, including reproduction and distribution of lectures and other documents in connection with these courses;

(f) Communication facilities (telex, facsimile, telephone) for official use in connection with both courses, office supplies and equipment for the conduct of the courses;

- (g) Customs clearance and transportation between the port of entry and the centers for the courses for any equipment required in connection with both courses;
- (h) All official transportation within Australia for all participants at both courses;
- (i) The transportation described in subparagraph (h) includes round-trip transportation between Canberra and Brisbane for the participants at the MicroBRIAN Course and also within that local area for official purposes during that course;
- (j) Local transportation for the United Nations Secretariat staff responsible for both courses for official purposes during those courses;
- (k) Accommodation and per diem expenses for the 10 participants at the MicroBRIAN Course;
- (l) Field trips for the participants;
- (m) Assistance in arranging bookings for accommodation for the Remote Sensing Course (but not cost of that accommodation);
- (n) The Australian lecturers/speakers and their papers for distribution at both courses;
- (o) Information brochures on Australia and on the locations of both courses;
- (p) The services of a travel agency to confirm or make new bookings for the participants in relation to both courses after their arrival in Australia;
- (q) Medical facilities for first aid in emergencies within the areas of the two courses, and adequate ambulance and hospital facilities;
- (r) Security protection as, in the opinion of the Government, may be required to ensure the well-being of all participants in the training courses and the efficient functioning of the training courses free from interference of any kind.

## *Section VI*

### FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations will be applicable in respect of the Remote Sensing Course and the MicroBRIAN Course. Accordingly, officials of the United Nations performing functions in connection with both courses will enjoy the privileges and immunities provided under articles V and VII of said Convention.
2. Officials of the specialized agencies attending either course will enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.
3. Participants other than officials of the United Nations will be designated by the Secretary-General as experts on mission for the United Nations and enjoy privileges and immunities accorded under article VI of the Convention.
4. All participants and persons performing functions in connection with either course will enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the courses.

5. All persons covered in paragraphs 1, 2 and 3 above will be exempt from the Government's requirements relating to entry permits. Visas will be granted free of charge.

6. When applications are made by the persons covered in paragraphs 1, 2 and 3 above, four weeks before the opening of the Remote Sensing Course, visas will be granted not later than two weeks before this course. On receipt of the list of participants from the United Nations, the Government will ensure that visas are issued as speedily as possible to all the selected candidates.

### *Section VII*

#### LIABILITY

1. The Government will be responsible for dealing with any actions, claims or other demands against the United Nations arising out of:

(a) Injury or damage to persons or property in the premises referred to in paragraph 3(a) and (b) of section V above;

(b) Injury or damage to persons or property occurring during use of the transportation referred to in paragraph 3(g), (h), (i), (j) and (l) of section V;

(c) The employment for the meeting of the personnel referred to in paragraphs 2 and 3(d) and (e) of section V.

2. The Government will hold the United Nations and its personnel harmless in respect of any such actions, claims and other demands, except where it is agreed by the parties that the injury or damage is attributable to negligence or wilful misconduct on the part of the United Nations or its personnel.

### *Section VIII*

#### SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or implementation of this Memorandum of Understanding, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other agreement applicable to both parties, will be settled by negotiation or in accordance with any other procedure decided upon by the parties.

### *Section IX*

1. This Understanding will enter into effect upon signature and will remain in effect until the MicroBRIAN Course is concluded.

2. This Understanding may be modified by arrangement between the United Nations and the Government.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Memorandum of Understanding in duplicate.

- (f) Protocol between the United Nations Transition Assistance Group and the Government of Angola on the tasks to be fulfilled by UNTAG in Angolan territory, and Additional Protocol on the status of UNTAG personnel in the territory of the People's Republic of Angola. Signed at Lubango on 9 June 1989<sup>12</sup>

Having come to an agreement on the establishment of an UNTAG liaison office in Angola in order to keep the Special Representative of the Secretary-General of the United Nations in Namibia informed;

After an agreement on the establishment of a joint Commission in order to supervise the implementation of the measures taken for South-West Africa People's Organization forces in Angolan territory, the following has been agreed upon:

1. The Joint Commission of Angolan Armed Forces members with UNTAG members will carry out the following tasks:
  - (a) Make sure that SWAPO forces are settled to the north of parallel 16;
  - (b) Obtain data referring to the total number of armed SWAPO members in Angolan territory;
  - (c) Have a record of the number of SWAPO military bases and their locations.
2. The Angolan side agrees to allow UNTAG supervising officials in Angolan military units near SWAPO bases so that they can inform the UNTAG Force Commander and the Special Representative of the Secretary-General of the United Nations for Namibia about the process of confinement and repatriation of SWAPO armed personnel.
3. For the successful fulfilment of these tasks, systems of communication are to be established between SWAPO bases and the Angolan authorities who will supervise them, between UNTAG supervising officials and their office in Lubango, between this office and the one in Luanda, between the office in Luanda and the Special Representative in Windhoek.
4. The Angolan authorities will supervise SWAPO bases until they are completely closed one week after the election results have been certified. The military equipment in those bases, as well as the military personnel of SWAPO to be repatriated, will be under the supervision of the Angolan authorities.
5. The SWAPO military personnel will not go out of the bases except for logistic purposes or for their repatriation.
6. Both parties agree to interpret and apply this document according to the principle of good faith.

ADDITIONAL PROTOCOL OF THE STATUS OF UNTAG PERSONNEL IN THE  
TERRITORY OF THE PEOPLE'S REPUBLIC OF ANGOLA

As it is necessary to establish the status of UNTAG personnel in Angolan territory as well as their working conditions, the parties agree to the following:

1. UNTAG personnel as well as United Nations officials working here have the same immunities and privileges as diplomats according to the Vienna

Conventions on diplomatic and consular relations.<sup>13</sup> They will, however, abide by the law of the land. The office of UNTAG in Luanda, as well as its documents and archives, have the same immunities and privileges as diplomatic buildings.

2. The personnel of UNTAG will carry their ID cards issued by the Angolan authorities and, when in uniform, their United Nations identifying marks. The means of transport they will be using will also carry the United Nations identifying symbols.

3. To enter Angolan territory, UNTAG will use the following border posts:

- Land: Ruagana;
- Air: Airports of Luanda, Lubango and Namibe;
- Sea: Namibe port.

4. The office of UNTAG will give the Angolan party 72 hours' notice, as well as the list of personnel, the date of their arrival in or departure from Angola as well as the border posts to be used, in order to facilitate the immigration formalities.

5. The travels in Angola in fulfilment of the tasks inside Angola, as well as trips for logistic purposes, will be made known in time to the Angolan party who will allow them and appoint the Angolan liaison official to go with them.

6. UNTAG supervising officials will be allowed to visit SWAPO bases whenever necessary, always with the Angolan liaison official who will head the visit.

7. UNTAG officials and their office in Lubango will be allowed direct communication provided the frequencies they use are decided with the Front Command.

8. UNTAG officials are allowed by the Angolan party regular air flights Windhoek-Lubango, Windhoek-Namibe, and Luanda-Lubango.

UNTAG will pay for the use of airport facilities as well as the refueling of aircraft in hard currency. Their personnel will travel free of taxes and customs fees, including the ones for their luggage.

9. Accommodation, food, transport and medical care fees of UNTAG personnel will be paid by UNTAG in hard currency through the appropriate bank operations.

10. When UNTAG personnel living in the city of Lubango wish to move around for purely personal reasons, they may move freely within the following area:

- Road Lubango/Huambo — 4 km;
- Road Lubango/Chibia — 40 km;
- Road Lubango/Namibe — 40 km;

11. Moving for personal reasons out of the above defined area should be cleared forty-eight hours in advance with the Angolan authorities by the person requiring to make the journey.

12. This additional protocol is part of the principal protocol signed between the Angolan authorities and UNTAG.

- (g) Agreement between the United Nations and the Government of Cuba on the United Nations Workshop on Space Communications for Development, Current and Future Developments, Rural Communications, Search and Rescue Missions and Disaster Relief, to be held at Havana. Signed at New York on 15 June 1989<sup>14</sup>

The United Nations and the Government of Cuba (hereinafter called “the Government”), desiring to give effect to the provisions of General Assembly resolution 37/90 of 10 December 1982 concerning the promotion of greater co-operation in space science and technology and the organization of workshops on advanced space science applications and new systems developments, have agreed as follows:

### *Article I*

#### PLACE, DATE AND LANGUAGES OF THE WORKSHOP

1. The United Nations Workshop on Space Communications for Development, Current and Future Developments, Rural Communications, Search and Rescue Missions and Disaster Relief (hereinafter called “the Workshop”), hosted by the Government, shall be held in La Havana, Cuba.
2. The Workshop shall be held in the month of March 1990 during a period of one week.
3. The official languages for the Workshop will be Spanish and English only.

### *Article II*

#### PARTICIPATION IN THE WORKSHOP

1. Participation in the Workshop shall be open to the following:
  - (a) Suitably qualified persons nominated by governments of developing countries of the Economic Commission for Latin America and the Caribbean region, accepted and invited for participation in the Workshop by the United Nations;
  - (b) Suitably qualified persons invited to the Workshop by the Government;
  - (c) Experts invited by the United Nations to serve as lecturers/instructors at the Workshop;
  - (d) Representatives of the United Nations, its specialized agencies and other organs of the United Nations, invited to attend the Workshop.
2. The number of participants from developing countries as referred to in paragraph 1(a) above shall be limited to thirty (30).
3. The number of participants referred to in paragraph 1(b) shall be limited to thirty (30) out of which fifteen (15) will participate in the capacity of observers.

### *Article III*

#### SERVICES TO BE PROVIDED BY THE UNITED NATIONS

1. The United Nations shall disseminate the necessary information and extend invitations to the participants referred to in article II, paragraph 1(a);
2. The United Nations shall provide, at its expense, the services of up to two officers of the Outer Space Affairs Division of the United Nations Secretariat; these officials shall be responsible for the organization of the Workshop on behalf of the United Nations;
3. The United Nations, in accordance with the provisions of General Assembly resolution 37/90, shall use the resources of its Space Application Programme fellowship budget to cover the cost of round-trip air travel (economy class) to La Havana, Cuba, for those in need among the participants referred to in paragraph 1(a) of article II. The United Nations shall provide for a subsistence allowance to cover board expenses of these same participants for the duration of the Workshop.
4. The United Nations shall make arrangements as necessary to provide for the Workshop the services of the lecturers/instructors referred to in paragraph 1(c) of article II.

### *Article IV*

#### SERVICES PROVIDED BY THE GOVERNMENT

1. The Government shall act as host to the Workshop.
2. The Government shall appoint a Liaison Officer who shall be responsible, in consultation with the United Nations, for making and carrying out the administrative and personnel arrangements for the Workshop as required under this Agreement.
3. The Government shall provide and defray the costs of:
  - (a) Appropriate premises for the effective conduct of the Workshop;
  - (b) Appropriate premises for offices, working areas and other related facilities for the United Nations Secretariat staff responsible for the Workshop, the Liaison Officer and the local personnel mentioned below;
  - (c) Adequate furniture and equipment (including duplication facilities and consumables) for the premises referred to in subparagraphs (a) and (b) above, to be installed prior to the Workshop and maintained in good repair by appropriate personnel for the duration of the Workshop;
  - (d) Sound and audio-visual projection equipment as well as tape recorders and tapes as necessary and technicians to operate them for the sessions of the Workshop;
  - (e) Participation of lecturers/instructors invited by the Government;
  - (f) Preparation and dissemination of documentation relevant to the Workshop;
  - (g) Local personnel required for the proper and effective conduct of the Workshop, including reproduction and distribution of documentation relevant to the Workshop;

(h) Simultaneous interpretation between Spanish and English for the duration of the Workshop;

(i) Bank, post-office, telephone, telex, and cable facilities, as well as those of a travel agency;

(j) All necessary utility services including local telephone communications for the United Nations Secretariat officials and their communications by telex and telephone with the United Nations Headquarters in New York. Long-distance telephone and telex communications should be made only when such communications are authorized by the Senior Official of the Government at the Workshop, in co-ordination with the Senior Official of the United Nations at the Workshop.

(k) Customs clearance and transportation from the port of entry to the site of the Workshop and return of all United Nations supplies and equipment required for the adequate functioning of the Workshop. The United Nations shall determine the mode of shipment of such equipment and supplies.

(l) Transport between the airport and the Workshop areas and principal hotels for all participants and lecturers/instructors in the Workshop and for United Nations officials responsible for the organization of the Workshop upon their arrival and departure, as well as transportation for visits to institutions and other activities organized in connection with the Workshop.

(m) Adequate room accommodations for up to thirty (30) foreign participants from developing countries at the Government's expense.

(n) Arrangement of adequate accommodation in hotels at reasonable commercial rates for persons other than those identified in subparagraph (m) above and who are participating in, attending or servicing the Workshop, at the expense of these same persons.

(o) Medical facilities adequate for first aid in emergencies within the Workshop area; for serious emergencies, the Government shall ensure immediate transportation and admission to a hospital;

(p) Security protection as may be required to ensure the well-being of all participants in the Workshop and the efficient functioning of the Workshop free from interferences of any kind. While such security services shall be under the direct supervision and control of the senior officer provided by the Government, this officer shall work in close cooperation with the designated official of the United Nations at the Workshop.

#### *Article V*

##### PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the Workshop.

2. Participants attending the Workshop in pursuance of paragraphs 1(a) and (c) of article II of this Agreement shall enjoy the privileges and immunities accorded to experts on mission under article VI of the Convention on the Privileges and Immunities of the United Nations.

3. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

4. Representatives of the specialized agencies participating in the Workshop shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

5. The personnel provided by the Government under article IV, paragraph 3, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Workshop.

6. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connections with the Workshop and all those invited to the Workshop shall enjoy the privileges and immunities, facilities and courtesies necessary for the independent exercise of their functions in connection with the Workshop.

7. All participants and persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Cuba and no impediment shall be imposed on their transit to and from the Workshop area. Visas shall be granted free of charge to those invited by the United Nations to the Workshop and as speedily as possible. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is not made at least two and a half weeks before the opening of the Workshop, visas shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival.

8. The participants in the Workshop, referred to in article II above, officials of the United Nations responsible for the organization of the Workshop and experts on mission for the United Nations in connection with the Workshop shall have the right to take out of Cuba at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Cuba in connection with the Workshop at the official rate prevailing when the funds were brought in.

9. The Government shall allow the temporary importation, tax- and duty-free, of all equipment and shall waive import duties and taxes on supplies necessary for the Workshop. It shall issue without delay any necessary import and export permits for this purpose.

#### *Article VI*

##### LIABILITY

The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials and arising out of:

(a) Injury to person or damage to or loss of property in the premises referred to in article IV that are provided by or are under the control of the Government;

(b) Injury to person or damage to or loss of property caused by, or incurred in using, the transport services referred to in article IV that are provided by or are under the control of the Government;

(c) The employment for the Workshop for the personnel provided by the Government under article IV.

The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand.

### *Article VII*

#### SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

### *Article VIII*

#### FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force on the date it is signed on behalf of the United Nations and the Government of Cuba and shall remain in force for the period of the Workshop or until such later date as may be necessary for the settlement of matters related to the Workshop.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in duplicate in the English and Spanish languages, both texts being equally authentic.

(h) Agreement between the United Nations and the Government of the German Democratic Republic relating to the Second United Nations International Training Course on Remote Sensing Applications to Geological Sciences to be held at Potsdam from 5 to 20 October 1989. Signed at New York on 18 September 1989<sup>15</sup>

The United Nations and the Government of the German Democratic Republic (hereinafter called "the Government"), desiring to give effect to the provisions of General Assembly resolution 37/90 of 10 December 1982 concerning the promotion of greater cooperation in space science and technology and the organization of training courses on advanced space science applications and new systems developments, have agreed as follows:

### *Article I*

#### PLACE, DATE, LANGUAGE AND OBJECTIVE OF THE COURSE

1. The Second United Nations International Training Course on Remote Sensing Applications to Geological Science (hereinafter called "the Course") shall be held in Potsdam, German Democratic Republic.
2. The duration of the Course shall be from 5 to 22 October 1989.
3. The official language of the Course shall be English only.
4. The main objective of the Course is to provide education and practical training to participants from developing countries with respect to the results of recent applications of airborne and satellite remote sensing techniques to geological sciences.

### *Article II*

#### PARTICIPATION IN THE COURSE

1. Participation in the Course shall be open to the following:
  - (a) Suitably qualified persons nominated by Governments of developing countries, accepted and invited for participation in the Course by the United Nations and the Government;
  - (b) Experts invited by the United Nations and the Government to serve as lecturers/instructors at the Course;
  - (c) Representatives of the United Nations, its specialized agencies and appropriate bodies of the United Nations, invited to attend the Course by the United Nations.
2. The number of participants from developing countries as referred to in paragraph 1(a) above shall be limited to fifteen.
3. The Secretary-General of the United Nations shall designate the officials of the United Nations assigned to attend the Course for the purpose of servicing it.

### *Article III*

#### SERVICES TO BE PROVIDED BY THE UNITED NATIONS

1. The United Nations shall disseminate the necessary information and extend invitations to the participants referred to in article II, paragraph 1(a);
2. The United Nations shall provide, at its expense, the services of up to two officers of the Outer Space Affairs Division of the United Nations Secretariat; these officials shall be responsible for the organization of the Course on behalf of the United Nations;
3. The United Nations, in accordance with the provisions of General Assembly resolution 37/90, shall use the resources of its Space Applications Programme fellowship budget to cover the cost of round-trip air travel (economy class) to Berlin, German Democratic Republic, for those in need among the participants referred to in paragraph 1(a) of article II. The United Nations shall make arrangements as necessary to provide for the Course the service of the lecturers/instructors referred to in paragraph 1(b) of article II.

## *Article IV*

### SERVICES TO BE PROVIDED BY THE GOVERNMENT

1. The Government shall act as host to the Course.
2. The Government shall appoint a Liaison Officer who shall be responsible in consultation with the United Nations for making and carrying out the administrative and personnel arrangements for the Course as required under this Agreement.
3. The Government shall provide and defray the costs of:
  - (a) Appropriate premises for the effective conduct of the Course;
  - (b) Appropriate premises for offices, working areas and other related facilities for the United Nations Secretariat staff responsible for the Course, the Liaison Officer and the local personnel mentioned below;
  - (c) Adequate furniture and equipment for the premises referred to in subparagraphs (a) and (b) above, to be installed prior to the Course and maintained in good repair by appropriate personnel for the duration of the Course;
  - (d) Sound and audio-visual projection equipment as well as tape recorders and tapes as necessary and technicians to operate them for the sessions of the Course;
  - (e) Preparation and dissemination of documentation relevant to the Course;
  - (f) Local personnel required for the proper and effective conduct of the Course, including reproduction and distribution of documentation relevant to the Course;
  - (g) All necessary utility services including local telephone communications for the United Nations Secretariat officials. Long-distance telephone and telex communications with the United Nations should be made only when such communications are authorized by the senior official of the United Nations at the Course;
  - (h) Customs clearance and transportation from the port of entry to the site of the Course and return of all United Nations supplies and equipment required for the adequate functioning of the Course. The United Nations shall determine the mode of shipment of such equipment and supplies;
  - (i) Transportation between the airport and the Course areas and principal hotels for all participants and lecturers in the Course and United Nations officials responsible for the organization of the Course upon their arrival and departure, as well as transportation for visits to institutions and other activities organized in connection with the Course;
  - (j) Room, board and pocket money for up to fifteen participants from developing countries;
  - (k) Medical facilities adequate for first aid in emergencies within the Course area; for serious emergencies, the Government shall ensure immediate transportation and admission to a hospital;
  - (l) Security protection as may be required to ensure the efficient functioning of the Course free from interference of any kind. While such security services shall be under the direct supervision and control of the senior officer provided by the Government, this officer shall work in close cooperation with the designated official of the United Nations at the Course.

4. The Government shall provide, if possible within the Course area, bank, post-office, telephone, telex, and cable facilities, as well as a travel agency.

5. The Government shall provide adequate accommodation in hotels or residences at reasonable commercial rates for persons participating in, attending or servicing the Course.

### *Article V*

#### PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the Course.

2. Participants attending the Course in pursuance of paragraph 1(a) and (b) of article II of this Agreement shall enjoy the privileges and immunities accorded to experts on mission under article VI of the Convention on the Privileges and Immunities of United Nations.

3. Officials of the United Nations participating in or performing functions in connection with the Course shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

4. Representatives of the Specialized Agencies participating in the Course shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

5. The personnel provided by the Government under article IV, paragraph 3, above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Course.

6. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the Course and all those invited to the Course shall enjoy such privileges, immunities and facilities as are necessary for the independent exercise of their functions in connection with the Course.

7. All participants and persons performing functions in connection with the Course shall have the right of unimpeded entry into and exit from the German Democratic Republic. Visas shall be granted free of charge and as speedily as possible. When applications are made four weeks before the opening of the Course, visas shall be granted not later than two weeks before the opening of the Course. If the application is not made at least two and a half weeks before the opening of the Course, visas shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Course are delivered at the airport of arrival to the participants who were unable to obtain them prior to their arrival.

8. The participants in the Course, referred to in article II above, officials of the United Nations responsible for the organization of the Course and experts on mission for the United Nations in connection with the Course shall have the right to take out of the German Democratic Republic at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into the German Democratic Republic.

9. The Government shall allow the temporary importation, tax- and duty-free, of all equipment and shall waive import duties and taxes on supplies necessary for the Course. It shall issue without delay any necessary import and export permits for this purpose.

#### *Article VI*

##### LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials and arising out of:

(a) Injury to persons or damage to or loss of property in the premises referred to in paragraph 3(a) and (b) of article IV above;

(b) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in paragraph 3(i) of article IV;

(c) The employment for the Course of the personnel provided by the Government under article IV.

2. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

#### *Article VII*

##### SETTLEMENT OF DISPUTES

In case of a dispute concerning the interpretation or implementation of this Agreement the United Nations and the Government should seek a solution by consultations or negotiations or by some other mutually agreed method.

#### *Article VIII*

##### FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force on the date it is signed on behalf of the United Nations and the Government of the German Democratic Republic and shall remain in force for the period of the Course or until such later date as may be necessary for the settlement of matters related to the Course.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in duplicate in the English language.

- (i) Exchange of letters between the United Nations and the Government of Nicaragua constituting an agreement on the status and privileges and immunities of the United Nations Observer Group in Central America. Signed at New York on 10 November 1989 and at Managua on 7 August 1990<sup>16</sup>

## I

### LETTER FROM THE UNITED NATIONS

10 November 1989

I have the honour to refer to Security Council resolution 644 (1989) of 7 November 1989 by which the Council decided to set up, under its authority, a United Nations Observer Group in Central America (hereinafter referred to as "ONUCA") with the terms of reference and structure referred to in the report of the Secretary-General to the Security Council contained in document S/20895 which was approved by the Security Council (copy enclosed). The Security Council requested the Secretary-General to take the necessary steps, in accordance with the above-mentioned report, to give effect to its decision to establish ONUCA.

In order to facilitate the fulfilment of its purposes, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to ONUCA, as an organ of the United Nations, its property, funds and assets and its officials the provisions of the Convention on the Privileges and Immunities of the United Nations, to which Nicaragua acceded on 29 November 1947. In view of the special importance of the functions which ONUCA will perform, I further propose that your Government extend to the Chief Military Observer the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law, and extend to the military personnel serving under the Chief Military Observer and their civilian support personnel, whose names shall be communicated to the Government for this purpose, the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention.

In addition to the foregoing, the privileges and immunities necessary for the fulfilment of the functions of ONUCA shall also include freedom of entry and exit, without delay or hindrance, of property, supplies, equipment and spare parts; unrestricted freedom of movement on land, sea and in the air of personnel, equipment and means of transport; unrestricted freedom of movement across the land, sea and air borders; the acceptance of United Nations registration of means of transport (on land, sea and in the air) and the United Nations licensing of the operators thereof; the right to fly the United Nations flag on United Nations premises, including ONUCA liaison office and verification centers, its vehicles, aircraft and vessels; and the right of unrestricted communication by radio, satellite or other forms of communication, within the area of ONUCA operations, with United Nations Headquarters and between ONUCA headquar-

ters in Tegucigalpa, Honduras, liaison offices and verification centers and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or other means.

It is understood that the Government of Nicaragua shall provide at its own expense, in agreement with the Chief Military Observer, all such premises as may be necessary for the accommodation and fulfilment of the functions of ONUCA, including office space for ONUCA liaison office and verification centers as well as the necessary space for the maintenance, service and parking/anchorage of aircraft and patrol boats. All such premises shall be inviolable and subject to the exclusive control and authority of the Chief Military Observer. Without prejudice to the use by the United Nations of its own means of transport and communication, it is understood that your Government shall, upon the request of the Chief Military Observer, provide, at its own expense, the means of transport and communication for ONUCA.

It is understood also that the Government of Nicaragua shall provide, upon the request of the Chief Military Observer, armed escort to protect ONUCA personnel during the exercise of their functions when in the opinion of the Chief Military Observer such escort is necessary.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and Nicaragua to take effect as of the date of the arrival of the first element of ONUCA in Nicaragua, which date shall be confirmed to you by me.

...

*(Signed)* JAVIER PÉREZ DE CUÉLLAR

## II

### LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF NICARAGUA

7 August 1990

I have the honour to refer to your letter of 10 November 1989 concerning the juridical status and privileges and immunities of the United Nations Observer Group in Central America (ONUCA) which has been set up in Nicaragua.

On behalf of the Government of Nicaragua, I have the pleasure to inform you that we accept the terms of your letter, on the basis of the following:

(a) In the third paragraph, where reference is made to “unrestricted freedom of the movement for personnel, equipment and means of land, sea and air transport; unrestricted freedom of movement across land, sea and air borders”, it is agreed that the reference is to freedom of movement within the ONUCA area of operations, and that this shall not affect the normal passport, visa and notification procedures and requirements for entry into the country.

It is also agreed that ONUCA personnel and their spouses and dependants shall enjoy immunity from immigration or foreign registry restrictions.

(b) In the fourth paragraph, where mention is made of premises for setting up ONUCA, it is agreed that the reference is to office space and other services required for the proper performance of the Group's functions.

(c) In the above-mentioned fourth paragraph, where reference is made to means of transport and communication which are to be provided by the Government of Nicaragua, it is agreed that these shall be provided, under exceptional circumstances, at the request of the Chief Military Observer.

In accordance with your proposal, the provisions set out in your letter of 10 November 1989 and this reply shall constitute an Agreement between the United Nations and the Government of Nicaragua on the juridical status and privileges and immunities of the United Nations Observer Group in Central America (ONUCA).

...

(Signed) Enrique Dreyfus MORALES  
Minister for Foreign Affairs

### 3. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

(a) Agreement between the United Nations Development Programme and the Government of Denmark relating to the headquarters of the Inter-Agency Procurement Services Unit in Copenhagen.  
Signed at New York on 25 January 1989<sup>17</sup>

The Government of Denmark and the United Nations Development Programme,

*Considering* that the United Nations Development Programme has accepted the offer of the Government of Denmark to provide expanded facilities in Copenhagen for the Inter-Agency Procurement Services Unit;

*Considering* that the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, to which Denmark became a party on 10 June 1948, is ipso facto applicable to the Inter-Agency Procurement Services Unit;

*Have agreed* as follows:

#### *Article I*

#### DEFINITIONS

In the present Agreement,

(a) The expression "UNDP" means the United Nations Development Programme;

(b) The expression "IAPSU, Copenhagen" means UNDP, Inter-Agency Procurement Service Unit in Copenhagen;

(c) The expression "the Government" means the Government of Denmark;

(d) The expression “headquarters” means the premises occupied by IAPSU, Copenhagen, in accordance with provisions set forth from time to time in supplementary agreements;

(e) The expression “Administrator” means the Administrator of UNDP or his authorized representative;

(f) The expression “officials of UNDP” means the Administrator and all members of the staff of UNDP, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(g) The expression “Director of IAPSU, Copenhagen” means the senior official in charge of IAPSU, Copenhagen;

(h) The expression “officials of IAPSU, Copenhagen” means the Director and all members of the staff of IAPSU, Copenhagen, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(i) The expression “Convention” means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946.

## *Article II*

### JURIDICAL PERSONALITY AND CAPACITY

The United Nations Development Programme acting through IAPSU, Copenhagen, shall have the capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property;
- (c) To institute legal proceedings.

## *Article III*

### HEADQUARTERS

1. The Government recognizes the extra-territoriality of the headquarters seat, which shall be under the control and authority of IAPSU, Copenhagen, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, and subject to any regulation enacted under paragraph 5, the laws of Denmark shall apply within the headquarters seat.

3. Except as otherwise provided in this Agreement, or in the General Convention, the courts or other appropriate organs of Denmark shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

4. The headquarters shall be inviolable. No official of the Government shall enter the headquarters to perform any duties except upon the consent of or at the request of the Director of IAPSU, Copenhagen, and under conditions approved by him.

5. IAPSU, Copenhagen, shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of

Denmark which is inconsistent with a regulation of UNDP authorized by this paragraph shall, to the extent of such inconsistency, be enforceable within the headquarters seat. Any dispute between IAPSU, Copenhagen, and Denmark as to whether a regulation of UNDP is authorized by this section, or as to whether a law of Denmark is inconsistent with any regulation of UNDP authorized by this paragraph, shall promptly be settled by the procedure set out in article XII.

6. Juridical actions, including service of legal process and the seizure of private property, shall not take place within the headquarters, except with the consent of, and under conditions approved by, the Director of IAPSU, Copenhagen.

7. Without prejudice to the provisions of the Convention or this Agreement, IAPSU, Copenhagen, shall prevent the headquarters from being used as a refuge by persons who are avoiding arrest under any law of Denmark, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

8. (a) The appropriate Danish authorities shall exercise due diligence to ensure that the tranquility of the headquarters is not disturbed by any person or groups of persons from attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat.

(b) If so requested by the Director of IAPSU, Copenhagen, the appropriate Danish authorities shall provide necessary assistance for the preservation of law and order in the headquarters and for the removal therefrom of persons as requested by the director of IAPSU, Copenhagen.

9. The appropriate Danish authorities shall make every possible effort to secure upon the request of the Director of IAPSU, Copenhagen, the public services needed by IAPSU, Copenhagen, including, without limitation by reason of this enumeration, postal, telephone, and telegraph services and power, water and fire protection services. Such public services shall be supplied on equitable terms.

10. In case of any interruption or threatened interruption of the aforesaid services, the appropriate Danish authorities shall consider the needs of UNDP as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly to ensure that the work of UNDP is not prejudiced.

#### *Article IV*

##### FREEDOM OF ACCESS TO THE HEADQUARTERS

1. The competent Danish authorities shall not impede the transit to or from the headquarters of persons holding official posts therein or of persons invited thereto in connection with the official work and activities of UNDP upon their arrival in or departure from Denmark.

2. The Government undertakes, for this purpose, to allow the entry into and residence in Denmark of the persons listed hereunder during their assignment or during the performance of their duties for UNDP, without charging visa fees and without delay as well as exemption from any requirements of exit visa formalities upon departure from Denmark of:

(a) Representatives of states, representatives of United Nations organs, specialized or related agencies, and observers from intergovernmental, non-governmental and other organizations, with which UNDP has established official relations, invited or entitled to participate in conferences or meetings convened in Denmark by UNDP including alternate representatives or observers, advisers, experts and assistants, as well as their spouses and dependent members of their families;

(b) UNDP officials and experts on missions for UNDP, as well as their spouses and dependent members of their families;

(c) Officials of the United Nations or any of its specialized or related agencies who are assigned to work for UNDP and those who have official duties with IAPSU, Copenhagen, as well as their spouses and dependent members of their families;

(d) All persons invited to the headquarters on official business.

3. Without prejudice to the special immunities which they may enjoy, persons referred to in paragraph 2 above may not be forced by Danish authorities to leave Danish territory unless they abuse their recognized residence privileges by exercising an activity outside their official capacity, and subject to the provisions mentioned hereunder:

(a) No action to force the persons referred to in paragraph 2 above to leave Danish territory may be taken except with the prior approval of the Ministry of Foreign Affairs. Such approval shall be given only after consultation with the Administrator.

(b) Persons enjoying diplomatic privileges and immunities under this Agreement may not be requested to leave Danish territory except in accordance with the practice and procedures applicable to diplomats accredited to the Government;

(c) It is understood that persons referred to in paragraph 2 above shall not be exempt from application of quarantine or other health regulations.

#### *Article V*

##### COMMUNICATIONS FACILITIES

1. For all official postal, telephone, telegraph, telephoto, and electronic communications, the Government shall accord to IAPSU, Copenhagen, a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegrams, telephotos, telephone calls and other communications, as well as such rates for news reported to the press and radio as may be accorded.

2. The Government shall secure the inviolability of the official correspondence of IAPSU, Copenhagen, and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publication, still and moving pictures, films and sound recording dispatched to or by IAPSU, Copenhagen.

3. IAPSU, Copenhagen, shall have the right to use codes and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. (a) The United Nations Development Programme is authorized to establish and operate at the headquarters facilities for electronic, high-frequency radio and satellite communications including point to point dedicated telecommunications with other United Nations Development Programme offices all over the world.

(b) With the agreement of the Government as may be included in a supplementary Agreement, the United Nations Development Programme may also establish and operate at the headquarters:

- (i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerances prescribed for the broadcasting services by applicable Danish regulations), radiograph, radiotelephone and similar services;
- (ii) Such other radio facilities as may be specified by supplementary agreement between the United Nations Development Programme and the appropriate Danish authorities.

(c) The United Nations Development Programme shall make arrangements for the operation of the services referred to in this article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters.

(d) The facilities provided for in this Article may, to the extent necessary for efficient operation, be established and operated outside the headquarters with the consent of the Government.

#### *Article VI*

##### PROPERTY, FUNDS AND ASSETS

The Government shall apply to the property, funds and assets of IAPSU, Copenhagen, wherever they are and by whomsoever held the provisions of the Convention.

#### *Article VII*

##### DIPLOMATIC FACILITIES, PRIVILEGES AND IMMUNITIES

1. Representatives of States participating in conferences and meetings convened by IAPSU, Copenhagen, in Denmark shall, while exercising their functions and during their journey to and from Denmark, enjoy the privileges and immunities provided in article IV of the General Convention.

2. Without prejudice to the provisions of article VIII, paragraphs 1 and 3, the Administrator and the Director of IAPSU, Copenhagen, shall enjoy during their residence in Denmark the facilities, privileges and immunities granted to heads of diplomatic missions accredited in Denmark.

3. Other officials having the professional grade of P-5 and above, and such additional categories of officials as may be designated, in agreement with the Government and the Administrator on the ground of the responsibilities of their positions in IAPSU, Copenhagen, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staff of heads of diplomatic missions accredited in Denmark.

4. The facilities, privileges and immunities granted to the representatives of States mentioned in paragraph 1 above and to the officials mentioned in paragraphs 2 and 3 above shall extend to their spouses and dependent members of their families.

### *Article VIII*

#### OFFICIALS OF IAPSU, COPENHAGEN

1. Officials of IAPSU, Copenhagen, shall enjoy in Denmark the following privileges and immunities:

(a) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity;

(b) Immunity from seizure of their personal and official baggage;

(c) Immunity from inspection of official baggage, and if the official comes within the scope of paragraph 2 or 3 of article VII, immunity from inspection of personal baggage;

(d) Exemption from taxation on the salaries and all other remuneration paid to them by the United Nations Development Programme;

(e) Exemption from military service obligations provided that, with respect to Danish nationals, such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Administrator and approved by the Government;

(f) Exemption for themselves and for their spouses and dependent members of their families from immigration restrictions on alien registration procedures;

(g) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of comparable rank of diplomatic missions accredited to the Government;

(h) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their household as are accorded in time of international crises to members, having comparable rank, of the staff of heads of diplomatic missions accredited to Denmark;

(i) If they have been previously residing abroad, the right to import their furniture, personal effects and all household appliances, including one automobile, intended for personal use free of duty when they come to reside in Denmark, which privilege shall be valid for a period of one year from the date of arrival in Denmark;

(j) Officials of IAPSU, Copenhagen, except those who are locally recruited staff in the General Service or related categories, shall have the right to import, free of custom and excise duties, limited quantities of certain articles for personal consumption (food products, beverages, etc.) in accordance with a list to be approved by the Government of Denmark;

(k) Officials of IAPSU, Copenhagen, except those who are locally recruited staff in the General Service or related categories, shall have the right, once every three years, to import one motor vehicle free of customs and excise duties, including value added taxes, it being understood that permission to sell or dispose of the vehicle in the open market will normally be granted two years after its importation only. It is further understood that customs and excise duties will become payable in the event of the sale or disposal of such motor vehicle within three years after its importation to a person not entitled to this exemption.

2. The Government shall furnish persons within the scope of this Article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to Danish Authorities.

3. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant UNDP regulations and rules.

### *Article IX*

#### EXPERTS ON MISSION FOR IAPSU, COPENHAGEN

1. Experts on mission for UNDP, other than the officials referred to in article VIII above, performing missions authorized by, serving on boards, committees or other organs of, or consulting at its request in any way with UNDP shall enjoy, within and with respect to Denmark, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(a) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage;

(b) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for UNDP, or may no longer be present at the headquarters attending meetings convened by UNDP;

(c) Inviolability of all papers, documents and other official material;

(d) The right, for the purpose of all communications with UNDP, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(e) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;

(f) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members having comparable rank, of the staff of heads of diplomatic missions accredited to Denmark;

(g) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members having comparable rank of the staff of heads of diplomatic missions accredited to Denmark.

2. (a) IAPSU, Copenhagen, shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary;

(b) The Government shall furnish persons within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to Danish authorities.

3. The privileges and immunities referred to in articles VIII and IX are granted in the interests of UNDP and not for the personal benefit of the officials or experts themselves. The Administrator of UNDP shall waive the immunity granted to any official or expert whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of UNDP.

#### *Article X*

##### COOPERATION WITH THE APPROPRIATE DANISH AUTHORITIES

UNDP shall cooperate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities mentioned in this Agreement.

#### *Article XI*

##### LAISSEZ-PASSER

1. The Government shall recognize and accept the United Nations laissez-passer issued to officials of UNDP as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to experts on mission for UNDP and other persons traveling on the business of UNDP. The Government further agrees to issue any required visas on such certificates.

#### *Article XII*

##### SETTLEMENT OF DISPUTES

1. Any dispute between UNDP and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement or arrangement or any question affecting the headquarters or the relationship

between IAPSU, Copenhagen, and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators; one to be chosen by the Administrator, one to be chosen by the Minister for Foreign Affairs of Denmark, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Administrator of UNDP or the Government.

2. The Administrator of UNDP or the Government may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

### *Article XIII*

#### FINAL PROVISIONS

1. The provisions of this Agreement shall be considered supplementary to the provisions of the Convention. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary whenever possible; both of them shall be applied and neither shall restrict the force of the other.

2. Consultations with respect to amendments to this Agreement shall be entered into at the request of either party and such amendments shall be made by mutual consent. If the consultations do not result in an understanding within one year the present Agreement may be terminated by either party on giving two years' notice.

3. This Agreement shall enter into force upon the date of the last signature.

(b) Agreement between the United Nations (United Nations Development Programme) and the Government of Ecuador concerning assistance by UNDP to the Government of Ecuador. Signed at Quito on 8 March 1989<sup>18</sup>

*Whereas* the General Assembly of the United Nations has established the United Nations Development Programme (hereinafter referred to as UNDP) to support and supplement the national efforts of developing countries to solve the most important problems of their economic development and to promote social progress and better standards of living; and

*Whereas* the Government of the Republic of Ecuador wishes to request assistance from UNDP for the benefit of its people;

*Now therefore* the Government of the Republic of Ecuador and UNDP (hereinafter referred to as the Parties) have entered into this Agreement in a spirit of friendly cooperation.

## *Article I*

### SCOPE OF THIS AGREEMENT

1. This Agreement embodies the basic conditions under which UNDP and its Executing Agencies shall assist the Government in carrying out its development projects, and under which such UNDP-assisted projects shall be executed. It shall apply to all such UNDP assistance and to such Project Documents or other instruments (hereinafter referred to as Project Documents) as the Parties may conclude to define in more detail the particulars of such assistance and the respective responsibilities of the Parties and the Executing Agency hereunder in regard to such projects.

2. Assistance shall be provided by UNDP under this Agreement only in response to requests submitted by the Government and approved by UNDP. Such assistance shall be made available to the Government, or to such entity as the Government may designate, and shall be furnished and received in accordance with the relevant and applicable resolutions and decisions of the competent UNDP organs, and subject to the availability of the necessary funds to UNDP.

## *Article II*

### FORMS OF ASSISTANCE

1. Assistance which may be made available by UNDP to the Government under this Agreement may consist of:

(a) The services of advisory experts and consultants, including consultant firms or organizations, selected by and responsible to UNDP or the Executing Agency concerned;

(b) The services of operational experts selected by the Executing Agency to perform functions of an operational, executive or administrative character as civil servants of the Government or as employees of such entities as the Government may designate under article I, paragraph 2, hereof;

(c) The services of members of the United Nations Volunteers (hereinafter referred to as volunteers);

(d) Equipment and supplies not readily available in Ecuador (hereinafter referred to as the country);

(e) Seminars, training programmes, demonstration projects, expert working groups and related activities;

(f) Scholarships and fellowships, or similar arrangements under which candidates nominated by the Government and approved by the Executing Agency concerned may study or receive training; and

(g) Any other form of assistance which may be agreed upon by the Government and UNDP.

2. Requests for assistance shall be presented by the Government to UNDP through the UNDP resident representatives in the country (referred to in paragraph 4(a) of this article), and in the form and in accordance with procedures established by UNDP for such requests. The Government shall provide UNDP with all appropriate facilities and relevant information to appraise the request, including an expression of its intent with respect to the follow-up of investment-oriented projects.

3. Assistance may be provided by UNDP to the Government either directly, with such external assistance as it may deem appropriate, or through an Executing Agency, which shall have primary responsibility for carrying out UNDP assistance to the project and which shall have the status of an independent contractor for this purpose. Where assistance is provided by UNDP directly to the Government, all references in this Agreement to an Executing Agency shall be construed to refer to UNDP, unless clearly inappropriate from the context.

4. (a) UNDP may maintain a permanent mission, headed by a resident representative, in the country to represent UNDP therein and be the principal channel of communication with the Government on all Programme matters. The resident representative shall have full responsibility and ultimate authority, on behalf of the UNDP Administrator, for the UNDP programme in all its aspects in the country, and shall be team leader in regard to such representatives of other United Nations organizations as may be posted in the country, taking into account their professional competence and their relations with appropriate organs of the Government. The resident representative shall maintain liaison on behalf of the Programme with the appropriate organs of the Government, including the Government's coordinating agency for external assistance, and shall inform the Government of the policies, criteria and procedures of UNDP and other relevant programmes of the United Nations. He shall assist the Government, as may be required, in the preparation of UNDP country programme and project requests, as well as proposals for country programme or project changes, assure proper coordination of all assistance rendered by UNDP through various Executing Agencies or its own consultants, assist the Government, as may be required, in coordinating UNDP activities with national, bilateral and multilateral programmes within the country, and carry out such other functions as may be entrusted to him by the Administrator or by an Executive Agency.

(b) The UNDP mission in the country shall have such other staff as UNDP may deem appropriate to its proper functioning. UNDP shall notify the Government from time to time of the names of the members, and of the families of the members, of the mission, and of changes in the status of such persons.

### *Article III*

#### EXECUTION OF PROJECTS

1. The Government shall remain responsible for its UNDP-assisted development projects and the realization of their objectives as described in the relevant Project Documents and shall carry out such parts of such projects as may be stipulated in the provisions of this Agreement and such Project Documents. UNDP undertakes to complement and supplement the Government's participation in such projects through assistance to the Government in pursuance of this Agreement and the Work Plans forming part of such Project Documents, and through assistance to the Government in fulfilling its intent with respect to investment follow-up. The Government shall inform UNDP of the Government Cooperating Agency directly responsible for the Government's participation in each UNDP-assisted project. Without prejudice to the Government's overall responsibility for its projects, the Parties may agree that an Executing Agency shall assume primary responsibility for execution of a project in con-

sultation and agreement with the Cooperating Agency, and any arrangements to this effect shall be stipulated in the project Work Plan forming part of the Project Document together with arrangements, if any, for transfer of such responsibility, in the course of project execution, to the Government or to an entity designated by the Government.

2. Compliance by the Government with any prior obligations agreed to be necessary or appropriate for UNDP assistance to a particular project shall be a condition of performance by UNDP and the Executing Agency of their responsibilities with respect to that project. Should provision of such assistance be commenced before such prior obligations have been met, it may be terminated or suspended without notice and at the discretion of UNDP.

3. Any agreement between the Government and an Executing Agency concerning the execution of a UNDP-assisted project or between the Government and an operational expert shall be subject to the provisions of this Agreement.

4. The Cooperating Agency shall as appropriate and in consultation with the Executing Agency assign a full-time director for each project who shall perform such functions as are assigned to him by the Cooperating Agency. The Executing Agency shall as appropriate and in consultation with the Government appoint a Chief Technical Adviser or Project Coordinator responsible to the Executing Agency to oversee the Executing Agency's participation in the project at the project level. He shall supervise and coordinate activities of experts and other Executing Agency personnel and be responsible for the on-the-job training of national Government counterparts. He shall be responsible for the management and efficient utilization of all UNDP-financed inputs, including equipment provided to the project.

5. In the performance of their duties, advisory experts, consultants and volunteers shall act in close consultation with the Government and with persons or bodies designated by the Government, and shall comply with such instructions from the Government as may be appropriate to the nature of their duties and the assistance to be given and as may be mutually agreed upon between UNDP and the Executing Agency concerned and the Government. Operational experts shall be solely responsible to, and be under the exclusive direction of, the Government or the entity to which they are assigned, but shall not be required to perform any functions incompatible with their international status or with the purposes of UNDP or of the Executing Agency. The Government undertakes that the commencing date of each operational expert in its service shall coincide with the effective date of his contract with the Executing agency concerned.

6. Recipients of fellowships shall be selected by the Executing Agency. Such fellowships shall be administered in accordance with the fellowship policies and practices of the Executing Agency.

7. Technical and other equipment, materials, supplies and other property financed or provided by UNDP shall belong to UNDP unless and until such time as ownership thereof is transferred, on terms and conditions mutually agreed upon between the Government and UNDP, to the Government or to an entity nominated by it.

8. Patent rights, copyright rights, and other similar rights to any discoveries of work resulting from UNDP assistance under this Agreement shall be-

long to UNDP. Unless otherwise agreed by the parties in each case, however, the Government shall have the right to use any such discoveries of work within the country free of royalty or any charge of similar nature.

#### *Article IV*

##### INFORMATION CONCERNING PROJECTS

1. The Government shall furnish UNDP with such relevant reports, maps, accounts, records, statements, documents and other information as it may request concerning any UNDP-assisted project, its execution or its continued feasibility and soundness, or concerning the compliance by the Government with its responsibilities under this Agreement or Project Documents.

2. UNDP undertakes that the Government shall be kept currently informed of the progress of its assistance activities under this Agreement. Either Party shall have the right, at any time, to observe the progress of operations on UNDP-assisted projects.

3. The Government shall, subsequent to the completion of a UNDP-assisted project, make available to UNDP at its request information as to benefits derived from and activities undertaken to further the purposes of that project, including information necessary or appropriate to its evaluation or to evaluation of UNDP assistance, and shall consult with and permit observation by UNDP for this purpose.

4. Any information or material which the Government is required to provide to UNDP under this article shall be made available by the Government to an Executing Agency at the request of the Executing Agency concerned.

5. The Parties shall consult each other regarding the publication, as appropriate, of any information relating to any UNDP-assisted project or to benefits derived therefrom. However, any information relating to any investment-oriented project may be released by UNDP to potential investors, unless and until the Government has requested UNDP in writing to restrict the release of information relating to such project.

#### *Article V*

##### PARTICIPATION AND CONTRIBUTION OF GOVERNMENT IN EXECUTION OF PROJECT

1. In fulfilment of the Government's responsibility to participate and cooperate in the execution of the projects assisted by UNDP under this Agreement, it shall contribute the following in kind to the extent detailed in relevant Project Documents:

(a) Local counterpart professional and other services, including national counterparts to operational experts;

(b) Land, buildings, and training and other facilities available or produced within the country;

(c) Equipment, materials and supplies available or produced within the country.

2. Whenever the provision of equipment forms part of UNDP assistance to the Government, the latter shall meet charges relating to customs clearance of such equipment, its transportation from the port of entry to project site together with any incidental handling or storage and related expenses, its insurance after delivery to the project site, and its installation and maintenance.

3. The Government shall also meet the salaries of trainees and recipients of fellowships during the period of their fellowships.

4. If so provided in the Project Document, the Government shall pay, or arrange to have paid, to UNDP or an Executing Agency the sums required, to the extent specified in the Project Budget of the Project Document, for the provision of any of the items enumerated in paragraph 1 of this article, whereupon the Executing Agency shall obtain the necessary items and account annually to UNDP for any expenditures out of payments made under this provision.

5. Moneys payable to UNDP under the preceding paragraph shall be paid to an account designed for this purpose by the Secretary-General of the United Nations and shall be administered in accordance with the applicable financial regulations of UNDP.

6. The cost of items constituting the Government's contribution to the project and any sums payable by the Government in pursuance of this article, as detailed in Project Budgets, shall be considered as estimates based on the best information available at the time of preparation of such Project Budgets. Such sums shall be subject to adjustment whenever necessary to reflect the actual cost of any such items purchased thereafter.

7. The Government shall as appropriate display suitable signs at each project identifying it as one assisted by UNDP and the Executing Agency.

#### *Article VI*

##### ASSESSED PROGRAMME COSTS AND OTHER ITEMS PAYABLE IN LOCAL CURRENCY

1. In addition to the contribution referred to in article V above, the Government shall assist UNDP in providing it with assistance by paying or arranging to pay for the following local costs or facilities, in the amounts specified in the relevant Project Document or otherwise determined by UNDP in pursuance of relevant decisions of its governing bodies:

(a) The local living costs of advisory experts and consultants assigned to projects in the country;

(b) Local administrative and clerical services, including necessary local secretarial help, interpreters, translators, and related assistance;

(c) Transportation of personnel within the country;

(d) Postage and telecommunications for official purposes.

2. The Government shall also pay each operational expert directly the salary, allowances and other related emoluments which would be payable to one of its nationals if appointed to the post involved. It shall grant an operational expert the same annual and sick leave as the Executing Agency concerned grants its own

officials, and shall make any arrangement necessary to permit him to take home leave to which he is entitled under the terms of his service with the Executing Agency concerned. Should his service with the Government be terminated by it under circumstances which give rise to an obligation on the part of an Executing Agency to pay him an indemnity under its contract with him, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or comparable employee of like rank whose service is terminated in the same circumstances.

3. The Government undertakes to furnish in kind the following local services and facilities:

- (a) The necessary office space and other premises;
- (b) Such medical facilities and services for international personnel as may be available to national civil servants;
- (c) Simple but adequately furnished accommodation for volunteers;
- (d) Assistance in finding suitable housing accommodation for international personnel, and the provision of such housing to operational experts under the same conditions as to national civil servants of comparable rank.

4. The Government shall also contribute towards the expenses of maintaining the UNDP mission in the country by paying annually to UNDP a lump sum mutually agreed between the Parties to cover the following expenditures:

- (a) An appropriate office with equipment and supplies, adequate to serve as local headquarters for UNDP in the country;
- (b) Appropriate local secretarial and clerical help, interpreters, translators and related assistance;
- (c) Transportation of the resident representative and his staff for official purposes with the country;
- (d) Postage and telecommunications for official purposes;
- (e) Subsistence for the resident representative and his staff while in official travel status within the country.

5. The Government shall have the option of providing in kind the facilities referred to in paragraph 4 above, with the exception of items (b) and (e).

6. Moneys payable under the provisions of this article, other than under paragraph 2, shall be paid by the Government and administered by UNDP in accordance with article V, paragraph 5.

## *Article VII*

### RELATION TO ASSISTANCE FROM OTHER SOURCES

In the event that assistance towards the execution of a project is obtained by either Party from other sources, the Parties shall consult with each other and the Executing Agency with a view to the effective coordination and utilization of assistance received by the Government from all sources. The obligations of the Government hereunder shall not be modified by any arrangements it may enter into with other entities cooperating with it in the execution of a project.

### *Article VIII*

#### USE OF ASSISTANCE

The Government shall exert its best efforts to make the most effective use of the assistance provided by UNDP and shall use such assistance for the purpose for which it is intended. Without restricting the generality of the foregoing, the Government shall take such steps to this end as are specified in the Project Document.

### *Article IX*

#### PRIVILEGES AND IMMUNITIES

1. The Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representatives and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations.

2. The Government shall apply to each Specialized Agency acting as an Executing Agency, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies. In case the International Atomic Energy Agency (IAEA) acts as an Executing Agency, the Government shall apply to its property, funds and assets, and to its officials and experts, the Agreement on the Privileges and Immunities of IAEA.

3. Members of the UNDP mission in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise by the mission of its functions.

4. (a) Except as the Parties may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNDP, a Specialized Agency or IAEA who are not covered by paragraphs 1 and 2 above the same privileges and Immunities as officials of the United Nations, the Specialized Agencies concerned or IAEA under sections 18, 19, or 18 respectively of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, or of the Agreement on the Privileges and Immunities of IAEA.

(b) For purpose of the instruments on privileges and immunities referred to in the preceding parts of this article:

- (i) All papers and documents relating to a project in the possession or under the control of the persons referred to in paragraph 4(a) above shall be deemed to be documents belonging to the United Nations, the Specialized Agency concerned, or IAEA, as the case may be;
- (ii) Equipment, materials and supplies brought into or purchased or leased by those persons within the country for purposes of a project shall be deemed to be property of the United Nations, the Specialized Agency concerned, or IAEA, as the case may be.

5. The expression “persons performing services” as used in articles IX, X and XIII of this Agreement includes operational experts, volunteers, consultants, and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNDP may retain, whether as an Executing Agency or otherwise, to execute or to assist in the execution of UNDP assistance to a project, and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

### *Article X*

#### FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

1. The Government shall take any measures which may be necessary to exempt UNDP, its Executing Agencies, their experts and other persons performing services on their behalf from regulations or other legal provisions which may interfere with operations under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNDP assistance. It shall, in particular, grant them the following rights and facilities:

- (a) Prompt clearance of experts and other persons performing services on behalf of UNDP or an Executing Agency;
- (b) Prompt issuance without cost of necessary visas, licences or permits;
- (c) Access to the site of work and all necessary rights of way;
- (d) Free movement within or to or from the country, to the extent necessary for proper execution of UNDP assistance;
- (e) The most favourable legal rate of exchange;
- (f) Any permits necessary for the importation of equipment, materials and supplies, and for their subsequent exportation;
- (g) Any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of UNDP, its Executing Agencies, or other persons performing services on their behalf, and for the subsequent exportation of such property;
- (h) Prompt release from customs of the items mentioned in subparagraphs (f) and (g) above.

2. Assistance under this Agreement being provided for the benefit of the Government and people of Ecuador, the Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims which may be brought by third parties against UNDP or an Executing Agency, their officials or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Parties and the Executing Agency are agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

## *Article XI*

### SUSPENSION OR TERMINATION OF ASSISTANCE

1. UNDP may by written notice to the Government and to the Executing Agency concerned suspend its assistance to any project if in the judgement of UNDP any circumstance arises which interferes with or threatens to interfere with the successful completion of the project or the accomplishment of its purposes. UNDP may, in the same or a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance to the project. Any such suspension shall continue until such time as such conditions are accepted by the Government and as UNDP shall give written notice to the Government and the Executing Agency that it is prepared to resume its assistance.

2. If any situation referred to in paragraph 1 of this article shall continue for a period of fourteen days after notice thereof and of suspension shall have been given by UNDP to the Government and the Executing Agency, then at any time thereafter during the continuance thereof UNDP may by written notice to the Government and the Executing Agency terminate its assistance to the project.

3. The provisions of this article shall be without prejudice to any other rights or remedies UNDP may have in the circumstances, whether under general principals of law or otherwise.

## *Article XII*

### SETTLEMENT OF DISPUTES

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

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

*Article XIII*

GENERAL PROVISIONS

1. This Agreement shall enter into force at the time of its signature and shall continue in force until terminated under paragraph 3 below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNDP resources and concerning the UNDP office in the country, and it shall apply to all assistance provided to the Government and to the UNDP office established in the country under the provisions of the Agreements now superseded.

2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by the Parties under articles IV (concerning project information) and VIII (concerning the use of assistance) hereof shall survive the expiration or termination of this Agreement. The obligations assumed by the Government under articles IX (concerning privileges and immunities), X (concerning facilities for project execution) and XII (concerning settlement of disputes) hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of UNDP and of any Executing Agency, or of any persons performing services on their behalf under this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized by the Government of the Republic of Ecuador and by the United Nations Development Programme respectively, have signed this Agreement on behalf of the Parties, in duplicate in the Spanish language, at Quito on 8 March 1989.

(c) Agreement between the United Nations (United Nations Development Programme) and the Government of Pakistan on the United Nations International Workshop on Oceanographic/Marine Space Information Systems, to be held at Karachi from 2 to 6 July 1989.<sup>19</sup>

The United Nations and the Government of Pakistan (hereinafter called "the Government"), desiring to give effect to the provisions of General Assembly resolution 37/90 of 10 December 1982 concerning the promotion of greater cooperation in space science and technology between developed and developing countries as well as among developing countries and for the greater exchange of actual experience, have agreed as follows:

### *Article I*

#### PLACE, DATE AND LANGUAGE OF THE WORKSHOP

1. The United Nations International Workshop on Oceanographic/Marine Space Information Systems (hereinafter called "the Workshop"), co-sponsored by the Government, shall be held in Karachi, Pakistan.
2. The duration of the Workshop shall be from 2 to 6 July 1989.
3. The official language of the Workshop shall be English only.

### *Article II*

#### PARTICIPATION IN THE WORKSHOP

1. Participation in the Workshop shall be open to the following:
  - (a) Suitably qualified persons nominated by governments of developing countries of the Indian Ocean region, accepted and invited for participation in the Workshop by the United Nations in consultations with the Government;
  - (b) Suitably qualified persons invited to the Workshop by the Government and accepted by the United Nations;
  - (c) Experts invited by the United Nations to serve as lecturers/instructors as well as to provide substantive contributions to the attainment of the objectives of the Workshop;
  - (d) Representatives of the United Nations, its specialized agencies and other appropriate organs of the United Nations.
2. The number of foreign participants from developing countries, referred to in paragraph 1(a) above, shall be limited to thirty (30).
3. The number of participants referred to in paragraph 1(b) shall be limited to thirty (30).

### *Article III*

#### SERVICES TO BE PROVIDED BY THE UNITED NATIONS

1. The United Nations shall disseminate the necessary information and extend invitations to the participants referred in paragraph 1(a) of article II.
2. The United Nations shall provide at its expense the services of up to two officers of the Outer Space Affairs Division of the United Nations Secretariat; these officials shall be responsible for the organization of the Workshop on behalf of the United Nations.
3. The United Nations, in accordance with the provisions of General Assembly resolution 37/90, shall use the resources of its Space Applications Programme fellowship budget to cover the cost of round-trip air travel (economy class) to Karachi, Pakistan, as well as to provide an appropriate daily allowance for pocket money, for those in need among the participants referred to in paragraph 1(a) of article II.
4. The United Nations shall make arrangements as necessary to provide for the Workshop the services of the lecturers/instructors referred to in paragraph 1(c) article II.

#### *Article IV*

##### SERVICES TO BE PROVIDED BY THE GOVERNMENT

1. The Government shall act as host to the Workshop.
2. The Government shall appoint a Liaison Officer who shall be responsible, in consultation with the United Nations, for making and carrying out the administrative and personnel arrangements for the Workshop as required under this Agreement.
3. The Government shall provide and defray the costs of:
  - (a) Appropriate premises for the conduct of the Workshop;
  - (b) Appropriate premises for offices, working areas and other related facilities for the United Nations Secretariat staff responsible for the Workshop, the Liaison Officer and the local personnel mentioned below;
  - (c) Adequate furniture and equipment for the premises referred to in subparagraphs (a) and (b) above, to be installed prior to the Workshop and maintained in good repair by appropriate personnel for the duration of the Workshop;
  - (d) Sound and audio-visual projection equipment as well as tape recorders and tapes as necessary, and technicians to operate them for the duration of the Workshop;
  - (e) Participation of lecturers/instructors invited by the Government;
  - (f) The services of two secretaries who can perform support functions in English for the duration of the Workshop, as well as office supplies necessary for the conduct of the Workshop;
  - (g) Preparation and dissemination of documentation relevant to the Workshop;
  - (h) Local personnel required for the proper conduct of the Workshop, including reproduction and distribution of working documentation relevant to the Workshop;
  - (i) All necessary utility services including local telephone communications for the United Nations Secretariat officials and their communications by telex with the United Nations Headquarters in New York. Telex communications shall be made only when such communications are authorized by the senior official of the United Nations at the Workshop;
  - (j) Customs clearance and transportation from the port of entry to the site of the Workshop and return of all United Nations supplies and equipment required for the adequate functioning of the Workshop. The United Nations shall determine the mode of shipment of such equipment and supplies;
  - (k) Transport between the airport and the Workshop areas and principal hotels for all the participants and lecturers/instructors in the Workshop and for United Nations officials responsible for the organization of the Workshop upon their arrival and departure, as well as transportation for visits to institutions and other activities organized by the Government in connection with the Workshop;
  - (l) Room and board for up to thirty (30) foreign participants from the developing countries at the Government's expense;
  - (m) Arrangement of adequate accommodation in hotels at reasonable commercial rates for persons other than those identified in subparagraph (l) above, and who are participating in, attending or servicing the Workshop at the expense of these same persons;

(n) Medical facilities adequate for first aid in emergencies within the Workshop area. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital;

(o) Security protection as may be required to ensure the efficient functioning of the Workshop free from interference of any kind. While such security services shall be under the direct supervision and control of the senior officer provided by the Government, this officer shall work in close cooperation with the designated official of the United Nations at the Workshop.

#### *Article V*

##### PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 shall be applicable in respect of the Workshop.

2. Participants attending the Workshop in pursuance of paragraph 1(a) and (c) of article II of this Agreement shall enjoy the privileges and immunities accorded to experts of mission under article VI of the Convention on the Privileges and Immunities of the United Nations.

3. Representatives of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

4. Officials of the specialized agencies participating in the Workshop shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

5. Without prejudice to the preceding paragraphs of this article, all participants and all persons performing functions in connection with the Workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Workshop.

6. All participants and all persons performing functions in connections with the Workshop shall have the right of unimpeded entry into and exit from Pakistan and no impediment shall be imposed on their transit to and from the Workshop area. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible, provided the request for such a visa or entry permit is submitted together with a copy of the United Nations invitation to the Workshop.

7. The participants in the Workshop, referred to in article II above, officials of the United Nations responsible for the organization of the Workshop and experts on mission for the United Nations in connection with the Workshop shall have the right to take out of Pakistan at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Pakistan in connection with the Workshop at the United Nations official rate prevailing when the funds were brought in.

8. The Government shall allow the temporary importation, tax- and duty-free, of all equipment and shall waive import duties and taxes on supplies nec-

essary for the Workshop. The Government shall issue without delay any necessary import and export permits for this purpose.

#### *Article VI*

##### LIABILITY

The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials and arising out of:

(a) Injury to person or damage to or loss of property in the premises referred to in article IV that are provided by or are under the control of the Government;

(b) Injury to person or damage to or loss of property caused by, or incurred in using, the transport services referred to in article IV that are provided by or are under the control of the Government,

(c) The employment for the Workshop of the personnel provided by the Government under article IV. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand except where it is agreed that the claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

#### *Article VII*

##### SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred, at the request of either party, for final decision, to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two, if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointment at the request of either party.

#### *Article VIII*

1. This Agreement may be modified by written agreement between the United Nations and the Government.

2. This Agreement shall enter into force on the date it is signed on behalf of the United Nations and the Government of Pakistan and shall remain in force for the period of the Workshop or until such later date as may be necessary for the settlement of matters to the Workshop.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in the English Language.

**B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations**

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES<sup>20</sup> APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1989, the following States acceded to the Convention or if already parties undertook by a subsequent notification to apply the provision of the Convention, in respect of the specialized agencies indicated below:

<i>State</i>	<i>Date of receipt of instrument of accession or notification</i>	<i>Specialized agencies</i>
Federal Republic of Germany	3 March 1989	UNIDO

As of 31 December 1989, 99 States were parties to the Convention.<sup>21</sup>

2. INTERNATIONAL MONETARY FUND

Executive Agency Agreement between the United Nations Development Programme and the International Monetary Fund. Signed in Noordwijk, Netherlands, on 16 July 1989.<sup>22</sup>

The United Nations Development Programme and the International Monetary Fund (hereinafter called the "Parties"),

*Considering* that the General Assembly of the United Nations has established the United Nations Development Programme (hereinafter called "UNDP") to support and supplement the national efforts of developing countries to accelerate their economic and social development,

*Mindful* of the desire of the General Assembly that organizations of the United Nations system should play the role of partners in this common endeavor,

*Aware* that the General Assembly has called upon the Administrator of UNDP to establish and maintain close and continuing relationships with the Specialized Agencies,

*Conscious* of the readiness of the International Monetary Fund (hereinafter called the "Executing Agency") to participate in activities designed to give effect to the resolutions and decisions of the General Assembly in this matter,

*Determined* to enhance the effectiveness of the UNDP as an instrument of international development cooperation with developing countries,

*Have agreed* as follows:

### *Article I*

#### SCOPE OF THIS AGREEMENT

The Parties hereby agree to join efforts and to maintain close and continuing working relationships in order to achieve their individual and common purposes. The Parties also recognize their separate and complementary roles within the United Nations system for the achievement of those purposes, and the Executing Agency agrees to carry out such relevant activities at the request of UNDP as the Executing Agency may accept. Those activities shall include the execution of specific UNDP technical cooperation activities with Governments. The relationship between the Parties in the execution of such UNDP cooperation activities shall be governed by this Agreement.

### *Article II*

#### CONDITION OF CO-OPERATION ACTIVITIES

1. The basic conditions of execution of UNDP projects by the Executing Agency hereunder shall be those set forth in the relevant and applicable resolutions and decisions of the competent UNDP organs and such basic Agreements as UNDP may enter into with recipient Governments. The particular conditions of and the specifications relating to each such activity shall be as set forth in such Project Documents or other similar instruments (hereinafter called "Project Documents") as the UNDP, the Executing Agency and the recipient Government may conclude.

2. Activities financed by UNDP and executed by the Executing Agency shall be within the context of the technical assistance programme agreed to between the UNDP and recipient Governments.

3. The text of the Standard Basic Assistance Agreement with Governments in current use by UNDP is annexed to this Agreement. UNDP shall consult with the Executing Agency on any substantial variation in that text which it proposes to adopt for general use, and shall provide the Executing Agency with copies of individual signed Agreements.

### *Article III*

#### THE UNDP RESIDENT REPRESENTATIVE

The Parties recognize that the UNDP Resident Representative in a country has full responsibility and ultimate authority on behalf of the Administrator of the UNDP for all aspects of the UNDP programme in the country concerned. The UNDP Resident Representative, in that capacity, acts as team leader in relation to the representatives of the agencies participating in the Programme. The Resident Representative also has the responsibility to assist the Government, as may be required, in coordinating the UNDP Programme with other national, bilateral and multilateral programmes within the country. For this purpose, the Executing Agency agrees to keep the Resident Representative informed to the extent feasible on the planning and formulation of its technical cooperation activities.

*Article IV*

PROJECT COOPERATION

The Parties hereto shall cooperate fully with one another and with the Government concerned in the execution of UNDP technical cooperation activities with a view to the realization of the objectives described in the Project Documents. The Parties shall consult with one another with respect to any matters which might affect the successful completion of any such activity.

*Article V*

INFORMATION REGARDING PROJECTS

1. The Parties shall from time to time exchange views with one another and with the Government on UNDP technical cooperation activities, including the progress and cost thereof and the benefits derived therefrom, and each shall comply with any reasonable request for information which the other may make in respect of such matters. The Executing Agency shall furnish the UNDP with periodic reports on the carrying out of UNDP technical cooperation activities at such times and in such forms as may be agreed by the Parties.

2. The UNDP and the Government may observe at any time the progress of any technical cooperation activities carried out by the Executing Agency under this Agreement, and the Executing Agency shall afford full facilities to the UNDP and the Government for this purpose.

3. The Parties recognize that the Executing Agency, under its Articles of Agreement, and UNDP under its Basic Standard Assistance Agreements with Governments, are bound to protect the confidentiality of certain information in their possession and thus agree in the implementation of this Article to respect such confidentiality.

*Article VI*

CONDITIONS OF PROJECT SERVICE

1. With a view to securing the highest standards of efficiency, competence and integrity in the execution of technical cooperation activities, UNDP shall develop general conditions of service for project staff in consultation with appropriate organs of the United Nations system. The Executing Agency agrees to give sympathetic consideration to the adoption of any such conditions of service recommended to it by UNDP.

2. The Executing Agency shall endeavor to the maximum extent possible to observe the principles of international competitive bidding when procuring goods or contracting services for UNDP technical cooperation activities, and shall give due regard to the need to make the fullest possible use of the various currencies available to UNDP.

3. All persons performing services for the Executing Agency as part of a technical cooperation activity shall in all cases meet the highest standard in terms of qualifications and acceptability.

## *Article VII*

### AGENCY STATUS AND ACCOUNTABILITY

In the execution of technical cooperation activities, the executing Agency shall have the status of an independent contractor vis-à-vis UNDP. The Executing Agency shall be accountable to UNDP for its execution of such activities.

## *Article VIII*

### INTELLECTUAL PROPERTY

Except where a Government and UNDP shall have agreed otherwise, patent rights, copyright rights, and other similar rights to any discoveries or work resulting from technical cooperation activities shall belong to UNDP, it being understood that the recipient Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of a similar nature. The Executing Agency agrees to cooperate with UNDP in regard to such steps as UNDP may decide to take in each case concerning such rights.

## *Article IX*

### COSTS OF COOPERATION ACTIVITIES

1. UNDP undertakes to meet all costs directly incurred by the Executing Agency in the execution of technical cooperation activities, in the amounts set forth in the project budgets forming part of the Project Documents or otherwise agreed between the Parties. It further undertakes to provide the Executing Agency with advances of funds in such amounts and such currencies as will assist it in meeting current expenses of such activities.

2. UNDP undertakes to meet Executing Agency overhead costs covering the clearly identifiable additional expenses incurred by the Executing Agency in the provision of services to UNDP under this Agreement, in amounts determined in pursuance of such resolutions and decisions as the competent UNDP organs may adopt from time to time.

3. The Executing Agency shall be responsible for discharging all commitments and obligations incurred by it in the course of its execution of technical cooperation activities pursuant to this Agreement. UNDP shall not be responsible for any costs other than those for which it undertakes responsibility under paragraphs 1 and 2 of this article.

## *Article X*

### CURRENCY AND RATES OF EXCHANGE

1. The Parties shall consult from time to time regarding the use of currencies available to them, with a view to the effective utilization of such currencies.

2. The United Nations operational rate of exchange shall apply for currency conversions between UNDP and the Executing Agency under this Agreement.

## *Article XI*

### FINANCIAL RECORDS AND ACCOUNTS

1. The Executing Agency shall maintain accounts, records and supporting documentation relating to UNDP technical cooperation activities, including funds received and disbursed by the Executing Agency, in accordance with the Executing Agency's Financial Regulations and Rules insofar as applicable.

2. The Executing Agency shall furnish to UNDP periodic reports on the financial situation of such activities at such time and in such form as UNDP may reasonably request.

3. The Executing Agency shall cause an independent external auditor to examine and report on its (the Executing Agency's) accounts and records relating to UNDP technical cooperation activities, and shall make such independent external auditor's reports available to UNDP.

4. Without restricting the generality of the foregoing provisions, the Executing Agency shall as soon as possible after the close of each financial year of UNDP submit to UNDP audited statements of accounts showing the status of funds provided to it by UNDP to finance technical cooperation activities.

5. The Executing Agency shall close the accounts of each technical cooperation activity as soon as practical, but normally no later than twelve months after the completion of the work set out in the Project Documents or termination of the activity. Provisions shall be made for unliquidated obligations valid at the closing of the accounts.

## *Article XII*

### SUSPENSION OR TERMINATION OF ASSISTANCE

1. The parties hereto recognize that the successful completion and accomplishment of the purpose of a technical cooperation activity are of paramount importance, and that UNDP may find it necessary to terminate a UNDP technical cooperation activity, or the responsibility of the Executing Agency for execution of such technical cooperation activity, should circumstances arise which jeopardize successful completion or the accomplishment of the purposes of such an activity. The provisions of this article shall apply to any such situations.

2. UNDP shall consult with the Executing Agency if any circumstances arise which, in the judgement of UNDP, interfere or threaten to interfere with the successful completion of a technical cooperation activity, or the accomplishment of its purposes. The Executing Agency shall promptly inform UNDP of any such circumstances which might come to its (the Executing Agency's) attention. The Parties shall cooperate towards the rectification or elimination of the circumstances in question and shall exert all reasonable efforts to that end, including prompt corrective steps by the Executing Agency where such circumstances are attributable to it or within its responsibility or control.

3. UNDP may at any time after occurrence of the circumstances in question and appropriate consultations suspend the execution of the technical cooperation activity concerned by written notice to the Executing Agency and the Government, without prejudice to the initiation or continuation of any of the measures envisaged in the preceding paragraph. UNDP may indicate to the Executing Agency and the Government the conditions under which it is prepared to authorize a resumption of execution of the technical cooperation activity concerned.

4. If the cause of suspension is not rectified or eliminated within fourteen days after UNDP shall have given notice of suspension to the Government and/or the Executing Agency, UNDP may, by written notice at any time thereafter during the continuation thereof:

- (a) Terminate the technical cooperation activity concerned, or
- (b) Terminate the Executing Agency's execution of such activity, and take over its execution or entrust it to another Executing Agency, with effect from the date specified in the written notice from UNDP.

5. (a) In the event of any termination under the preceding paragraph, UNDP shall reimburse the Executing Agency for all costs it may incur or may have incurred (and for which provision has been made in the Project Documents) to execute the technical cooperation activity concerned up to the effective date of the termination, including:

- (i) Such proportion of the Executing Agency overhead costs allowable for the activity (if any) as the amount expended on such activity by the Executing Agency (counted to the effective date of termination) bears to the entire UNDP allocation on the activity (as determined in the Project Documents);
- (ii) Reasonable costs of winding up its execution of the technical cooperation activity.

Reimbursement to the Executing Agency under this provision when added to amounts previously remitted to it by UNDP in respect of the activity shall not exceed the total UNDP allocation for such activity.

(b) In the event of transfer of the Executing Agency's responsibilities for execution of a technical cooperation activity either to UNDP or to another Executing Agency, the Executing Agency shall cooperate with UNDP in the orderly transfer of such responsibilities.

6. The Executing Agency may withdraw from execution of any UNDP technical cooperation activity if it deems that conditions have developed which compromise or prevent the Executing Agency's successful accomplishment of its role under the Project. In the event of the Executing Agency's withdrawal from execution under this paragraph, and unless the Parties agree otherwise, UNDP shall reimburse the Executing Agency for costs it may have incurred or may reasonably incur on the basis of legal commitments entered into (and for which provision has been made in the Project Documents) to execute the technical cooperation activities concerned up to the effective date of the withdrawal. The Parties shall consult as to the amounts to be paid in connection with such withdrawal.

### *Article XIII*

#### WAIVER OF IMMUNITIES

In the event the Executing Agency retains the services of operational experts or consultant firms or organizations to assist it in the execution of a technical cooperation activity, the privileges and immunities to which any such operational expert or firm or organization and its personnel may be entitled under any agreement between UNDP and a Government may be waived by the Executing Agency where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the successful completion of the activity concerned or to the interests of UNDP or the Executing Agency; the Executing Agency shall give sympathetic consideration to the waiver of such immunity in any case in which UNDP so requests. Nothing in this provision shall be construed to affect any rights of waiver of such immunities which UNDP may have under any relevant agreements between UNDP and recipient Governments and/or under general principles of law.

### *Article XIV*

#### GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature, and shall continue in force until terminated under paragraph 5 below.

2. This Agreement may be modified by written agreement between UNDP and the Executing Agency hereto.

3. Any relevant matter for which no provision is made in this Agreement, or any controversy between UNDP and the Executing Agency, shall be settled by negotiation between the Parties, within the context of the relevant resolutions and decisions of the respective governing bodies of each Party.

4. In case any matters are not resolved by negotiation, either Party shall have the option to request the appointment of a conciliator or arbitrator by the President of the International Court of Justice. The procedure of the conciliation or arbitration shall be fixed, in consultation with the Parties, by the conciliator or arbitrator. The recommendation of the conciliator or the arbitral award shall contain a statement of the reasons on which it is based. The Parties shall give due consideration to the recommendation of a conciliator and abide by an arbitral award. The expenses of the conciliation or arbitration shall be borne equally by the Parties.

5. This Agreement may be terminated by either UNDP or the Executing Agency by written notice to the other and shall terminate sixty days after receipt of such notice, provided that termination shall become effective with respect to ongoing technical cooperation activities only with the concurrence of both UNDP and the Executing Agency.

6. The provisions of this Agreement shall survive its termination to the extent necessary to permit an orderly settlement of accounts between UNDP and the Executing Agency and, if appropriate, with each Government concerned.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed the present Agreement, in duplicate, on the dates and at the places indicated below their respective signatures.

### 3. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

- (a) Memorandum of understanding concerning the integration of the United Nations Industrial Development Organization (UNIDO) field service within the United Nations Development Programme (UNDP) field office. Signed at New York on 5 April 1989 and at Vienna on 12 April 1989<sup>23</sup>

1. The present Memorandum of Understanding is concluded between UNDP and UNIDO regarding the integration of the UNIDO field service within the UNDP field office. The Memorandum of Understanding implements decisions 87/48 and 88/45, part B, of the Governing Council of UNDP and Decision IBD.4/Dec.10 of the Industrial Development Board of UNIDO on the SIDFA programme and replaces the "Memorandum of Agreement concerning the establishment of a UNIDO field service at the country level to be integrated within the UNDP field offices" undersigned by UNDP and UNIDO on 3 October 1967. The Memorandum also takes into account UNIDO's Standard Basic Cooperation Agreement with Governments receiving assistance from UNIDO and the Standard Basic Assistance Agreement between UNDP and Governments. The Annex to this Memorandum shall be considered to be an integral part of this Memorandum of Understanding.

2. The purposes of the arrangements described below are:

(a) To achieve with respect to the UNIDO field staff and activities a desirable degree of coordination with and integration within the field offices of UNDP Resident Representatives, particularly in respect to efforts aimed at expanding operational activities in the industrial field;

(b) To provide, as required, the services of qualified Senior Industrial Development Field Advisers (SIDFAs) [to be renamed UNIDO Country Directors (UCDs), if this change of title is approved by UNDP's Governing Council and UNIDO's Industrial Development Board], on matters of industrial development to recipient governments and to Resident Representatives, as well as support and guidance to UNIDO experts on technical cooperation activities; and

(c) To assure for UNIDO an adequate channel of communication with Member States on matters outside the scope of UNDP-sponsored activities, as well as with the United Nations economic commissions and with other regional and subregional organizations.

3. The status and responsibilities of the UNDP Resident Representative and the SIDFA (UCD) shall be as follows:

(a) The UNDP Resident Representative is the UNIDO Representative in the country or countries of their assignment. UNIDO will appoint, after consultation with the concerned Governments and the UNDP, SIDFAs (UCDs) who will have the function of Deputy to the UNIDO Representatives and who will be responsible for the industrial sector of the UNDP country programme, under the general direction of the UNDP Resident Representative/UNIDO Representative, and will act as Senior Advisers on industrial matters to Governments;

(b) The SIDFA (UCD) shall receive instructions from and report directly to UNIDO on matters pertaining to the formulation, implementation and evaluation of UNIDO financed projects, and on other matters of direct concern to UNIDO. In such matters the SIDFA (UCD) shall be the principal channel of communication between UNIDO and the Government. He will duly inform the Resident Representative of such contacts, as outlined in paragraph 5 below;

(c) The UNDP Representatives will be briefed by UNIDO on their functions and responsibilities as UNIDO Representatives. When discharging functions on matters of concern to UNIDO they will be guided by the rules and regulations of UNIDO and instructions provided by its Director-General;

(d) Contacts on matters within the sphere of interest of UNDP with the central organs of the recipient Government (e.g., Head of State, Prime Minister, Ministry of Foreign Affairs, central coordinating authority) would be principally reserved for the UNDP Resident Representative, who would associate the SIDFA (UCD) in such contacts when the matter specifically affects the sphere of activities of UNIDO;

(e) In matters related to coordination at the field level, the UNDP Resident Representative and UN Resident Coordinator will involve the SIDFA (UCD) in the field of industry in ways similar to the involvement of other UN Agency Representatives in their respective fields.

4. Under the general direction of the UNDP Resident Representative the SIDFA (UCD) will bear the main responsibility for the industrial development policy aspects in the UNDP field office. In particular the SIDFA (UCD) will be responsible for the following functions:

(a) Direct contacts with the technical authorities of the recipient governments on policy matters as well as on matters of the programming, execution and evaluation of industrial cooperation projects;

(b) Contact with and guidance to UNIDO experts;

(c) Under the general guidance of the UNDP Resident Representative, coordinate activities within the offices of the UNDP Resident Representative with respect to operations in the industrial sector of the country programme including coordination with other international and bilateral agencies.

5. On matters concerning UNDP not dealt with in paragraph 3(d) of this Memorandum, the SIDFAs (UCDs) will copy their correspondence to the UNDP Resident Representative and on matters not concerning the UNDP they would keep the UNDP Resident Representative fully informed.

6. SIDFAs (UCDs) will be required to possess technical and management qualifications and expertise in the field of industry.

7. The core activities of SIDFAs (UCDs) will comprise the following:

- Project development and programming;
- Project implementation;
- Provision of policy and technical advice to Resident Representatives;
- Provision of policy advice to the Government in general;
- Assistance to Governments in problem and needs identification and assessment, either in providing solutions or in arranging to provide solutions for them;

- Provision of advice both of a policy and technical nature for regions and subregions. It is envisaged here that SIDFAs (UCDs), in addition to their normal duties, would take on special advisory roles throughout the region;
- Supporting UNIDO activities and programmes such as economic and technical cooperation among developing countries (ECDC/TCDC), investment promotion, system of consultations, integration of women into industrial development, rural development, technology transfer and industrial information;
- Establishment and maintenance of contacts with non-governmental organizations and UNIDO national committees;
- Coordination of industrial project activities in the field;
- Coverage, on behalf of UNIDO, of conferences, seminars and meetings in the country.

8. Other functions related to the specific host country or countries will be listed in a specific job description to be issued by UNIDO, after consultation with the UNDP Resident Representative. The job description will be revised according to the changing needs of the specific host country or countries.

9. In addition to the responsibilities of the SIDFAs (UCDs) within the countries of duty stations, SIDFAs (UCDs) will be required to cover other countries through periodic visits. The UNDP field offices of such other countries will provide SIDFAs (UCDs) with all necessary facilities to accomplish their missions. As in the duty stations, SIDFAs (UCDs) will contact relevant government authorities to provide advice and assistance in the programming, execution and evaluation of UNIDO projects.

10. In addition to the SIDFAs (UCDs), UNIDO will place Junior Professional Officers (JPOs) in the countries of the duty stations of SIDFAs (UCDs) and also in other countries, whether under the coverage of SIDFAs (UCDs) or not. The arrangements for the implementation of the UNIDO JPO programme are outlined in a separate “Memorandum of Understanding between UNIDO and UNDP covering Junior Professional Officers as Assistants to the SIDFA” (UCD), the relevant provisions of which are as follows:

(a) In the duty stations where a SIDFA (UCD) has been appointed, UNIDO JPOs are directly attached to the SIDFA (UCD) offices working under the supervision of the SIDFA (UCD) and acting as Assistants to the SIDFA (UCD);

(b) In other countries JPOs will primarily deal with all aspects of UNIDO’s programme under the supervision of the UNDP Resident Representative and in consultation with the responsible SIDFA (UCD). The JPO will keep the SIDFA (UCD) informed of ongoing activities and will assist the SIDFA (UCD) during visits to the country.

11. UNDP and UNIDO will jointly and periodically review the duty stations of SIDFAs (UCDs) in order to ensure their optimal utilization.

12. SIDFAs (UCDs) shall be recruited from among the most qualified candidates, including UNIDO Headquarters staff members and present or former project chief technical advisers and senior experts. UNIDO will consult with UNDP and concerned Governments before selecting SIDFAs (UCDs). SIDFAs (UCDs) will be appointed by the Director-General of UNIDO and will hold contracts, independent of the sources of financing, under the rules, regulations and administrative instructions governing the 200 series staff rules of UNIDO.

13. UNIDO will be responsible for the personnel and financial administration of the SIDFA (UCD) Programme, including funds allocated by the UNDP Governing Council under the Sectoral Support Programme, the biennial budget of UNIDO and any voluntary contribution provided by donor or host countries for this purpose.

14. All established SIDFA (UCD) posts will be administered according to the same procedures, regardless of the source of funds from which the post is financed. Such procedures will be based on the staff and financial rules and regulations of UNIDO.

15. The financial arrangements for the SIDFA (UCD) Programme are as follows:

(a) UNDP will transfer to UNIDO \$16 million allocated for this purpose for the period from January 1987 to December 1991 by the UNDP Governing Council in its Sectoral Support Programme. The transfers will be made on a quarterly basis in advance through the mechanism of the operating financial statement and the amount will be tailored to actual costs of SIDFAs (UCDs), local staff and other related expenditures in agreed upon duty stations;

(b) In conformity with present practice UNIDO will make provisions in its biennial budget for the funding of a number of SIDFA (UCD) posts and related costs including costs of locally recruited staff. UNIDO will also solicit specific contributions from donors for this purpose. From these sources UNIDO will endeavour to continue to fund — as a minimum — the present number of posts until the end of 1991.

(c) Host countries, generally excluding the least-developed countries, will be expected to contribute, in local currency and/or in kind, to the local support costs of the SIDFA (UCD) offices, such as salaries of secretaries and drivers; rental of premises; telephone and communication costs and transportation facilities for the travel of SIDFAs (UCDs) within the country. In approaching the Governments concerned, UNDP or UNIDO, as the case may be, will ensure that a clear distinction is made between the SIDFA (UCD) contribution and Government contribution towards local office costs (GLOC). Arrangements regarding contributions towards local SIDFA (UCD) costs by the Government concerned shall, when possible, be made before the appointment of a SIDFA (UCD);

(d) In order to facilitate the quarterly transfer of resources UNIDO will provide quarterly expenditure reports against the sectoral allocation. In addition UNIDO will provide annually income and expenditure figures for the part of the SIDFA (UCD) programme funded via its own biennial budget and specific donor contributions in order to satisfy the reporting requirements specified in GC 87/48;

(e) In case of termination of this Memorandum of Understanding any costs attributable to the abolition of posts or for the settlement of claims and payments of termination of a SIDFA (UCD) shall be charged to the source of funding of the post before the termination.

16. The arrangements for the personnel administration of the SIDFA (UCD) Programme are as follows:

(a) The Resident Representative is requested to make every effort to ensure that the SIDFA (UCD) be provided with the diplomatic privileges and immunities applicable to other United Nations agency representatives in the countries of assignment;

(b) Support staff (secretaries, drivers, etc.) financed under the SIDFA (UCD) Programme may either hold contracts with UNIDO or with UNDP, as determined by the practices of a given field office;

(c) Staff in the UNDP field office dealing with the industrial sector, such as JPOs, national programme officers (NPOs), secretarial and clerical staff, will report to the SIDFA (UCD);

(d) UNIDO will encourage and facilitate the assignment of its headquarters staff as SIDFAs (UCDs). UNIDO in filling vacant posts at its headquarters would consider the candidature of interested SIDFAs (UCDs). The Director-General will determine the duration of the headquarters staff assignment as SIDFAs (UCDs);

(e) The performance evaluation of the SIDFA (UCD) and support staff holding UNIDO contracts is subject to UNIDO's evaluation system. The UNDP Resident Representative, at the request of UNIDO, will provide once a year a performance evaluation report, which will assist UNIDO in determining contract extension, reclassification and promotion of SIDFAs (UCDs). The recourse procedure regarding performance evaluation would be conducted by UNIDO in accordance with its established procedures.

17. Should any question of interpretation under this Memorandum arise at the field level, which cannot be settled by mutual agreement between the Resident Representative and the SIDFA (UCD), either official may refer the matter to UNDP and UNIDO Headquarters for joint clarification and decision by UNDP and UNIDO.

18. This Memorandum of Understanding shall enter into force upon signature. It supersedes the previously applicable Memorandum of Agreement Concerning the Establishment of a UNIDO Field Service at the Country Level to be Integrated within UNDP Field Offices, signed on 3 October 1967.

19. This Memorandum of Understanding will terminate at the end of the current UNDP development cooperation cycle, if either party so requests by giving four months' notice to the other party. Failing such notice, the Memorandum of Understanding shall continue to apply.

20. The parties shall conduct a review of the terms of the present Memorandum of Understanding at mid-term of the fifth UNDP development cooperation cycle, i.e., 1990.

## ANNEX

### **The UNDP Resident Representative**

The Parties recognize that the UNDP Resident Representative in a country has full responsibility and ultimate authority on behalf of the Administrator of UNDP for all aspects of UNDP programmes in the country concerned. UNIDO further recognizes the Resident Representative as the central channel of communication between the Programme and the Government for all aspects of UNDP's programmes in the country concerned. UNIDO agrees to consult the Resident Representative and to keep him or her fully informed of the formulation, implementation and evaluation of technical cooperation activities or projects financed by UNIDO. The UNDP country programming process should be taken into consideration as a frame of reference for the technical cooperation activities financed by UNIDO from its own resources. The term Resident Representative as used in this Agreement includes a regional representative and officer in charge of a UNDP field office, and any other official performing the functions of a Resident Representative.

- (b) Cooperation Agreement between the United Nations Industrial Development Organization and the World Health Organization. Signed at Geneva on 19 April 1989<sup>24</sup>

*Article 1*

COOPERATION AND CONSULTATION

With a view to facilitating the effective attainment of the objectives set forth in their respective Constitutions, the United Nations Industrial Development Organization (hereinafter referred to as “UNIDO”) and the World Health Organization (hereinafter referred to as “WHO”) agree that, within the general framework established by the Charter of the United Nations and by their respective Constitutions, they shall act in close cooperation with each other and they shall consult with each other regularly in regard to matters of common interest.

*Article 2*

RECIPROCAL REPRESENTATION

1. Representatives of WHO shall be invited to attend the sessions of the General Conference and of the Industrial Development Board of UNIDO and to participate without vote in the deliberations of each of these bodies on matters of particular concern to WHO.

2. Representatives of UNIDO shall be invited to attend the sessions of the Executive Board of WHO and the World Health Assembly and to participate without vote in the deliberations of each of these bodies on matters of particular concern to UNIDO.

*Article 3*

PROPOSAL OF AGENDA ITEMS

Upon request by the other organization, and after such preliminary consultations as may be necessary, each organization shall include in the provisional agenda of the session respectively referred to in article 2, paragraphs 1 and 2, any question which has been submitted to it by the other organization.

*Article 4*

EXCHANGE OF INFORMATION AND DOCUMENTS

Subject to such arrangements as may be necessary for the safeguarding of confidential material, the fullest and promptest exchange of information and documentation shall be made between UNIDO and WHO. The information so provided shall in particular cover all projected activities and all programmes of work which may be of interest to the other party.

*Article 5*

COOPERATION BETWEEN SECRETARIATS

The Secretariat of UNIDO and the Secretariat of WHO shall maintain a close working relationship in accordance with such arrangements as may have been agreed upon from time to time between the Directors-General of UNIDO and WHO.

*Article 6*

UNIDO/WHO JOINT COMMITTEES

1. UNIDO and WHO may refer to a joint committee any questions of common interest which it may appear desirable to refer to such a committee.
2. Any such joint committee shall consist of representatives appointed by each organization, the number to be appointed by each being decided by agreement between the two organizations.

*Article 7*

STATISTICAL SERVICES

UNIDO and WHO agree to keep each other informed of their work in the field of statistics and to consult each other in regard to all statistical projects dealing with matters of common interest.

*Article 8*

PERSONNEL ARRANGEMENTS

WHO and UNIDO agree to cooperate in order to facilitate the interchange of staff and to promote efficiency and effective coordination of their respective activities. Such cooperation shall be in accordance with the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances.

*Article 9*

FINANCING OF SPECIAL SERVICES

If compliance with a request for assistance made by either organization to the other would involve substantial expenditure for the organization complying with the request, consultation shall take place with a view to determining the most equitable manner of meeting such expenditure.

*Article 10*

IMPLEMENTATION OF THE AGREEMENT

The Directors-General of UNIDO and WHO may enter into such arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the two organizations.

*Article 11*

NOTIFICATION TO THE UNITED NATIONS AND FILING AND RECORDING

1. In accordance with their respective agreements with the United Nations, UNIDO and WHO shall inform the United Nations forthwith of the terms of the present Agreement.

2. On the coming into force of the present Agreement in accordance with the provisions of article 13, it shall be communicated to the Secretary-General of the United Nations for filing and recording.

*Article 12*

REVISION AND TERMINATION

1. This Agreement shall be subject to revision by agreement between UNIDO and WHO.

2. It may be terminated by either party on 31 December of any year by written notice given not later than 30 June of that year.

*Article 13*

ENTRY INTO FORCE

This Agreement shall enter into force upon having been approved by the Industrial Development Board of UNIDO and the World Health Assembly of WHO and signed by the Directors-General of UNIDO and WHO, respectively.

IN WITNESS WHEREOF the Director-General of the World Health Organization and the Director-General of the United Nations Industrial Development Organization have affixed their signature to two authentic texts of this Agreement, in English and French each, the texts in English and French being equally authoritative.

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- (c) Cooperation Agreement between the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization. Signed at Paris on 22 April 1989 and at Vienna on 5 June 1989.<sup>25</sup>

The United Nations Educational, Scientific and Cultural Organization and the United Nations Industrial Development Organization,

*Considering* that UNESCO was created for the purpose of advancing, through the educational and scientific and cultural relations of the peoples of the world, the objectives of international peace and of the common welfare of mankind for which the United Nations was established and which its Charter proclaims,

*Considering* that the primary objective of the United Nations Industrial Development Organization is the promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order,

*Wishing* to coordinate their efforts, in consideration of their common objectives, within the framework of the Charter of the United Nations, the Constitution of UNESCO and the Constitution of UNIDO,

*Having regard* to decision 7.2 adopted by the Executive Board of UNESCO at its 126th session and decision CG.1/Dec.41 by which the General Conference of UNIDO at its first session (Vienna, 9-13 December 1985) adopted directives concerning the conclusion of agreements with intergovernmental organizations of the United Nations system,

*Have agreed* as follows:

#### *Article I*

##### COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization agree that, with a view to facilitating the effective attainment of the objectives set forth in their respective constitutional instruments, within the general framework established by the Charter of the United Nations, and in accordance with their respective fields of competence they will act in close cooperation with each other and they will consult with each other regularly in regard to matters of common interest.

#### *Article II*

##### RECIPROCAL REPRESENTATION

1. Representatives of the United Nations Educational, Scientific and Cultural Organization shall be invited to attend the General Conference of the United Nations Industrial Development Organization and to participate without vote in the deliberations of that body on matters of particular concern to the United Nations Educational, Scientific and Cultural Organization.

2. Representatives of the United Nations Industrial Development Organization shall be invited to the General Conference of the United Nations Educational, Scientific and Cultural Organization and to participate without vote in the deliberations of that body on matters of particular concern to the United Nations Industrial Development Organization.

3. Representatives of the United Nations Educational, Scientific and Cultural Organization shall be invited to attend the sessions of the Industrial Development Board and to participate without vote in the deliberations of that body on matters of particular concern to the United Nations Educational, Scientific and Cultural Organization.

4. Representatives of the United Nations Industrial Development Organization shall be invited to attend the sessions of the Executive Board of the United Nations Educational, Scientific and Cultural Organization and participate without vote in the deliberations of that body on matters of particular concern to the United Nations Industrial Development Organization.

5. Appropriate arrangements shall be made by agreement from time to time for the reciprocal representation of the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization at other meetings convened under their respective auspices which consider matters of interest to the other organization.

### *Article III*

#### PROPOSAL OF AGENDA ITEMS

Upon request by the other organization, and after such preliminary consultations as may be necessary, the secretariat of each organization shall include in the provisional agenda of the sessions respectively referred to in article II, paragraphs 3 and 4, any question which has been submitted to it by the other organization. Items submitted by either party for consideration by the other shall be accompanied by an explanatory memorandum.

### *Article IV*

#### EXCHANGE OF INFORMATION AND DOCUMENTS

Subject to such arrangements as may be necessary for the safeguarding of confidential material, the secretariat of the United Nations Industrial Development Organization and the Secretariat of the United Nations Educational, Scientific and Cultural Organization shall keep each other fully informed concerning all projected activities and all programs of work which may be of interest to the other party.

### *Article V*

#### COOPERATION BETWEEN SECRETARIATS

1. The Secretariat of the United Nations Industrial Development Organization and the Secretariat of the United Nations Educational, Scientific and Cultural Organization shall maintain a close working relationship in accordance with such arrangements as may have been agreed upon from time to time by the

Directors-General of the United Nations Industrial Development Organization and of the United Nations Educational, Scientific and Cultural Organization.

2. In particular, it is agreed that mechanisms should be established to ensure that close cooperation is encouraged between those staff members of both organizations who are engaged in the implementation of specific programmes and actions, *inter alia*, to avoid duplication of activities and programmes.

#### *Article VI*

##### STATISTICAL SERVICES

1. The United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization agree to strive, within the framework of the general arrangements for statistical cooperation made by the United Nations, for maximum cooperation with a view to the most efficient use of their technical personnel in their respective collection, analysis, publication, standardization, improvement and dissemination of statistical information. They recognize the desirability of avoiding duplication in the collection of statistical information whenever it is practicable for either of them to utilize information or materials which the other may have available or may be specially qualified and prepared to collect, and agree to combine their efforts to secure the greatest possible usefulness and utilization of statistical information and to minimize the burdens placed upon national governments and other organizations from which such information may be collected.

2. The United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization agree to keep each other informed of their work in the field of statistics and to consult each other in regard to all statistical projects dealing with matters of common interest.

#### *Article VII*

##### PERSONNEL ARRANGEMENTS

The United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization agree that the measures to be taken by them, within the framework of any general arrangements for cooperation, in regard to personnel matters which are made by the United Nations, will include:

- (a) Measures to avoid competition in the recruitment of their personnel;
- (b) Measures to facilitate interchange of personnel on a temporary or permanent basis, in appropriate cases, in order to obtain the maximum benefit from their services, making due provision for the protection of the seniority, pension and other rights of the personnel concerned;
- (c) Measures to avoid duplication of entitlements and other benefits as provided in the relevant Staff Regulations and Rules in cases where the husband or wife of a staff member of one of the organizations is employed by the other organization.

*Article VIII*

FINANCING OF SPECIAL SERVICES

If compliance with a request for assistance made by either organization to the other would involve substantial expenditure for the organization complying with the request, consultation shall take place with a view to determining the most equitable manner of meeting such expenditure.

*Article IX*

IMPLEMENTATION OF THE AGREEMENT

1. The Directors-General of the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization may enter into such working arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the two organizations.

2. The arrangements provided for in the foregoing articles of this Agreement shall apply as far as appropriate to the relations between such branch or regional offices as may be established by the two organizations, as well as between their central machinery.

*Article X*

NOTIFICATION TO THE UNITED NATIONS

1. In accordance with their respective agreements with the United Nations, the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization will inform the Economic and Social Council forthwith of the terms of the present Agreement.

2. On the coming into force of the present Agreement in accordance with the provisions of article XII, it will be communicated to the Secretary-General of the United Nations for filing and recording in pursuance of article 10 of the regulations adopted by the General Assembly of the United Nations on 14 December 1946 to give effect to Article 102 of the Charter of the United Nations.

*Article XI*

REVISION AND TERMINATION

1. This Agreement shall be subject to revision by agreement between the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization.

2. It may be terminated by either party on 31 December of any year by notice given not later than 30 June of that year.

*Article XII*

ENTRY INTO FORCE

This Agreement shall enter into force on its approval by the Industrial Development Board of the United Nations Industrial Development Organization and the Executive Board of the United Nations Educational, Scientific and Cultural Organization and signature by the Directors-General of the United Nations Industrial Development Organization and the United Nations Educational, Scientific, and Cultural Organization respectively.

IN WITNESS WHEREOF the Directors-General of the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization have affixed their signatures to two copies in English and two copies in French of this Agreement, both language versions being equally authentic.

- 
- (d) Agreement between the United Nations Industrial Development Organization and the Government of China on the establishment of a UNIDO Centre for International Industrial Cooperation. Signed at Vienna on 21 November 1989<sup>26</sup>

*Whereas* Article 2(n) of the Constitution of the United Nations Industrial Development Organization (hereinafter referred to as “UNIDO”) provides that UNIDO shall develop special measures designed to promote cooperation in the industrial field among developing countries and between developed and developing countries,

*Whereas* the Government of the People’s Republic of China desires to promote and coordinate industrial cooperation between enterprises (including public, private, cooperative and other forms of enterprises) and non-governmental organizations and other related institutions from developed and developing countries and similar organizations from the People’s Republic of China, and thus to coordinate its work with that of UNIDO in implementing mutually agreed-upon programmes and projects related to cooperation between industrial enterprises from the People’s Republic of China and those from developed and developing countries,

*Whereas* the Government of the People’s Republic of China and UNIDO have established close collaboration in the field of international industrial cooperation among industrial enterprises and gained valuable experience on how to improve this cooperation which, among other things, includes the need for much greater coordination between the two parties in planning, formulating and implementing joint programmes, projects and activities,

*Therefore* the Government of the People’s Republic of China and UNIDO hereby agree to enter into the following Agreement:

## *Article 1*

### *1.1 Purpose of the Agreement*

The purpose of this Agreement is to establish an institutional framework for cooperation between the Government of the People's Republic of China and UNIDO aimed at facilitating international industrial cooperation between enterprises, non-governmental organizations and other related institutions from developed and developing countries, and similar organizations from the People's Republic of China.

### *1.2 Areas of cooperation*

(a) This Agreement shall apply to programmes, projects and activities concerned with different forms of international industrial cooperation, including:

- (i) Industrial collaboration (joint production and production sharing);
- (ii) Transfer of technology and exchange of know-how;
- (iii) Joint research and marketing;
- (iv) Deliveries of machinery and equipment;
- (v) Rehabilitation of industrial plants and provision of operational and managerial services;
- (vi) Provision of experts and consultancy services;
- (vii) Preparation of joint studies on industrial topics and cooperation;
- (viii) Investment promotion and joint venture establishment;
- (ix) Training of managerial and technical personnel;
- (x) Promotional activities, workshops, seminars, preparatory missions, study tours;
- (xi) Other activities on which UNIDO and the Government of the People's Republic of China and, where appropriate, Chinese and foreign cooperating partners may agree.

(b) UNIDO activities related to technical cooperation projects financed by the United Nations Development Program (UNDP) and executed by UNIDO in the People's Republic of China are not subject to this Agreement.

## *Article 2*

### *2.1 Establishment of a UNIDO Centre for International Industrial Cooperation in Beijing*

In order to achieve better coordination of the activities referred to in article 1.2 and to facilitate international and industrial cooperation, the Government of the People's Republic of China and UNIDO agree to act jointly through the Centre for International Industrial Cooperation, which shall be established by UNIDO in Beijing, People's Republic of China, pursuant to the present Agreement, and which shall be called "UNIDO Centre for International Industrial Cooperation".

## 2.2 *Functions of the Centre*

The Centre will act primarily as a promoter of industrial cooperation between enterprises and organizations from the People's Republic of China and private, public, cooperative and other forms of enterprises (large-, medium- and small scale) and organizations from developed and developing countries by assisting them in meeting their goals and needs. To achieve this objective, the Centre will assume the following functions:

(a) Coordination of activities and liaison between enterprises and organizations in the People's Republic of China and in developed and developing countries involved in industrial cooperation between the People's Republic of China and these countries;

(b) Collection and dissemination of information on opportunities for industrial and economic cooperation by maintaining a data bank on Chinese and foreign partners willing to enter into cooperation arrangements;

(c) Maintaining close contact with UNIDO headquarters, the UNIDO Investment Promotion Service Offices, as well as other appropriate organizations in developed and developing countries in order to ensure exchange of information related to the promotion of industrial cooperation;

(d) Evaluation and screening of specific requests or proposals for cooperation submitted by Chinese and foreign partners as to their technological, managerial and financial practicability before proceeding with further negotiations.

(e) Identification, screening and selection of potential partners for cooperation in the People's Republic of China and in developed and developing countries according to the criteria established by the People's Republic of China and UNIDO;

(f) Provision of assistance to potential partners (Chinese and foreign enterprises and organizations) in preparing and negotiating cooperation arrangements on specific projects, including the establishment of joint ventures in the People's Republic of China and abroad;

(g) Organization and implementation of different promotional activities, specific missions, study tours, seminars, workshops and technology exhibitions;

(h) Having access to and using in its work the UNIDO Investment Promotion Information System, the UNIDO Industrial and Technological Information Bank as well as other information available and relevant to the operation of the Centre;

(i) Organization and implementation of other related activities as may be agreed upon between UNIDO, the Government of the People's Republic of China and cooperating partners.

## 2.3 *Personnel arrangements*

(a) Initially, the Centre shall have the following staff and other personnel:

(i) The Head of the Centre shall be appointed by the Director-General of UNIDO, after consultation with the Government of the People's Republic of China, in accordance with the Staff Regulations and Rules of UNIDO applicable to technical cooperation project personnel. The Head of the Centre shall be an official under the Con-

vention on the Privileges and Immunities of the United Nations. The Government shall provide for the Head of the Centre such medical and health coverage as is required for Government civil servants in Beijing under the applicable national legislation;

- (ii) At least three National Professional Officers and at least three national support employees shall be appointed by the Director-General of UNIDO after consultation with the Government of the People's Republic of China. They shall be appointed under individual service agreements which shall determine the conditions of employment and which shall expressly exclude participation in the United Nations Joint Staff Pension Fund. The National Professional Officers and national support employees shall enjoy immunity from legal process of any kind in respect of words spoken and written and all acts done in the course of the performance of their official functions for the Centre. The Government of the People's Republic of China shall provide the National Professional Officers and national support employees with such social security coverage, including pensions, health, medical and work-related accident insurance, as is required for government civil servants in Beijing under the applicable national legislation.

(b) The size and composition of the staff and other personnel of the Centre shall be set out from time to time in the project document which forms part of the annexed Trust Fund Agreement.

(c) The costs to UNIDO of employing the above-mentioned staff and other personnel of the Centre shall be financed by trust fund contributions from the Government of the People's Republic of China to UNIDO. The Trust Fund Agreement and the project document attached thereto shall be concluded for an initial period of two years and shall thereafter be replaced by subsequently concluded Trust Fund Agreements with attached project documents, all of which shall constitute integral parts of the present Agreement.

#### *2.4 Foreign consultants and project personnel*

Foreign consultants and technical cooperation project personnel shall be selected and recruited by UNIDO to work in the Centre or on specific project activities, whenever this is considered necessary on a project-by-project basis. The costs of such consultants and project personnel normally shall be financed from trust fund contributions to UNIDO from enterprises, governmental or non-governmental organizations, industrial organizations or related institutions in foreign developed or developing countries. Such foreign consultants shall be experts on mission under the Convention on the Privileges and Immunities of the United Nations and shall be exempt from taxation on the salaries and emoluments paid to them by UNIDO while the technical cooperation project personnel shall be officials under the said Convention.

#### *2.5 Office facilities and premises*

The Government of the People's Republic of China shall provide adequately equipped office facilities and premises for the Centre. The exact location and size of the premises are described in the annexed Trust Fund Agreement be-

tween the Government of the People's Republic of China and UNIDO and its attached project document, referred to under 2.3(c) above. The premises shall be premises of UNIDO for the purposes of section 3 of the Convention on the Privileges and Immunities of the United Nations.

## *2.6 Legal arrangements*

In accordance with article 21 of the Constitution of UNIDO, the Convention on the Privileges and Immunities of the United Nations is fully applicable to the Centre. The staff and other personnel of the Centre, the technical cooperation project personnel and the foreign consultants also shall enjoy such additional official status, privileges, immunities and facilities as are granted by the Government of the People's Republic of China to personnel employed on projects executed in the People's Republic of China by UNIDO as an executing agency of the United Nations Development Programme.

## *Article 3*

### *3.1 Focal points*

The focal points for the activities of the Centre will be the Industrial Cooperation and Funds Mobilization Division in UNIDO and the Department for International Relations of the Ministry of Foreign Economic Relations and Trade in the People's Republic of China.

### *3.2 Programme management*

In order to formulate the overall policy of the Centre, the work programme, and specific projects and activities, to review problems of implementation and to recommend appropriate measures to strengthen cooperation, the Government of the People's Republic of China and UNIDO agree to meet at least once a year to review programmes of the past year, evaluate their effectiveness and draw up a new programme for the following year. The Director of the Centre shall be responsible for the administration of the Centre and shall have the overall responsibility and authority for the implementation of the work programme.

## *Article 4*

### *4.1 Sources of financing*

The financing of projects and activities described in article 2.2 of this Agreement shall be secured primarily through:

(a) Special-purpose contributions to the UNIDO Industrial Development Fund or donations to trust funds established by UNIDO for specific projects or activities. Such contributions or donations may be received from the People's Republic of China, from other Governments, from industrial enterprises or from non-governmental organizations;

(b) Direct contributions in kind for the purpose of such projects and activities by enterprises of the People's Republic of China, or enterprises and organizations from other cooperating developed or developing countries.

#### 4.2 *Approval of projects*

Approval of specific projects and activities included in the work programme shall be in accordance with the applicable regulations and rules of UNIDO and shall, as appropriate, be in conformity with the laws and regulations of the People's Republic of China and the laws and regulations applicable to cooperating Governments, enterprises and organizations.

#### *Article 5*

##### 5.1 *Duration*

The present Agreement shall be concluded for an indefinite period on the understanding, however, that each party shall have the right to terminate it upon giving six (6) months' notice in writing to the other party.

##### 5.2 *Termination*

If the Agreement is terminated by either party, the necessary steps shall be taken in order that such a decision does not affect the implementation of any project or activity in progress.

#### *Article 6*

##### *Final provisions*

(a) The Government of the People's Republic of China and UNIDO may enter into such supplementary arrangements or agreements within the scope of this Agreement as may be necessary and appropriate.

(b) The provisions of the present Agreement may be amended at any time by mutual agreement in writing between the two parties.

(c) This Agreement shall enter into force upon signature by the Director-General of UNIDO and the Representative of the Government of the People's Republic of China.

Signed on this 21st day of November 1989, at Vienna, in duplicate, each in the Chinese and English languages. Both versions are equally authentic.

#### 4. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement between the International Atomic Energy Agency and the Government of the United States of America regarding the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. Signed at Vienna on 17 February 1989<sup>27 28</sup>

*Whereas* the United States of America (hereinafter referred to as the "United States") is a party to Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America (hereinafter referred to as "the Tlatelolco Treaty"),<sup>29</sup> opened for signature at Mexico City on 14 February 1967;

*Whereas* Additional Protocol I of the Tlatelolco Treaty states, *inter alia*, that its parties have agreed to “undertake to apply the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty” (hereinafter referred to as “Protocol I territories”);

*Whereas* article 13 of the Tlatelolco Treaty states, *inter alia*, that “each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities”;

*Whereas* the International Atomic Energy Agency (hereinafter referred to as “the Agency”) is authorized, pursuant to article III of its Statute, to conclude such agreements;

*Whereas* the United States in implementation of its obligations under article 1 of Additional Protocol I of the Tlatelolco Treaty undertakes in this Agreement to accept the application of the safeguards of the Agency to all peaceful nuclear activities within the United States Protocol I territories;

*Now therefore* the United States and the Agency have agreed as follows:

#### *Article 1*

##### BASIC UNDERTAKING

The United States undertakes to accept safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within the United States Protocol I territories for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

#### *Article 2*

##### APPLICATION OF SAFEGUARDS

The Agency shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within United States Protocol I territories for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

#### *Article 3*

##### COOPERATION BETWEEN THE UNITED STATES AND THE AGENCY

The United States and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

#### *Article 4*

##### IMPLEMENTATION OF SAFEGUARDS

The safeguards provided for in this Agreement shall be implemented in a manner designed:

- (a) To avoid hampering the economic and technological development of the United States Protocol I territories or international cooperation in the field of peaceful nuclear activities, including international exchange of nuclear material;
- (b) To avoid undue interference in peaceful nuclear activities of the United States Protocol I territories, and in particular in the operation of facilities;
- (c) To be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

#### *Article 5*

(a) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement.

- (b) (i) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board of Governors of the Agency (hereinafter referred to as "the Board") and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing this Agreement;
- (ii) Summarized information on nuclear material subject to safeguards under this Agreement may be published upon decision of the Board if the States directly concerned agree thereto.

#### *Article 6*

(a) The Agency shall, in implementing safeguards pursuant to this Agreement, take full account of technological developments in the field of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the application of the principle of safeguarding effectively the flow of nuclear material subject to safeguards under this Agreement by use of instruments and other techniques at certain strategic points to the extent that present or future technology permits.

- (b) In order to ensure optimum cost-effectiveness, use shall be made, for example, of such means as:
  - (i) Containment as a means of defining material balance areas for accounting purposes;

- (ii) Statistical techniques and random sampling in evaluating the flow of nuclear material;
- (iii) Concentration of verification procedures on those stages in the nuclear fuel cycle involving the production, processing, use or storage of nuclear material from which nuclear weapons or other nuclear explosive devices could readily be made, and minimization of verification procedures in respect of other nuclear material, on condition that this does not hamper the Agency in applying safeguards under this Agreement.

National system of materials control

#### *Article 7*

(a) The United States shall establish and maintain a system of accounting for and control of all nuclear material subject to safeguards under this Agreement.

(b) The Agency shall apply safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of such nuclear material from peaceful uses to nuclear weapons or other nuclear explosive devices, findings of the United States' system. The Agency's verification shall include, *inter alia*, independent measurements and observations conducted by the Agency in accordance with the procedures specified in Part II of this Agreement. The Agency, in its verification, shall take due account of the technical effectiveness of the United States' system.

#### *Article 8*

##### PROVISION OF INFORMATION TO THE AGENCY

(a) In order to ensure the effective implementation of safeguards under this Agreement, the United States shall, in accordance with the provisions set out in Part II of this Agreement, provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material.

- (b) (i) The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under this Agreement.
- (ii) Information pertaining to facilities shall be the minimum necessary for safeguarding nuclear material subject to safeguards under this Agreement.

(c) If the United States so requests, the Agency shall be prepared to examine on premises of the United States Protocol I territories design information which the United States regards as being of particular sensitivity. Such information need not be physically transmitted to the Agency provided that it remains readily available for further examination by the Agency on premises of the United States Protocol I territories.

## *Article 9*

### AGENCY INSPECTORS

- (a) (i) The Agency shall secure the consent of the United States to the designation of Agency inspectors to the United States Protocol I territories.
  - (ii) If the United States, either upon proposal of a designation or at any other time after a designation has been made, objects to the designation, the Agency shall propose to the United States an alternative designation or designations.
  - (iii) If, as a result of the repeated refusal of the United States to accept the designation of Agency inspectors, inspections to be conducted under this Agreement would be impeded, such refusal shall be considered by the Board, upon referral by the Director General of the Agency (hereinafter referred to as "the Director General"), with a view to its taking appropriate action.
- (b) The United States shall take the necessary steps to ensure that Agency inspectors can effectively discharge their functions under this Agreement.
- (c) The visits and activities of Agency inspectors shall be so arranged as:
- (i) To reduce to a minimum the possible inconveniences and disturbance to the United States Protocol I territories and to the peaceful nuclear activities inspected; and
  - (ii) To ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge.

## *Article 10*

### PRIVILEGES AND IMMUNITIES

The provisions of the International Organization Immunities Act of the United States of America<sup>30</sup> shall apply to Agency inspectors performing functions in the United States Protocol I territories under this Agreement and to any property of the Agency used by them.

## *Article 11*

### TERMINATION OF SAFEGUARDS

#### *Consumption or dilution of nuclear material*

Safeguards shall terminate on nuclear material upon determination by the Agency that the material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practically irrecoverable.

#### *Article 12*

##### *Transfer of nuclear material out of the United States Protocol I territories*

The United States shall give the Agency advance notification of intended transfers of nuclear material subject to safeguards under this Agreement out of the United States Protocol I territories in accordance with the provisions set out in Part II of this Agreement. The Agency shall terminate safeguards on nuclear material under this Agreement when the recipient State has assumed responsibility therefor, as provided for in Part II of this Agreement. In the case of transfers out of the United States Protocol I territories of such nuclear material which is to remain the responsibility of the United States, the Agency shall terminate safeguards on the nuclear material under this Agreement when the material leaves the United States Protocol I territories. The Agency shall maintain records indicating each transfer and, where applicable, the re-application of safeguards to the transferred nuclear material.

#### *Article 13*

##### *Provisions relating to nuclear material to be used in non-nuclear activities*

Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities, such as the production of alloys or ceramics, the United States shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards on such material may be terminated.

#### *Article 14*

##### FINANCE

The United States and the Agency shall bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, if the United States or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case the Agency shall bear the cost of any additional measuring or sampling which inspectors may request.

#### *Article 15*

##### THIRD-PARTY LIABILITY FOR NUCLEAR DAMAGE

In carrying out its functions under this Agreement within the United States Protocol I territories, the Agency and its personnel shall be covered to the same extent as nationals of the United States by any protection against third-party liability provided under the Price-Anderson Act,<sup>31</sup> including insurance and other indemnity coverage that may be required by the Price-Anderson Act with respect to nuclear incidents.

### *Article 16*

#### INTERNATIONAL RESPONSIBILITY

Any claim by the United States against the Agency or by the Agency against the United States in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

### *Article 17*

#### MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

If the Board, upon report of the Director General, decides that an action by the United States is essential and urgent in order to ensure verification that nuclear material while subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon the United States to take the required action without delay, irrespective of whether procedures have been invoked pursuant to Article 21 of this Agreement for the settlement of a dispute.

### *Article 18*

If the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material while required to be safeguarded under this Agreement to nuclear weapons or other nuclear explosive devices, it may make the reports provided for in paragraph C of article XII of the Statute of the Agency (hereinafter referred to as "the Statute") and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford the United States every reasonable opportunity to furnish the Board with any necessary reassurance.

### *Article 19*

#### INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

The United States and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

### *Article 20*

The United States shall have the right to request that any question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite the United States to participate in the discussion of any such question by the Board.

### *Article 21*

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under article 18 or an action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by the United States and the Agency, shall, at the request of either, be submitted to an arbitral tribunal composed as follows: the United States and the Agency shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either the United States or the Agency has not designated an arbitrator, either the United States or the Agency may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the United States and the Agency.

### *Article 22*

#### OTHER SAFEGUARDS AGREEMENTS

The Parties shall institute steps to suspend the application of Agency safeguards in the United States Protocol I territories under other safeguards agreements with the Agency while this Agreement is in force.

### *Article 23*

#### AMENDMENT TO THE AGREEMENT

- (a) The United States and the Agency shall, at the request of either, consult each other on amendment to this Agreement.
- (b) All amendments shall require the agreement of the United States and the Agency.
- (c) Amendments to this Agreement shall enter into force in the same conditions as entry into force of the Agreement itself or in accordance with a simplified procedure.
- (d) The Director General shall promptly inform all Member States of the Agency of any amendment to this Agreement.

### *Article 24*

#### ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force on the date upon which the Agency receives from the United States written notification that the statutory and constitutional requirements of the United States for entry into force have been met. The Director General shall promptly inform all Member States of the Agency of the entry into force of this Agreement. This Agreement shall remain in force as long as the United States is party to Protocol I of the Tlatelolco Treaty.

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NOTES

<sup>1</sup>United Nations, *Treaty Series*, vol. 1, p. 15.

<sup>2</sup>The Convention is in force with regard to each State which deposited an instrument of accession or succession with the Secretary-General of the United Nations as from the date of its deposit.

<sup>3</sup>For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.90.V.6).

<sup>4</sup>Came into force on the date of signature.

<sup>5</sup>Came into force on the date of signature.

<sup>6</sup>United Nations, *Treaty Series*, vol. 195, p. 2; vol. 1209, p. 32; vol. 1281, p. 297.

<sup>7</sup>Came into force on the date of signature.

<sup>8</sup>United Nations, *Treaty Series*, vol. 374, p. 147.

<sup>9</sup>Came into force on the date of signature.

<sup>10</sup>United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>11</sup>Came into force on the date of signature.

<sup>12</sup>Came into force on the date of signature.

<sup>13</sup>Vienna Convention on Diplomatic Relations (1961), United Nations, *Treaty Series*, vol. 500, p. 95. Vienna Convention on Consular Relations (1963), *ibid.*, vol. 596, p. 261.

<sup>14</sup>Came into force on the date of signature.

<sup>15</sup>Came into force on the date of signature.

<sup>16</sup>Came into force on 8 December 1989.

<sup>17</sup>Came into force on the date of signature.

<sup>18</sup>Came into force on the date of signature.

<sup>19</sup>Came into force on the date of signature.

<sup>20</sup>United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>21</sup>For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.90.V.6).

<sup>22</sup>Came into force on the date of signature.

<sup>23</sup>Came into force on 12 April 1989.

<sup>24</sup>Came into force on 19 May 1983.

<sup>25</sup>Came into force on 5 June 1989.

<sup>26</sup>Came into force on the date of signature. A similar agreement also was signed with the Government of the USSR in 1989.

<sup>27</sup>Came into force on 8 April 1989.

<sup>28</sup>See also chap. III.B.4 of the present *Yearbook*.

<sup>29</sup>United Nations, *Treaty Series*, vol. 634, p. 281.

<sup>30</sup>*Statutes of the United States of America*, vol. 59, p. 669 (Public Law 79-291, approved 1945).

<sup>31</sup>Section 170 of the Atomic Energy Act of 1954, *Statutes of the United States of America*, vol. 68, p. 919 (Public Law 83-703, approved 1954), as amended.

**Part Two**

**LEGAL ACTIVITIES OF THE UNITED  
NATIONS AND RELATED  
INTERGOVERNMENTAL  
ORGANIZATIONS**



## Chapter III

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

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

##### 1. DISARMAMENT AND RELATED MATTERS<sup>1</sup>

###### (a) Comprehensive approaches to disarmament

###### (i) *Role of the United Nations in the field of disarmament*

In 1989, both the First Committee of the United Nations General Assembly and the Disarmament Commission devoted their attention to numerous aspects of the question of the United Nations role in disarmament. The Conference on Disarmament, for its part, focused mainly on its own role and functioning and on the relation between multilateralism and bilateralism in disarmament negotiations.

The Disarmament Commission continued the consideration of its agenda item entitled "Review of the role of the United Nations in the field of disarmament" as a matter of priority. It was not able, however, to complete the elaboration of concrete recommendations and proposals, in spite of intense deliberations within the relevant working group and in informal negotiations.

On the whole, the 1989 deliberations on the role of the United Nations in the field of disarmament presented many positive aspects and reflected major changes in attitudes and perceptions. In this much improved situation, many found it easier to view disarmament and the role of the United Nations as components of a credible strategy for international peace and security.

On 15 December 1989, the General Assembly adopted a number of resolutions in this area: resolution 44/116 Q<sup>2</sup> on the review of the role of the United Nations in the field of disarmament; resolutions 44/119 C<sup>3</sup> and D<sup>4</sup> on the reports of the Disarmament Commission and Conference on Disarmament, respectively; and resolution 44/119 A<sup>5</sup> on the Declaration of the 1990s as the Third Disarmament Decade.

Regarding the United Nations regional centres for peace and disarmament in Africa, in Asia and the Pacific, and in Latin America and the Caribbean, the General Assembly on 15 December 1989 adopted resolution 44/117 F<sup>6</sup> wherein it appealed to Member States, as well as international governmental and non-governmental organizations, to make voluntary contributions in order to strengthen the effective operational activities of the centres. In its resolution 44/117 E,<sup>7</sup> on the United Nations disarmament fellowship, training and advisory services programme, also adopted on 15 December 1989, the Assembly expressed its appreciation to the Governments of the German Democratic Republic, the

Federal Republic of Germany, Japan, Sweden, the Union of Soviet Socialist Republics and the United States of America for inviting the 1989 fellows to study selected activities in the field of disarmament, thereby contributing to the fulfilment of the overall objectives of the programme; and also expressed gratitude to the Government of Nigeria for serving as host to the United Nations Regional Disarmament Workshop for Africa, which examined African security perceptions and requirements including related regional issues, and to the Government of Norway for making financial contributions to the Workshop.

Finally, the General Assembly also adopted on 15 December 1989 resolution 44/122<sup>8</sup> on compliance with arms limitation and disarmament agreements; resolution 44/116 G<sup>9</sup> on implementation of General Assembly resolutions in the field of disarmament; and resolution 44/118 B<sup>10</sup> on science and technology for disarmament.

(ii) *Question of general and complete disarmament: the comprehensive programme of disarmament*

On 15 December 1989, the General Assembly adopted resolution 44/119 A,<sup>11</sup> in which it called upon the Conference on Disarmament to consider, at the beginning of its 1991 session, the resumption of the work of the Ad Hoc Committee on the Comprehensive Programme of Disarmament with the aim of resolving the outstanding issues in order to conclude the elaboration of the programme.

(iii) *Confidence— and security-building measures*

In 1989, a major set of negotiations concerning confidence- and security-building measures in Europe began in Vienna within the framework of the Conference on Security and Cooperation in Europe process. The prospects for its successful conclusion seemed to be favourable, as there was more common ground in the positions of the participating States, particularly those of Eastern European and North Atlantic Treaty Organization (NATO) States, than at the beginning of the Stockholm Conference on Confidence- and Security-building Measures and Disarmament in Europe.

In the course of its 1989 session, the Disarmament Commission addressed the question of naval armaments and disarmament, including maritime confidence-building measures, in a consultation group, as it had done at its three previous sessions. A number of proposals on the subject were made and there was some progress in its substantive consideration, but the United States of America once again chose not to participate in this aspect of the work of the Commission.

The considerable support for a confidence- and security-building approach evinced by Member States was reflected in the four resolutions in the subject area that the General Assembly adopted at its forty-fourth session, two of them by consensus: resolutions 44/116 I, 44/116 U, 44/116 M and 44/116 P. Three of the resolutions dealt with matters covered in earlier resolutions: the Vienna negotiations and naval disarmament. The fourth dealt with defensive security concepts and policies, an aspect of security to which attention is increasingly being drawn. There were also indications of growing interest in the applicability of the confidence-building approach to regions other than Europe.

(b) Nuclear disarmament

(i) *Nuclear-arms limitation and disarmament*

In 1989, the two major Powers continued to make progress towards the conclusion of a treaty on the 50 per cent. reduction of their strategic nuclear weapons. At their Malta meeting, in December, their leaders agreed to resolve the remaining issues by the time of their summit meeting in June 1990 and to sign the treaty before the end of that year.

Within the multilateral framework, in the Conference on Disarmament, there was again a lack of agreement on an appropriate organizational arrangement for dealing with the item and there were no changes in well-known positions. In a plenary meeting early in August, the heads of the delegations of the United States and the Union of Soviet Socialist Republics to the bilateral talks on nuclear and space arms made detailed presentations on the status of their negotiations.

The subsequent resolutions of the General Assembly on nuclear disarmament underlined once again the special responsibility of the two major Powers for nuclear disarmament and at the same time reflected the conviction of a majority of States Members of the United Nations that the Conference on Disarmament should continue to be entrusted with the consideration of a number of global questions requiring urgent multilateral attention, among them the issues of nuclear disarmament, the cessation of nuclear tests and the prevention of an arms race in outer space.

Specific resolutions in this area adopted by the General Assembly, on 15 December 1989, included resolutions 44/116 B and 44/116 K,<sup>12</sup> on bilateral arms negotiations; resolution 44/116 D<sup>13</sup> on nuclear disarmament; resolution 44/116 H<sup>14</sup> on the prohibition of the production of fissionable material for weapons purposes; and resolution 44/117 D<sup>15</sup> on a nuclear-arms freeze.

(ii) *Prevention of nuclear war*

In 1989, the question of the prevention of nuclear war remained on the agenda of the Disarmament Commission, the Conference on Disarmament and the General Assembly. It continued to be the object of active consideration in those bodies. The General Assembly adopted, as it has each year since the early 1980s, three initiatives of Socialist and non-aligned members calling for the Conference on Disarmament to conduct negotiations concerning the obligation of non-first use, practical measures for the prevention of nuclear war and a convention prohibiting the use of nuclear weapons: resolutions 44/119 B, 44/119 E and 44/117 C.<sup>16</sup>

The two major Powers, for their part, continued to make progress in their efforts to put United States-Soviet relations on a more productive and sustainable basis and to reduce further the risk of any conflict which might lead to nuclear war.

(iii) *Cessation of all nuclear-test explosions*

The most noteworthy activity on the question of nuclear testing took place in the bilateral negotiations between the Soviet Union and the United States.

Regarding the work of the Conference on Disarmament, for the sixth successive year, it was unable to reach consensus on a mandate for a subsidiary body to deal with the question of a nuclear-test ban. Elsewhere in the United Nations, the Secretary-General conveyed to the General Assembly the second annual register of information provided to him on nuclear test explosions; and, once again, as in 1987 and 1988, the General Assembly adopted two traditional resolutions: resolutions 44/105 and 44/107.<sup>17</sup> One, sponsored mainly by non-aligned States, focused on the establishment, within the Conference on Disarmament, of a subsidiary body with a mandate to negotiate a multilateral treaty on the complete cessation of nuclear-test explosions. The other, chiefly sponsored by Australia and New Zealand but enjoying diverse co-sponsorship, focused on the initiation of substantive work in the Conference on the various issues involved in working out such a treaty.

Both of those initiatives drew very wide support, but the negative votes of all three Western nuclear-weapon States on the former initiative and the negative votes of two of the three (France and United States) and the abstention of the third (United Kingdom of Great Britain and Northern Ireland) on the latter suggested that there was still some distance to go. Furthermore, the United Kingdom and the United States, while affirming that they would continue to fulfil their duties as depositaries, voted against the resolution on the partial-test-ban Treaty Amendment Conference,<sup>18</sup> and France and China, as nuclear-weapon States non-parties to the Treaty, did not participate in the voting process.

#### *(iv) Nuclear non-proliferation*

The Treaty on the Non-proliferation of Nuclear Weapons<sup>19</sup> forms the cornerstone of an international non-proliferation regime which has grown to embrace the overwhelming majority of countries in the world in the period since the Treaty, upon ratification by 40 non-nuclear-weapon States, entered into force on 5 March 1970.<sup>20</sup> The other elements of the regime include, first of all, the safeguards system of IAEA, which operates to prevent the diversion of nuclear materials to military or other prohibited activities and must be accepted by all non-nuclear-weapon parties to the Treaty; and secondly, the Antarctic Treaty,<sup>21</sup> the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)<sup>22</sup> and the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga)<sup>23</sup> which serve to extend the regime geographically. The last two Treaties require safeguards agreements with IAEA (articles 7-16 of the Treaty of Tlatelolco and article 8 of the Treaty of Rarotonga). In addition, the Treaty of Tlatelolco contains provisions establishing the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) to ensure compliance.

Furthermore, there are two major treaties designed to keep nuclear weapons out of particular environments, namely, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,<sup>24</sup> and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.<sup>25</sup> Finally, a large number of Safeguards Agreements of various types existing outside the context of treaties broaden the scope of IAEA activities in support of the regime.

As of 31 December 1989, 141 States were parties to the Non-Proliferation Treaty, including the three nuclear-weapon States depositaries of the Treaty: the Soviet Union, the United Kingdom and the United States.

The other two nuclear-weapon States, China and France, have not signed the Non-Proliferation Treaty. In 1984, China affirmed that it neither advocated nor encouraged nuclear proliferation, nor did it help other States to develop nuclear weapons.<sup>26</sup> Subsequently, China stated that, when exporting nuclear materials and equipment, it requested the receiving country to place them under IAEA safeguards.<sup>27</sup> France stated in 1968, when the Non-Proliferation Treaty was concluded, that it would behave in the future exactly as did States adhering to the Treaty.<sup>28</sup>

Several other States not party to the Treaty, among them Argentina, Brazil, India, Israel, Pakistan and South Africa, have extensive peaceful nuclear programmes and facilities, the great majority of them, however, subject to non-treaty Safeguards Agreements with IAEA and with States supplying them with nuclear materials and technology. India's Minister of External Affairs announced on 21 May 1974, after his country had carried out a nuclear explosion, that India had no intention of developing nuclear weapons and that, in performing its peaceful scientific test, it had not violated any international obligations.<sup>29</sup> India has reaffirmed that position several times.

One source of criticism of the Treaty by some countries has been that it provides for two categories of parties, nuclear-weapon and non-nuclear-weapon States, each with specific obligations, and is accordingly discriminatory. The nuclear-weapon parties (defined as those which had manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1967) commit themselves not to transfer nuclear weapons or any other nuclear explosive devices to any recipient, either directly or indirectly. The non-nuclear-weapon parties commit themselves not to receive or manufacture nuclear weapons or other nuclear explosive devices and to accept mandatory international safeguards on all their peaceful nuclear activities.

The main provisions of the Treaty seek: (a) to prevent the dissemination of nuclear weapons or other explosive devices; (b) to provide guarantees, through international safeguards, to ensure that the peaceful nuclear activities of non-nuclear-weapon States are not diverted to the production of such weapons; (c) to promote the peaceful uses of nuclear energy and make available to non-nuclear-weapon States any potential benefits from the peaceful application of nuclear explosions; (d) to ensure that the Treaty is conducive to progress on measures relating to cessation of the nuclear-arms race at an early date and to nuclear disarmament and disarmament in general; and (e) to avoid affecting the right of groups of States to conclude regional treaties establishing nuclear-weapon-free zones. The Treaty also contains provisions for periodic reviews of its operation.

The most difficult area of operation, as has been evident at the three Review Conferences held so far<sup>30</sup> — particularly at the first two, in 1975 and 1980, but also at the third, in 1985 — was the absence of adequate progress towards nuclear disarmament under article VI. In the view of many non-nuclear-weapon States parties, the nuclear parties have not lived up to their Treaty obligations. For their part, the three nuclear-weapon States have emphasized their many proposals and extensive attempts to reach agreement in the relevant issue areas and have individually denied responsibility for the lack of progress.

Two other questions — the establishment of reliable security guarantees to non-nuclear-weapon States for foregoing the nuclear option and the adequacy of technical and other assistance to them for research and development and for the production and use of nuclear energy for peaceful purposes, which is their inalienable right under article IV — have, in addition, given rise to controversy.

The Final Declaration of the Third Review Conference contained a recommendation to the effect that a fourth conference to review the operation of the Treaty should be convened in 1990.

(v) *Strengthening the security of non-nuclear-weapon States*

Differences in the perception of security interests of the nuclear-weapon and the non-nuclear-weapon States were still pronounced throughout 1989 and thus agreement on effective arrangements to grant negative security assurances to non-nuclear-weapon States once again eluded the Ad Hoc Committee of the Conference on Disarmament. All delegations were ready to continue the search for a common approach to the issue, but the exact form of that approach remained the subject of debate. In the General Assembly, two draft resolutions initiated by Bulgaria and by Pakistan respectively, were adopted on 15 December 1989 as resolutions 44/110 and 44/111 with, in each instance, a large majority of affirmative votes and, for the first time in the case of the Bulgarian initiative, no negative votes. The very widespread support for the former resolution and the marked increase in support for the latter raised hopes that at the next session it might be possible to achieve a single resolution on this complex issue, which was regarded as significant for efforts to strengthen nuclear non-proliferation.

(vi) *Nuclear-weapon-free zones and zones of peace*

The question of the establishment of nuclear-weapon-free zones and zones of peace in general and in various regions of the world continued to draw support in the Disarmament Commission and at the forty-fourth session of the General Assembly. Member States reiterated their belief that the establishment of nuclear-weapon-free zones could, in principle, contribute to the prevention of the proliferation of nuclear weapons, to the strengthening of the security of the countries concerned and to confidence-building among them.

Debate in the General Assembly focused primarily on the desirability and feasibility of setting up nuclear-weapon-free zones in Africa,<sup>31</sup> the Middle East<sup>32</sup> and South Asia.<sup>33</sup> The discussion on the denuclearization of Africa and on the proposed zone in the Middle East was dominated, as at previous sessions, by concerns about the alleged nuclear-weapon capability of South Africa and Israel. It was also clear that there was no agreement and prior commitment of all the States of South Asia to the creation of a nuclear-weapon-free zone in that region. The two existing nuclear-free zones, in Latin America<sup>34</sup> and the South Pacific,<sup>35</sup> were generally acknowledged to be valuable measures of regional arms control. The majority of Member States were also in favour of the establishment of zones of peace such as those in the South Pacific and the Indian Ocean.<sup>36</sup> However, despite a decision taken in 1988 to convene the Conference on the Indian Ocean in 1990, at its forty-fourth session the General Assembly adopted by vote a resolution that called for a postponement of the Conference to 1991.

Although there were no significant developments regarding nuclear-weapon-free zones and zones of peace in 1989, the improved political atmosphere, the various sets of ongoing negotiations on disarmament and the steps that have been taken or are being taken to solve some regional crises and conflicts might contribute to more tangible progress in this area in the future.

(vii) *Peaceful uses of nuclear energy and IAEA safeguards and related activities*

Safeguarding the non-proliferation regime and promoting cooperation in the peaceful use of nuclear energy continued to be dominant concerns of the international community in 1989. In various forums, there was marked interest in the contribution that nuclear energy and nuclear techniques could make to sustainable development and serious concern for the safe operation of nuclear power plants and for the safe disposal of radioactive wastes. Developments during the year included: conclusion of a Safeguards Agreement between Viet Nam and IAEA; accession by China to the Convention on the Physical Protection of Nuclear Material;<sup>37</sup> approval by the Board of Governors of IAEA of international criteria for the safe disposal of high-level radioactive wastes.

All five nuclear-weapon States now have agreements in force to submit some of their nuclear activities to IAEA safeguards. About 95 per cent. of the fissile material and 95 per cent. of the nuclear installations in non-nuclear-weapon States are at present covered by safeguards. For 1988 (the most recent full year for which data have been reported), the Agency considered it reasonable to conclude that nuclear material under its safeguards system remained in peaceful nuclear activities or was otherwise adequately accounted for.

During the year, IAEA expanded its technical cooperation programmes. A number of developing countries acquired the capability to carry out substantial parts of their nuclear programmes, and the initiation of several joint projects among them indicated increased cooperation among this group of States.

In the United Nations, recognition by Member States of the importance of IAEA programmes and their support for its activities were reflected in the adoption by consensus of resolution 44/13, on the report of IAEA,<sup>38</sup> by which the General Assembly urged all States to strive for effective and harmonious cooperation in carrying out the work of the Agency.

(c) Prohibition or restriction of use of other weapons

(i) *Chemical and bacteriological (biological) weapons*

Intensive international attention was focused on the question of chemical weapons in 1989. Early in the year, the Paris Conference on the prohibition of chemical weapons adopted a Final Declaration which reaffirmed the authority of the 1925 Geneva Protocol and called upon the Conference on Disarmament to redouble its efforts to conclude a chemical weapons convention. In September, a conference in Canberra affirmed the commitment of Governments and the world's chemical industry to work together to promote that objective.

In response to the recommendation of the Paris Conference, the Conference on Disarmament intensified its work towards the conclusion of a ban on

chemical weapons. This was reflected in, among other things, the unprecedented number of meetings and greatly increased participation by States non-members of the Conference. Progress was achieved in the elaboration of several draft provisions of the rolling text, including those concerning institutional and technical aspects. Further clarification of verification problems was facilitated by a series of national trial inspections undertaken and reported on in the course of the year.

Prospects for progress in the multilateral negotiations on chemical weapons were also improved by the advances made in the bilateral negotiations between the Soviet Union and the United States. It was recognized, however, that the 1989 session of the Conference on Disarmament did not witness a breakthrough in this area.

An expert group appointed by the Secretary-General submitted its report concerning technical guidelines and procedures for the timely and efficient investigation of reports of the possible use of chemical or biological weapons.

The convergence of views continued in the General Assembly, which again adopted by consensus two resolutions on chemical weapons and one on biological weapons: resolution 44/115 A, entitled "Chemical and bacteriological (biological) weapons", adopted on 15 December 1989; resolution 44/115 B, entitled "Chemical and bacteriological (biological) weapons: measures to uphold the authority of the 1925 Geneva Protocol and to support the conclusion of a chemical weapons convention", adopted on 15 December 1989; and resolution 44/115 C, entitled "Implementation of the recommendations of the Second Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction",<sup>39</sup> adopted on 15 December 1989.

*(ii) New weapons of mass destruction; radiological weapons*

The question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons attracted little attention in the deliberations of the disarmament bodies in 1989, although differences of view concerning the imminence of the emergence of such weapons persisted. For the first time since 1975, the General Assembly did not adopt a resolution on the subject.

The prohibition of radiological weapons was again addressed in the Conference on Disarmament and in the General Assembly. The Conference re-established the relevant Ad Hoc Committee, which dealt with the subject in two contact groups: one on the prohibition of radiological weapons in the traditional sense, and the other on the prohibition of attacks against nuclear facilities. No new developments were evident during the session and no substantive progress was made in drafting the texts on the two aspects of the question. At its forty-fourth session, the General Assembly adopted its two traditional resolutions: by resolution 44/116 A,<sup>40</sup> it requested the Conference on Disarmament to intensify further its efforts to reach an agreement prohibiting armed attacks against nuclear facilities; and by resolution 44/116 T,<sup>41</sup> it requested the Conference to continue its substantive negotiation on the prohibition of radiological weapons with a view to the prompt conclusion of its work.

The problem of the prohibition of the dumping of radioactive wastes figured in the deliberations of the Conference on Disarmament and in the General Assembly at its regular session, and references were made to the report of the Secretary-General on the subject. The Group of African States submitted a text that was supported by the Group as a whole, and the Assembly adopted it as resolution 44/116 R with no negative votes and only four abstentions. By the resolution, the Assembly requested the Conference on Disarmament to continue to take into account, in the ongoing negotiations for a convention on the prohibition of radiological weapons, the deliberate employment of nuclear wastes to cause destruction, damage or injury by means of radiation.

(iii) *Third Review Conference of the Parties to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof*<sup>42</sup>

A high level of understanding and a relative absence of serious differences of view characterized the Third Review Conference. In general, the Final Document confirmed the positions taken at the Second Review Conference. However, a significant change occurred in connection with discussion of the possible extension of the geographical scope of the Treaty, in that all parties stated that they had not emplaced any nuclear weapons or other weapons of mass destruction on the seabed outside the zone of application and had no intention of doing so. Although the statement did not constitute a legally binding modification of the Treaty, it did imply a de facto extension of the scope of the Treaty to territorial waters for the time being.

The question of technological developments, in particular those having both civilian and military applications, received a great deal of attention, as it had in the past. The importance of the subject was reflected in the decision of the Conference to expand the role of the Secretary-General by requesting him to report at three-year intervals on developments relevant to the Treaty and to verification of compliance with its provisions, drawing on official sources, contributions of States parties and appropriate expertise. The Conference again requested the Conference on Disarmament, as it had at the two earlier Review Conferences, to proceed promptly with consideration of further measures to prevent an arms race in the seabed environment and to report to the General Assembly at its forty-seventh session.<sup>43</sup>

(iv) *Prevention of an arms race in outer space*

The question of the prevention of an arms race in outer space drew considerable attention in 1989 within the United Nations. Although the majority of States considered that bilateral and multilateral efforts were complementary and urged the immediate commencement of negotiations in the Conference on Disarmament, the United States maintained its position that a fundamental framework in which to identify measures must first be established on a bilateral basis.

In all forums dealing with the question, concern was expressed about the danger of the militarization of outer space, and the importance and urgency of preventing an arms race in that environment was stressed. Many affirmed that

outer space, as the common heritage of mankind, should be used exclusively for peaceful purposes, to promote the scientific, economic and social development of all countries. In the context of identifying measures that might be feasible and desirable as the basis for negotiating further multilateral arms control agreements applicable to outer space, the issues of verification and confidence-building measures were raised. In addition, a majority of States emphasized the need to strengthen and further elaborate the existing legal regime applicable to outer space.

The Ad Hoc Committee of the Conference on Disarmament continued to examine the question of the prevention of an arms race in outer space, to identify various relevant issues and to deepen its understanding of a number of the problems involved and of the positions of various Member States. At the forty-fourth session of the General Assembly, a single resolution, resolution 44/112,<sup>44</sup> was adopted in which the Assembly, while urging the Soviet Union and the United States to pursue intensively their bilateral negotiations, requested the Conference on Disarmament to intensify its consideration of the question of the prevention of an arms race in outer space and to reestablish an ad hoc committee with an adequate mandate at the beginning of its 1990 session.

*(d) Consideration of conventional weapons and other approaches*

*(i) Conventional weapons*

The trend since the mid-1980s towards increased emphasis on the conventional aspect of the arms race and conventional disarmament continued in 1989, mostly in European forums.

However, the work of the United Nations Disarmament Commission in the area of conventional disarmament could not be brought to a conclusion. A further effort would be made in 1990 to achieve a consensus text to guide the international community in its efforts towards conventional arms reductions globally and regionally and towards curbs on conventional arms transfers. Worthwhile initiatives were forthcoming on these and other questions of conventional disarmament, however, and the need for conclusion of the work of the Commission and for subsequent tangible action was universally acknowledged. The problem that remained was evidently one of minimizing divergent viewpoints on how best to move to enhanced security at lower levels of conventional armaments.

The General Assembly on 15 December 1989 adopted five resolutions and a decision pertaining to conventional disarmament.<sup>45</sup> Three of the resolutions were adopted without a vote, while the resolution on arms transfers and one of the two on regional disarmament were voted upon and drew a number of explanations of vote. The decision, regarding the existing Convention on inhumane weapons, was adopted without a vote.

*(ii) Reduction of military expenditures*

As in previous years, delegations in various disarmament bodies considered the question of the reduction of military expenditures, often relating the issue to reductions in conventional armed forces and armaments; the reallocation of resources released through reduced military spending to development;

and the building of confidence through transparency and openness in military matters. Although some progress had been achieved, in particular as regards positions on transparency and comparability of military data, disagreement remained with regard to the extent to which the international standardized reporting instrument should be used for providing data. The Disarmament Commission was not able to finalize its work on the agenda item and to adopt the text it had been elaborating, which was entitled "Principles which should govern further actions of States in the field of freezing and reduction of military budgets". By its resolution 44/114 A of December 1989, the General Assembly by majority vote took note of the set of principles annexed to the resolution. Another issue which figured continuously in the discussion was that of objective information on military matters. Pursuant to resolution 44/116 E of the same date, the agenda of the Disarmament Commission for 1990 will include that item.<sup>46</sup>

## 2. OTHER POLITICAL AND SECURITY QUESTIONS

### (a) Membership in the United Nations

During 1989, no State was admitted to membership in the United Nations. The number of Member States remained at 106.

### (b) Question of Antarctica

The General Assembly, by its resolution 44/124 A of 15 December 1989,<sup>47</sup> adopted on the recommendation of the First Committee,<sup>48</sup> appealed once again to the Antarctic Treaty Consultative Parties to take urgent measures to exclude the racist apartheid regime of South Africa from participation in the meeting of the Consultative Parties at the earliest possible date. By its resolution 44/124 B of the same date,<sup>49</sup> the General Assembly expressed its regret that, despite the numerous resolutions in which it had called upon the Antarctic Treaty Consultative Parties to invite the Secretary-General or his representative to their meetings, the Secretary-General had not been invited to the Preparatory Meeting of the XVth Antarctic Treaty Consultative Meeting or to the XVth Consultative Meeting, held in Paris in May and October 1989, respectively. The Assembly further expressed the conviction that, in view of the significant impact that Antarctica exerted on the global environment and ecosystems, any regime to be established for the protection and conservation of the Antarctic environment and its dependent and associated ecosystems, in order to be for the benefit of mankind as a whole and in order to gain the universal acceptability necessary to ensure full compliance and enforcement, must be negotiated with the full participation of all members of the international community.

### (c) Comprehensive review of the whole question of peacekeeping operations in all their respects

The General Assembly, by its resolution 44/49 of 8 December 1989,<sup>50</sup> adopted on the recommendation of the Special Political Committee,<sup>51</sup> took note of the report of the Special Committee on Peacekeeping Operations;<sup>52</sup> considered that

status-of-forces agreements should be concluded between host countries of any United Nations peacekeeping operation and the United Nations and, to that end, urged host countries of any United Nations peacekeeping operation to conclude status-of-forces agreements with the United Nations as soon as possible after the establishment of the operation and furthermore requested the Secretary-General to prepare a model status-of-forces agreement between the United Nations and host countries, while maintaining the flexibility needed to encompass different possible operations, and to make the model agreement available to Member States.

(d) Scientific and technological developments and their impact  
on international security

The General Assembly, by its resolutions 44/118 A and B of 15 December 1989,<sup>53</sup> adopted on the recommendation of the First Committee,<sup>54</sup> having examined the report of the Secretary-General on the question,<sup>55</sup> took note of the preliminary work of the Secretary-General to follow future scientific and technological developments, especially those which had potential military applications, and to evaluate their impact on international security, and requested the Secretary-General to conclude the work so that the report could be submitted to the General Assembly at its forty-fifth session.

(e) Legal aspects of the peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its twenty-eighth session at United Nations Headquarters in New York from 20 March to 7 April 1989,<sup>56</sup> wherein discussions were held on: (a) the elaboration of draft principles relevant to the use of nuclear power sources in outer space; (b) matters relating to the definition and delimitation of outer space and to 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; and (c) consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

Subsequently, the Committee on the Peaceful Uses of Outer Space held its thirty-second session at United Nations Headquarters in New York from 5 to 15 June 1989,<sup>57</sup> wherein it took note of the report of the Legal Subcommittee and recommended that the Subcommittee continue consideration of the above-mentioned items.

At its forty-fourth session, the General Assembly, by its resolution 44/46 of 8 December 1989,<sup>58</sup> adopted on the recommendation of the Special Political Committee,<sup>59</sup> endorsed the report of the Committee on the Peaceful Uses of Outer Space. The Assembly took note that the Legal Subcommittee had continued its work as mandated by the General Assembly in resolution 43/56 of 6 December 1988, and further endorsed the recommendations of the Committee that the Legal Subcommittee should continue consideration of its agenda items. The Assembly also invited States that had not yet become parties to the international treaties governing the uses of outer space<sup>60</sup> to give consideration to ratifying or acceding to those treaties.

(f) Review of the implementation of the Declaration on the Strengthening of International Security

The General Assembly, by its resolution 44/126 of 15 December 1989,<sup>61</sup> adopted on the recommendation of the First Committee,<sup>62</sup> reaffirmed the validity of the Declaration<sup>63</sup> and called upon all States to contribute effectively to its implementation; further called upon all States to refrain from the use or threat of use of force, intervention, interference, aggression, foreign occupation and colonial domination or measures of political and economical coercion which violated the sovereignty, territory integrity, independence and security of other States, as well as the permanent sovereignty of peoples over their natural resources; and stressed that there was a need further to enhance the effectiveness of the Security Council in discharging its principal responsibility of maintaining international peace and security and to enhance the preventive role, authority and enforcement capacity of the Council in accordance with the Charter of the United Nations.

3. ENVIRONMENTAL, ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(a) Environmental questions

The fifteenth session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 15 to 26 May 1989.<sup>64</sup> At the session, the Governing Council adopted a number of decisions, including those on the economic crisis; foreign debt and the environment; desertification; the environmental situation in the occupied Palestinian and other Arab territories; oil pollution in the Red Sea; shared natural resources and legal aspects of offshore mining and drilling; industrial accidents; the International Register of Potentially Toxic Chemicals; international legal instruments in the field of the environment; preparation of an international legal instrument on the biological diversity of the planet; promotion of the transfer of environmental protection technology; and progress on the protection of the ozone layer.

The General Assembly, at its forty-fourth session, adopted a number of resolutions in this area, including resolution 44/228 of 22 December 1989,<sup>65</sup> adopted on the recommendation of the Second Committee,<sup>66</sup> on the convening of the United Nations Conference on Environment and Development in 1992; and resolution 44/229 of the same date,<sup>67</sup> adopted on the recommendation of the Second Committee,<sup>68</sup> on international cooperation in the field of the environment. At the same session, the Assembly also adopted resolution 44/224 of 22 December 1989,<sup>69</sup> adopted on the recommendation of the Second Committee,<sup>70</sup> concerning international cooperation in the monitoring, assessment and anticipation of environmental threats and in assistance in cases of environmental emergency; and resolution 44/226 of the same date,<sup>71</sup> adopted on the recommendation of the Second Committee,<sup>72</sup> regarding traffic in and disposal, control and transboundary movements of toxic and dangerous products and wastes.

(b) Economic questions

(i) *Charter of Economic Rights and Duties of States*

The General Assembly, by its resolution 44/170 of 19 December 1989,<sup>73</sup> adopted on the recommendation of the Second Committee,<sup>74</sup> recalling its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, and resolution 3362 (S-VII) of 16 September 1975, on development and international economic cooperation, which laid the foundations of the new international economic order, took note of the report of the Secretary-General on the implementation of the Charter of the Economic Rights and Duties of States.<sup>75</sup>

(ii) *Towards a durable solution of external debt problems*

The General Assembly, by its resolution 44/205 of 22 December 1989,<sup>76</sup> adopted on the recommendation of the Second Committee,<sup>77</sup> took note of the report of the Secretary-General on the external debt crisis and development<sup>78</sup> and welcomed the contributions of the United Nations Conference on Trade and Development to the international search for a solution to the external debt crisis of developing countries and, in that regard, recalled Trade and Development Board resolutions 165 (S-IX) and 375 (XXXVI) on debt and development problems of developing countries. In the same resolution, the Assembly emphasized that for the reactivation of economic growth and sustained development in developing countries a number of measures were required, including the need for creditor Governments to review tax, regulatory and accounting practices in order to remove unnecessary obstacles with respect to new lending to developing countries and to debt reduction and debt-service reduction in order to ensure that a supportive policy environment might be achieved and maintained.

(iii) *Economic measures as a means of political and economic coercion against developing countries*

By its resolution 44/215 of 22 December 1989,<sup>79</sup> adopted on the recommendation of the Second Committee,<sup>80</sup> the General Assembly took note of the report of the Secretary-General on the topic,<sup>81</sup> and reaffirmed that developed countries should refrain from threatening or applying trade and financial restrictions, blockades, embargoes and other economic sanctions, incompatible with the provisions of the Charter of the United Nations and in violation of undertakings contracted multilaterally and bilaterally, against developing countries as a form of political and economic coercion affecting their political, economic and social development.

(iv) *Economic and technical cooperation among developing countries*

The General Assembly, by its resolution 44/222 of 22 December 1989,<sup>82</sup> adopted on the recommendation of the Second Committee,<sup>83</sup> reaffirmed the continued validity of all the recommendations of the Buenos Aires Plan of Action

for Promoting and Implementing Technical Cooperation among Developing Countries and the importance of technical cooperation among developing countries, and endorsed the decisions adopted by the High-level Committee at its sixth session,<sup>84</sup> taking into account the intergovernmental arrangements envisaged in recommendation 37 of the Buenos Aires Plan of Action.<sup>85</sup>

(v) *International code of conduct on the transfer of technology*

By its resolution 44/216 of 22 December 1989,<sup>86</sup> adopted on the recommendation of the Second Committee,<sup>87</sup> the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the consultations carried out in 1989 relating to the negotiations on an international code of conduct on the transfer of technology.<sup>88</sup>

(c) Social questions

(i) *World social situation*

The General Assembly, by its resolution 44/56 of 8 December 1989,<sup>89</sup> adopted on the recommendation of the Third Committee,<sup>90</sup> bearing in mind the importance of the 1989 Report on the World Social Situation<sup>91</sup> for increasing awareness of the advances made towards the goals of social progress and better standards of living, established in the Charter of the United Nations, and of the obstacles to further progress, reaffirmed the objectives of the Declaration on Social Progress and Development<sup>92</sup> and called for their effective realization as a means of attaining a more equitable world social situation.

(ii) *International cooperation in combating organized crime*

The General Assembly, by its resolution 44/71 of 8 December 1989,<sup>93</sup> adopted on the recommendation of the Third Committee,<sup>94</sup> taking into account the decisions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders relating to organized crime,<sup>95</sup> and recognizing the pivotal role of the Committee on Crime Prevention and Control in providing guidance and the coordinating role to be played by the Centre for Social Development and Humanitarian Affairs of the United Nations, especially by the Crime Prevention and Criminal Justice Branch, in strengthening international cooperation in crime prevention and criminal justice, invited the Economic and Social Council to request the Committee on Crime Prevention and Control, at its eleventh session, to give special attention in its work to promoting international cooperation in combating organized crime.

(iii) *Crime prevention and criminal justice*

By its resolution 44/72 of 8 December 1989,<sup>96</sup> adopted on the recommendation of the Third Committee,<sup>97</sup> the General Assembly took note of the report of the Secretary-General<sup>98</sup> on the implementation of its resolution 43/99 of 8 December 1988, in which, *inter alia*, the recommendations of the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders were summarized;<sup>99</sup> approved the recommendations contained in Economic and Social Council resolutions 1989/68 and

1989/69 of 24 May 1989 and requested the Secretary-General to take appropriate measures to translate them into action; welcomed the adoption of the statute of the United Nations Interregional Crime and Justice Research Institute and the formal establishment, at Kampala, of the African Institute for the Prevention of Crime and the Treatment of Offenders; and took note of the efforts made by the Secretariat towards the establishment of a global crime prevention and criminal justice information network.<sup>100</sup>

(iv) *Implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*<sup>101</sup>

The General Assembly, by its resolution 44/140 of 15 December 1989,<sup>102</sup> adopted on the recommendation of the Third Committee,<sup>103</sup> expressed its appreciation to the Secretary-General for his report on the conclusions of the Conference of Plenipotentiaries that adopted the Convention at Vienna,<sup>104</sup> and urged States to establish legislative and administrative measures so that their internal juridical regulations might be compatible with the spirit and scope of the Convention.

(v) *Global programme of action against illicit narcotic drugs*

By its resolution 44/141 of 15 December 1989,<sup>105</sup> adopted on the recommendation of the Third Committee,<sup>106</sup> the General Assembly resolved that action against drug abuse and illicit production and trafficking in narcotics should, as a collective responsibility, be accorded the highest possible priority by the international community and that the United Nations should be the main focus for concerted action against illicit drugs; and invited States, at the special session of the General Assembly, to consider requesting the Secretary-General to appoint a limited number of experts, representing the various aspects of the drug problem with regard to both developed and developing countries, to develop further the global programme of action as adopted at the special session.

(vi) *International action to combat drug abuse and illicit trafficking*

The General Assembly, by its resolution 44/142 of 15 December 1989,<sup>107</sup> adopted on the recommendation of the Third Committee,<sup>108</sup> endorsed Economic and Social Council resolution 1989/20 of 22 May 1989 and urged Governments and organizations to adhere to the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and to apply, as appropriate, the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control; recognized the importance of international cooperation in facilitating trade flows in support of integrated rural development programmes leading to economically viable alternatives to illicit cultivation, taking into account factors such as access to markets for crop substitution products; and requested the Secretary-General to undertake as soon as possible, with the assistance of a group of intergovernmental experts, a study on the economic and social consequences of illicit traffic in drugs, with a view to analysing, *inter alia*, the following elements:

(a) The magnitude and characteristics of economic transactions related to drug trafficking in all its stages, including production of, traffic in and distribution of illicit drugs, in order to determine the impact of drug-related money transfers and conversion on national economic systems;

(b) Mechanisms which would prevent the use of the banking system and the international financial system in this activity.

(d) Office of the United Nations High Commissioner for Refugees

The General Assembly, by its resolution 44/137 of 15 December 1989,<sup>109</sup> adopted on the recommendation of the Third Committee,<sup>110</sup> having considered the report of the United Nations High Commissioner for Refugees on the activities of his Office,<sup>111</sup> as well as the report of the Executive Committee of the Programme of the High Commissioner on the work of its fortieth Session,<sup>112</sup> and having heard the statements made by the Officer-in-Charge of the Office of the High Commissioner on 15 and 17 November 1989,<sup>113</sup> strongly reaffirmed the fundamental nature of the function of the United Nations High Commissioner for Refugees to provide international protection and the need for States to cooperate fully with his Office in the fulfilment of this function, in particular, by acceding to and fully and effectively implementing the relevant international and regional refugee instruments; endorsed the conclusions on the implementation of the 1951 Convention relating to the Status of Refugees<sup>114</sup> and the 1967 Protocol relating thereto,<sup>115</sup> adopted by the Executive Committee of the Programme of the High Commissioner at its fortieth session; called upon all States to refrain from measures jeopardizing the institution of asylum, in particular the return or expulsion of refugees and asylum-seekers contrary to fundamental prohibitions against those practices, and urged States to continue to admit and receive refugees pending identification of their status and appropriate solutions to their plight; further endorsed the conclusions on refugee children adopted by the Executive Committee of the Programme of the High Commissioner at its fortieth session, in particular on the development and dissemination of the "Guidelines on Refugee Children" and the implementation of a work plan concerning refugee children requiring the active cooperation and collaboration of Governments, United Nations bodies, among them the United Nations Children's Fund, and non-governmental organizations with the Office of the High Commissioner; also endorsed the conclusions on refugee women adopted by the Executive Committee of the Programme of the High Commissioner at its fortieth session, in which the Executive Committee recognized the need to facilitate the participatory role of refugee women and the need for a policy framework and organizational work plan for the implementation of the next stages of bringing issues concerning refugee women into the mainstream of the activities of the Office of the High Commissioner; and further endorsed the conclusions on durable solutions and refugee protection adopted by the Executive Committee of the Programme of the High Commissioner at its fortieth session, in which the Executive Committee recognized the need for the active promotion of solutions by the international community and by countries of origin, asylum and resettlement, in accordance with their respective obligations and responsibilities and the desirability of prevention through, *inter alia*, the observance of human rights, as the best solution.

By the same resolution, the General Assembly noted with appreciation the ongoing work being done by the Office of the High Commissioner to put into practice the concept of development-oriented assistance to refugees and returnees, as initiated at the Second International Conference on Assistance to Refugees in Africa<sup>116</sup> and reaffirmed in the Oslo Declaration and Plan of Action adopted by the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa, as well as in the Declaration and Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons adopted by the International Conference on Central American Refugees, held at Guatemala City from 29 to 31 May 1989,<sup>117</sup> urged the Office to continue that process wherever appropriate, in full cooperation with appropriate international agencies, and urged Governments to support those efforts, being fully aware of the catalytic role of the Office of the High Commissioner; and recognized the importance of the International Conference on Indo-Chinese Refugees, held at Geneva on 13 and 14 June 1989, and the Comprehensive Plan of Action adopted at the Conference,<sup>118</sup> as well as the International Conference on Central American Refugees and the Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons.

(e) Human rights questions

(1) Status and implementation of international instruments

(i) *International Covenants on Human Rights*

In 1989, two States became parties to the International Covenant on Economic, Social and Cultural Rights (1966),<sup>119</sup> bringing the total number of States parties to 92; two States became parties to the International Covenant on Civil and Political Rights (1966),<sup>120</sup> bringing the total number of States parties to 87; and five more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights (1966),<sup>121</sup> bringing the total to 48.

The General Assembly, by its resolution 44/128 of 15 December 1989,<sup>122</sup> adopted on the recommendation of the Third Committee,<sup>123</sup> adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which reads as follows:

**Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**

*The States Parties to the present Protocol,*

*Believing* that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

*Recalling* article 3 of the Universal Declaration of Human Rights,<sup>124</sup> adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

*Noting* that article 6 of the International Covenant on Civil and Political Rights refers to the abolition of the death penalty in terms that strongly suggest that abolition is desirable,

*Convinced* that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

*Desirous* to undertake hereby an international commitment to abolish the death penalty,

*Have agreed* as follows:

#### *Article 1*

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

#### *Article 2*

1. No reservation admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

#### *Article 3*

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

#### *Article 4*

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### *Article 5*

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provision of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### *Article 6*

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

#### *Article 7*

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 8*

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

#### *Article 9*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 10*

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;

(d) The date of the entry into force of the present Protocol under article 8 thereof.

#### *Article 11*

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

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

The General Assembly, by its resolution 44/129 of the same date,<sup>125</sup> adopted on the recommendation of the Third Committee,<sup>126</sup> took note with appreciation of the report of the Human Rights Committee on its thirty-fourth, thirty-fifth and thirty-sixth session.<sup>127</sup>

#### *(ii) Convention on the Prevention and Punishment of the Crime of Genocide (1948)<sup>128</sup>*

In 1989, two more States became parties to the Convention, bringing the total to 100.

By its resolution 44/158 of 15 December 1989,<sup>129</sup> adopted on the recommendation of the Third Committee,<sup>130</sup> the General Assembly took note of the report of the Secretary-General.<sup>131</sup>

#### *(iii) International Convention on the Elimination of All Forms of Racial Discrimination (1966)<sup>132</sup>*

In 1989, no State became party to the Convention, letting stand the total number of States parties at 125.

By its resolution 44/68 of 8 December 1989,<sup>133</sup> adopted on the recommendation of the Third Committee,<sup>134</sup> the General Assembly, welcoming the report of the Committee on the Elimination of All Forms of Racial Discrimination on the work of its thirty-seventh session,<sup>135</sup> and having considered the report of the Secretary-General on the question of financing the expenses of the members of the Committee, invited States parties at their thirteenth meeting to decide on administrative and legal measures to improve the financial situation of the Committee.

#### *(iv) International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)<sup>136</sup>*

In 1989, no State became party to the Convention, letting stand the total number of States parties at 65.

The General Assembly, by its resolution 44/69 of 8 December 1989,<sup>137</sup> adopted on the recommendation of the Third Committee,<sup>138</sup> took note of the report of the Secretary-General on the status of the Convention.<sup>139</sup>

(v) *Convention on the Elimination of All Forms of Discrimination against Women (1979)*<sup>140</sup>

In 1989, five States became parties to the Convention, bringing the total number of States parties to 98.

The General Assembly, by its resolution 44/73 of 8 December 1989,<sup>141</sup> adopted on the recommendation of the Third Committee,<sup>142</sup> took note of the report of the Secretary-General on the status of the Convention;<sup>143</sup> and strongly supported the view of the Committee on the Elimination of Discrimination against Women that the Secretary-General should accord higher priority to strengthening support for the Committee.

(vi) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*<sup>144</sup>

In 1989, 10 more States became parties to the Convention, bringing the total number of States parties to 47.

The General Assembly, by its resolution 44/144 of 15 December 1989,<sup>145</sup> adopted on the recommendation of the Third Committee,<sup>146</sup> took note of the report of the Secretary-General on the status of the Convention,<sup>147</sup> and also noted the adoption by the Committee against Torture of its rules of procedure.<sup>148</sup>

(vii) *Convention on the Rights of the Child (1989)*<sup>149</sup>

The General Assembly, by its resolution 44/25 of 20 November 1989,<sup>150</sup> adopted on the recommendation of the Third Committee,<sup>151</sup> adopted and opened for signature, ratification and accession the Convention on the Rights of the Child, which reads as follows:

**ANNEX**

**Convention on the Rights of the Child**

**PREAMBLE**

*The States Parties to the present Convention,*

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

*Bearing in mind* that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

*Recognizing* that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Recalling* that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

*Convinced* that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

*Recognizing* that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

*Considering* that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

*Bearing in mind* that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924<sup>152</sup> and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959<sup>153</sup> and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

*Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,<sup>154</sup>

*Recalling* the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally;<sup>155</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);<sup>156</sup> and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,<sup>157</sup>

*Recognizing* that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

*Taking due account* of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

*Recognizing* the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

*Have agreed* as follows:

## PART I

### *Article 1*

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

### *Article 2*

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### *Article 3*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### *Article 4*

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

### *Article 5*

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### *Article 6*

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### *Article 7*

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

### *Article 8*

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

### *Article 9*

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review

determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceeding pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by the State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child, or if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### *Article 10*

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### *Article 11*

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### *Article 12*

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### *Article 13*

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### *Article 14*

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### *Article 15*

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### *Article 16*

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

#### *Article 17*

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

#### *Article 18*

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### *Article 19*

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### *Article 20*

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### *Article 21*

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of the child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### *Article 22*

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### *Article 23*

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### *Article 24*

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parent and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### *Article 25*

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### *Article 26*

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of the right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### *Article 27*

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### *Article 28*

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### *Article 29*

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national value of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

*Article 30*

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

*Article 31*

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

*Article 32*

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

*Article 33*

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

*Article 34*

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

*Article 35*

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale or traffic in children for any purpose or in any form.

*Article 36*

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

*Article 37*

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

*Article 38*

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into the armed forces. In recruiting amongst those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

*Article 39*

States Parties shall take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

*Article 40*

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully protected.

4. A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and their offence.

#### *Article 41*

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of States Party; or
- (b) International law enforced for that State.

## PART II

#### *Article 42*

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

#### *Article 43*

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General and at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### *Article 44*

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### *Article 45*

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be present at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of the respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in the areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### PART III

#### *Article 46*

The present Convention shall be open for signature by all States.

#### *Article 47*

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

*Article 48*

The present Convention shall remain open for accession by any State.  
The instrument of accession shall be deposited with the Secretary-General of the United Nations.

*Article 49*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

*Article 50*

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering a voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

*Article 51*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by the States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

*Article 52*

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

*Article 53*

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

#### (2) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

The General Assembly, by its resolution 44/135 of 15 December 1989,<sup>158</sup> adopted on the recommendation of the Third Committee,<sup>159</sup> taking note of the report of the Secretary-General<sup>160</sup> on progress achieved in enhancing the effective functioning of the treaty bodies, pursuant, *inter alia*, to the conclusions and recommendations of the meeting of persons chairing the human rights treaty bodies, held at Geneva from 10 to 14 October 1988,<sup>161</sup> and taking note with appreciation of the study<sup>162</sup> on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights, prepared by an independent expert pursuant to the above-mentioned resolutions, welcomed the appointment by the Secretary-General of a task force to prepare a study on computerizing, as far as possible, the work of the treaty-monitoring bodies, with a view to increasing efficiency and facilitating compliance by States Parties with their reporting obligations and the examination of reports by the treaty bodies; took note of the report of the Secretary-General<sup>163</sup> to the Committee on Economic, Social and Cultural Rights showing the extent of overlapping of issues dealt with in international instruments on human rights, which would assist efforts to reduce, as appropriate, duplication in the supervisory bodies of issues raised with respect to any given State Party; and encouraged the Secretary-General to proceed with the planned finalization of the draft detailed reporting manual to assist States Parties in the fulfilment of their reporting obligations, as well as with its circulation to the various treaty bodies by the end of 1989.

#### (3) Enlargement of the Commission on Human Rights and the further promotion of human rights and fundamental freedoms

In its resolution 44/167 of 15 December 1989,<sup>164</sup> adopted on the recommendation of the Third Committee,<sup>165</sup> the General Assembly decided to recommend that the Economic and Social Council take the necessary steps, at its first regular session of 1990, to expand the membership of the Commission on Human Rights, on the basis of the principle of equitable geographical distribution, for the further promotion of human rights and fundamental freedoms.

#### (4) National institutions for the promotion of human rights

By its resolution 44/64 of 8 December 1989,<sup>166</sup> adopted on the recommendation of the Third Committee,<sup>167</sup> the General Assembly took note of the note of the Secretary-General<sup>168</sup> and encouraged initiatives on the part of the governments and regional, international, intergovernmental and non-governmental organizations intended to strengthen existing national institutions and to establish such institutions where they did not exist.

(5) Human rights in the administration of justice

The General Assembly, in its resolution 44/162 of 15 December 1989,<sup>169</sup> adopted on the recommendation of the Third Committee,<sup>170</sup> invited Member States to pay attention to relevant resolutions of the Economic and Social Council in developing strategies for the practical implementation of United Nations norms and standards on human rights in the administration of justice, as requested by the Assembly in its resolution 43/153 of 8 December 1988.

(6) Scientific and technological developments

The General Assembly adopted several resolutions in this area, including one on the guidelines for the regulation of computerized personal data files in connection with the Subcommission on Prevention of Discrimination and Protection of Minorities.<sup>171</sup> Two resolutions were adopted on 15 December 1989, both entitled “Human rights and scientific and technological developments”.<sup>172</sup>

(7) Summary on arbitrary executions

By its resolution 44/159 of 15 December 1989,<sup>173</sup> adopted on the recommendation of the Third Committee,<sup>174</sup> the General Assembly appealed urgently to Governments, United Nations bodies, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to take effective action to combat and eliminate summary or arbitrary executions, including extra-legal executions; reaffirmed Economic and Social Council resolution 1982/35 of 7 May 1982, in which the Council had decided to appoint a special rapporteur to consider the questions related to summary or arbitrary executions; recalled with satisfaction Council resolution 1988/38 of 7 May 1988, by which the Council had decided to renew the mandate of the Special Rapporteur for two years, while maintaining the annual reporting cycle; and welcomed the recommendations made by the Special Rapporteur in his reports<sup>175</sup> to the Commission on Human Rights at its forty-fourth and forty-fifth sessions with a view to eliminating summary or arbitrary executions.

(8) Questions of enforced or involuntary disappearances

The General Assembly, by its resolution 44/160 of 15 December 1989,<sup>176</sup> adopted on the recommendation of the Third Committee,<sup>177</sup> expressed its appreciation to the Working Group on Enforced or Involuntary Disappearances for its humanitarian work and to those Governments that had cooperated with it; recalled the decision of the Commission on Human Rights, at its forty-fourth session, to extend for two years the term of the mandate of the Working Group, as defined in Commission resolution 20 (XXXVI) of 29 February 1980,<sup>178</sup> while maintaining the principle of annual reporting by the Working Group; and also recalled the provisions made by the Commission on Human Rights in its resolution 1986/55 of 13 March 1986<sup>179</sup> to enable the Working Group to fulfil its mandate with greater efficiency.

(9) Human rights and mass exoduses

By its resolution 44/164 of 15 December 1989,<sup>180</sup> adopted on the recommendation of the Third Committee,<sup>181</sup> the General Assembly took note of the report of the Secretary-General on human rights and mass exoduses,<sup>182</sup> and invited him to inform the Assembly in future reports on the modalities of early-

warning activities to avert new and massive flows of refugees, and specially encouraged the Secretary-General to continue to discharge the task described in the report of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees.<sup>183</sup>

(10) Universal realization of the right of peoples to self-determination

The General Assembly, by its resolution 44/80 of 8 December 1989,<sup>184</sup> adopted on the recommendation of the Third Committee,<sup>185</sup> took note of the report of the Secretary-General.<sup>186</sup> The General Assembly also adopted resolution 44/81 of the same date,<sup>187</sup> adopted on the recommendation of the Third Committee,<sup>188</sup> wherein the Assembly expressed its appreciation to the Special Rapporteur of the Commission on Human Rights for his report on the question of the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination.<sup>189</sup>

(11) Right to development

By its resolution 44/62 of 8 December 1989,<sup>190</sup> adopted on the recommendation of the Third Committee,<sup>191</sup> the General Assembly, recalling the proclamation by the General Assembly at its forty-first session of the Declaration on the Right to Development,<sup>192</sup> and having considered the report of the Working Group of Governmental Experts on the Right to Development<sup>193</sup> and all other relevant documents submitted to the Assembly at its forty-fourth session, endorsed the view of the Commission that there was a need for a continuing evaluation mechanism to ensure the promotion, encouragement and reinforcement of the principles set forth in the Declaration.

(12) Measures to improve the situation and ensure the human rights and dignity of all migrant workers

The General Assembly, by its resolution 44/155 of 15 December 1989,<sup>194</sup> adopted on the recommendation of the Third Committee<sup>195</sup> took note of the two most recent reports of the Working Group on the drafting of an International Convention on the Protection of the Rights of all Migrant Workers and Their Families.<sup>196</sup>

(13) Elimination of all forms of religious intolerance

By its resolution 44/131 of 15 December 1989,<sup>197</sup> adopted on the recommendation of the Third Committee,<sup>198</sup> the General Assembly urged States, in accordance with their respective constitutional systems and with such internationally accepted instruments as the Universal Declaration of Human Rights,<sup>199</sup> the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, to provide, where they had not already done so, adequate constitutional and legal guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies where there was intolerance or discrimination based on religion or belief.

(f) Cultural issues

The General Assembly, by its resolution 44/18 of 6 November 1989,<sup>200</sup> adopted without reference to a Main Committee, recalling the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer

of Ownership of Cultural Property of 1970,<sup>201</sup> recommended that Member States adopt or strengthen the necessary protective legislation with regard to their own heritage and that of other peoples, and appealed to Member States to cooperate closely with the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation and to conclude bilateral agreements for that purpose.

#### 4. LAW OF THE SEA

##### Status of the United Nations Convention on the Law of the Sea (1982)<sup>202</sup>

As of 31 December 1989, the number of States that had ratified the Convention or acceded to it stood at 163.

##### *Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea*<sup>203</sup>

The Preparatory Commission met twice during 1989: it held its seventh session at Kingston from 27 February to 23 March and a summer meeting in New York from 14 August to 1 September 1989. During the debate, the preparation of draft agreements, rules, regulations and procedures for the International Seabed Authority were discussed.

Regarding the International Tribunal for the Law of the Sea, an architectural competition for the design and construction of the Tribunal was held.

##### *Consideration by the General Assembly*

The General Assembly, by its resolution 44/26 of 20 November 1989,<sup>204</sup> adopted without reference to a Main Committee, reiterated its conviction that the early, satisfactory and successful conclusion of the current consultations in the Preparatory Commission on the implementation of the obligations of the registered pioneer investors and the certifying States would constitute an important contribution to the overall progress in the work of the Commission; also expressed its appreciation for the report of the Secretary-General prepared in pursuance of paragraph 14 of General Assembly resolution 43/18 of 1 November 1988<sup>205</sup> and requested him to carry out the activities outlined therein, as well as those aimed at the strengthening of the legal regime of the sea, special emphasis being placed on the work of the Preparatory Commission, including the implementation of resolution II of the Third United Nations Conference on the Law of the Sea; and requested the competent international organizations, in accordance with their respective policies, to intensify financial, technological, organizational and managerial assistance to the developing countries in their efforts to realize the benefits of the comprehensive legal regime established by the Convention and to examine means of strengthening cooperation among themselves and with donor States in the provision of such assistance.

## 5. INTERNATIONAL COURT OF JUSTICE<sup>206, 207</sup>

### Cases before the Court<sup>208</sup>

#### (A) CONTENTIOUS CASES BEFORE THE FULL COURT

##### (i) *Border and Transborder Armed Actions* (*Nicaragua v. Honduras*)

On 21 April 1989 the President of the Court fixed time limits for written proceedings on the merits: 19 September 1989 for the Memorial of Nicaragua and 19 February 1990 for the Counter-Memorial of Honduras.

On 31 August 1989, the President of the Court made an Order (*I.C.J. Reports 1989*, p. 123) extending to 8 December 1989 the time limit for the Memorial and reserving the question of extension of the time limit for the filing of the Counter-Memorial of Honduras. The Memorial of Nicaragua was filed within the prescribed time limit.

By letters dated 13 December 1989, the Agents of both Parties transmitted to the Court the text of an agreement reached by the Presidents of the Central American countries on 12 December 1989 in San Isidro de Coronado, Costa Rica. They referred in particular to paragraph 13 thereof, which recorded the agreement of the President of Nicaragua and the President of Honduras, in the context of arrangements aimed at achieving an extra-judicial settlement of the dispute which is the subject of the proceedings before the Court, to instruct their Agents in the case to communicate immediately, either jointly or separately, the agreement to the Court, and to request the postponement of the date for the fixing of the time limit for the presentation of the Counter-Memorial of Honduras until 11 June 1990.

By an Order of 14 December 1989 (*I.C.J. Reports 1989*, p. 174), the Court decided that the time limit for the filing by Honduras of a Counter-Memorial on the merits was extended from 19 February 1990 to a date to be fixed by an order to be made after 11 June 1990.

Subsequent to the date last mentioned, the President of the Court consulted the Parties, was informed that they did not desire the new time limit for the Counter-Memorial to be fixed for the time being, and informed them that he would so advise the Court.

##### (ii) *Maritime Delimitation in the Area between Greenland and Jan Mayen* (*Denmark v. Norway*)

By an Order of 14 October 1988 (*I.C.J. Reports 1988*, p. 66), the Court, taking into account the views expressed by the Parties, fixed 1 August 1989 as the time limit for the Memorial of Denmark and 15 May 1990 for the Counter-Memorial of Norway. Both the Memorial and Counter-Memorial were filed within the prescribed time limits.

(iii) *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*

On 17 May 1989, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America.

In its Application, the Islamic Republic of Iran referred to:

“The destruction of an Iranian aircraft, Iran Air Airbus A-300B, flight 655, and the killing of its 290 passengers and the crew by two surface-to-air missiles launched from the USS *Vincennes*, a guided-missile cruiser on duty with the United States Persian Gulf/Middle East Force in the Iranian airspace over the Islamic Republic’s territorial waters in the Persian Gulf on 3 July 1988”.

It contended that,

“by its destruction of Iran Air Flight 655 and taking 290 lives, its refusal to compensate the Islamic Republic for damages arising from the loss of the aircraft and individuals on board and its continuous interference with the Persian Gulf aviation”,

the Government of the United States had violated certain provisions of the Chicago Convention on International Civil Aviation (7 December 1944), as amended, and of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (23 September 1971), and that the Council of the International Civil Aviation Organization had erred in its decision of 17 March 1989 concerning the incident.

The Government of the Islamic Republic of Iran requested, in its Application, the Court to adjudge and declare:

“(a) That the ICAO Council decision is erroneous in that the Government of the United States has violated the Chicago Convention, including the preamble, articles 1, 2, 3 *bis* and 44(a) and (h) and annex 15 of the Chicago Convention as well as Recommendation 2.6/1 of the Third Middle East Regional Air Navigation Meeting of ICAO;

(b) That the Government of the United States has violated articles 1, 3 and 10(1) of the Montreal Convention; and

(c) That the Government of the United States is responsible to pay compensation to the Islamic Republic, in the amount to be determined by the Court, as measured by the injuries suffered by the Islamic Republic and the bereaved families as a result of these violations, including additional financial losses which Iran Air and the bereaved families have suffered for the disruption of their activities.”

By an Order of 13 December 1989 (*I.C.J. Reports 1989*, p. 132), the Court, taking into account the views expressed by each of the Parties, fixed 12 June 1990 as the time limit for the filing of the Memorial of the Islamic Republic of Iran and 10 December 1990 for the filing of the Counter-Memorial of the United States of America. Judge Oda appended a declaration to the Order of the Court (*ibid.*, p. 135); Judges Schwebel and Shahabuddeen appended separate opinions (*ibid.*, pp. 136-144 and 145-160).

(iv) *Certain Phosphate Lands in Nauru (Nauru v. Australia)*

On 19 May 1989, the Republic of Nauru filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in a dispute concerning the rehabilitation of certain phosphate lands mined under Australian administration before Nauruan independence.

In its Application, Nauru claimed that Australia had breached the trusteeship obligations it accepted under Article 76 of the Charter of the United Nations and under articles 3 and 5 of the Trusteeship Agreement for Nauru of 1 November 1947. Nauru further claimed that Australia had breached certain obligations towards Nauru under general international law.

The Republic of Nauru requested the Court to adjudge and declare:

“that Australia has incurred an international legal responsibility and is bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered”;

and further

“that the nature and amount of such restitution or reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings”.

By an Order of 18 July 1989 (*I.C.J. Reports 1989*, p. 12), the Court, having ascertained the views of the Parties, fixed 20 April 1990 as the time limit for the Memorial of Nauru and 21 January 1991 for the Counter-Memorial of Australia. The Memorial was filed within the prescribed time limit.

(v) *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*

On 23 August 1989 the Republic of Guinea-Bissau filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal.

The Application explained that, notwithstanding the negotiations carried on from 1977 onwards, the two States had been unable to reach agreement regarding the settlement of a dispute concerning the maritime delimitation to be effected between them and for that reason had jointly consented, by an Arbitration Agreement dated 12 March 1985, to submit that dispute to an arbitration tribunal composed of three members.

It further indicated that, according to the terms of article 2 of that Agreement, the Tribunal was asked to rule on the following twofold question:

“(1) Does the agreement concluded by an exchange of letters [between France and Portugal] on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?

“(2) In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?”

The Application added that it had been specified, in article 9 of the Agreement, that the Tribunal would inform the two Governments of its decision regarding the question set forth in article 2, and that that decision should include the drawing on a map of the frontier line — the Application emphasized that the Agreement used the word “line” in the singular.

According to the Application, the Tribunal communicated to the Parties on 31 July 1989 a “text that was supposed to serve as an award”, but did not in fact amount to one.

Guinea-Bissau, contending that “a new dispute thus came into existence, relating to the applicability of the text issued by way of award on 31 July 1989”, therefore asked the Court to adjudge and declare:

“ — that [the] so-called decision [of the Tribunal] is inexistent in view of the fact that one of the two arbitrators making up the appearance of a majority in favour of the text of the ‘award’, has, by a declaration appended to it, expressed a view in contradiction with the one apparently adopted by the vote;

— subsidiarily, that that so-called decision is null and void, as the Tribunal did not give a complete answer to the two-fold question raised by the Agreement and so did not arrive at a single delimitation line duly recorded on a map, and as it has not given the reasons for the restrictions thus improperly placed upon its jurisdiction;

— that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989”.

Guinea-Bissau chose Mr. Hubert Thierry to sit as judge ad hoc. At the public sitting of 12 February 1990 (see below), Judge ad hoc Thierry made the solemn declaration required by the Statute and Rules of Court.

By an Order of 1 November 1989 (*I.C.J. Reports 1989*, p. 126), the Court, having ascertained the views of the Parties, fixed 2 May 1990 as the time limit for the filing of the Memorial of Guinea-Bissau and 31 October 1990 for the filing of the Counter-Memorial of Senegal. The Memorial was filed within the prescribed time limit.

## (B) CONTENTIOUS CASE BEFORE A CHAMBER

### (i) *Land, Island and Maritime Frontier Dispute* (*El Salvador/Honduras*)

In an Order of 13 December 1989 (*I.C.J. Reports 1989*, p. 162), adopted unanimously, the Court took note of the death of Judge ad hoc Virally, of the nomination on 9 February 1989 by Honduras of Mr. Santiago Torres Bernárdez to replace him and of a number of communications from the Parties, noted that it appeared that El Salvador had no objection to the choice of Mr. Torres

Bernárdez, and that no objection appeared to the Court itself, and declared the Chamber to be composed as follows: Judges José Sette-Camara (President of the Chamber), Shigeru Oda and Sir Robert Jennings; Judges ad hoc Nicolas Valticos and Santiago Torres Bernárdez. Judge Shahabuddeen appended a separate opinion to the Order (*I.C.J. Reports 1989*, pp. 165-172). Judge Torres Bernárdez made the solemn declaration required by the Statute and Rules of Court at the first public sitting held by the Chamber thereafter, on 5 June 1990.

The written proceedings in the case have taken the following course: Each party filed a Memorial within the time limit of 1 June 1988 which had been fixed therefor by the Court after ascertainment of the Parties' views. The Parties having requested, by virtue of the Special Agreement, that the written proceedings should also consist of Counter-Memorials and Replies, the Chamber authorized the filing of such pleadings and fixed time limits accordingly. At the successive requests of the Parties, the President of the Chamber extended those time limits, by Orders made on 12 January 1989 and 13 December 1989 (*I.C.J. Reports 1989*, pp. 3 and 129), to 10 February 1989 and 12 January 1990 respectively. Each Party's Counter-Memorial and Reply were filed within the time limits as thus extended.

On 17 November 1989, Nicaragua addressed to the Court an Application under Article 62 of the Statute for permission to intervene in the case. Nicaragua stated that it had no intention of intervening in respect of the dispute concerning the land boundary between El Salvador and Honduras, its object being:

“*First*, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.

“*Secondly*, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determinations of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua, and Nicaragua intends to subject itself to the binding effect of the decision to be given.”

Nicaragua further expressed the view that its request for permission to intervene was a matter exclusively within the procedural mandate of the full Court.

(ii) *Elettronica Sicula S.p.A. (ELSI)*

The oral proceedings took place between 13 February and 2 March 1989. During 12 public sittings statements were made on behalf of the United States and Italy. Three witnesses and an expert called by the United States and one expert called by Italy gave evidence before the Chamber. Questions were put to the Parties, and to the witnesses and experts, by the President and Members of the Chamber.

On 20 July 1989, at a public sitting, the Chamber delivered its judgment (*I.C.J. Reports 1989*, p. 15). An analysis of the judgment is given below, followed by the text of the operative clause.

*Proceedings and submissions of the Parties* (paras. 1-12)

The Chamber began by recapitulating the various stages of the proceedings, recalling that the case concerned a dispute in which the United States of America claimed that Italy, by its actions with respect to an Italian company, *Elettronica Sicula S.p.A. (ELSI)*, which was wholly owned by two United States corporations, the Raytheon Company (“Raytheon”) and The Machlett Laboratories Incorporated (“Machlett”), had violated certain provisions of the Treaty of Friendship, Commerce and Navigation between the two Parties, concluded in Rome on 2 February 1948 (“the FCN Treaty”) and the Supplementary Agreement thereto concluded on 26 September 1951.

*Origins and development of the dispute* (paras. 13-15)

In 1967, Raytheon held 99.16 per cent. of the shares in ELSI, the remaining 0.84 per cent. being held by Machlett, which was a wholly-owned subsidiary of Raytheon. ELSI was established in Palermo, Sicily, where it had a plant for the production of electronic components: in 1967 it had a workforce of slightly under 900 employees. Its five major product lines were microwave tubes, cathode-ray tubes, semiconductor rectifiers, X-ray tubes and surge arresters.

From 1964 to 1966 ELSI made an operating profit, but this was insufficient to offset its debt expense or accumulated losses. In February 1967, according to the United States, Raytheon began taking steps to endeavour to make ELSI self-sufficient.

At the same time, numerous meetings were held between February 1967 and March 1968 with Italian officials and companies, the purpose of which was stated to be to find for ELSI an Italian partner with economic power and influence, and to explore the possibilities of other governmental support.

When it became apparent that those discussions were unlikely to lead to a mutually satisfactory arrangement, Raytheon and Machlett, as shareholders in ELSI, began seriously to plan to close and liquidate ELSI to minimize their losses. An asset analysis was prepared by the Chief Financial Officer of Raytheon showing the expected position on 31 March 1968. This showed the book value of ELSI’s assets as 18,640 million lire; as explained in his affidavit filed in the current proceedings, it also showed “the minimum prospects of recovery of values which we could be sure of, in order to ensure an orderly liquidation process”, and the total realizable value of the assets on this basis (the “quick-sale value”) was calculated to be 10,838.8 million lire. The total debt of the company at 30 September 1967 was 13,123.9 million lire. The “orderly liquidation” contemplated was an operation for the sale of ELSI’s business or its assets, en bloc or separately, and the discharge of its debts, fully or otherwise, out of the proceeds, the whole operation being under ELSI’s own management. It was contemplated that all creditors would be paid in full, or, if only the “quick-sale value” was realized, the unsecured major creditors would receive about 50 per cent. of their claims, and that this would be acceptable as more favourable than what could be expected in a bankruptcy.

On 28 March 1968 it was decided that the Company should cease operations. Meetings with Italian officials, however, continued, at which the Italian authority rigorously pressed ELSI not to close the plant and not to dismiss the workforce. On 29 March 1968 letters of dismissal were mailed to the employees of ELSI.

On 1 April 1968, the Mayor of Palermo issued an order, effective immediately, requisitioning ELSI's plant and related assets for a period of six months.

The Parties disagreed over whether, immediately prior to the requisition order, there had been any occupation of ELSI's plant by the employees, but it was common ground that the plant was so occupied during the period immediately following the requisition.

On 19 April 1968, ELSI brought an administrative appeal against the requisition to the Prefect of Palermo.

A bankruptcy petition was filed by ELSI on 26 April 1968, referring to the requisition as the reason why the company had lost control of the plant and could not avail itself of an immediate source of liquid funds, and mentioning payments which had become due and could not be met. A decree of bankruptcy was issued by the *Tribunale di Palermo* on 16 May 1968.

The administrative appeal filed by ELSI against the requisition order was determined by the Prefect of Palermo by a decision given on 22 August 1969, by which he annulled the requisition order. The Parties were at issue on the question whether this period of time was or was not normal for an appeal of this character.

On 16 June 1970, the trustee in bankruptcy had brought proceedings in the Court of Palermo against the Minister of the Interior of Italy and the Mayor of Palermo for damages resulting from the requisition. The Court of Appeal of Palermo awarded damages for loss of use of the plant during the period of the requisition.

The bankruptcy proceedings closed in November 1985. Of the amount realized, no surplus remained for distribution to the shareholders, Raytheon and Machlett.

I. *Jurisdiction of the Court and admissibility of the Application; rule of exhaustion of local remedies* (paras. 48-63)

An objection to the admissibility of the instant case was entered by Italy in its Counter-Memorial on the ground of an alleged failure of the two United States corporations, Raytheon and Machlett, on whose behalf the United States claim was brought, to exhaust the local remedies available to them in Italy. The Parties agreed that this objection be heard and determined in the framework of the merits.

The United States questioned whether the rule of the exhaustion of local remedies could apply at all, as article XXVI (the jurisdictional clause) of the FCN Treaty was categorical in its terms, and unqualified by any reference to the local remedies rule. It also argued that insofar as its claim was for a declaratory judgement of a direct injury to the United States by infringement of its rights under the FCN treaty, independent of the dispute over the alleged violation in respect of Raytheon and Machlett, the local remedies rule was inapplicable. The Chamber rejected these arguments. The United States also observed that at no time until the filing of the Respondent's Counter-Memorial in the proceedings had Italy suggested that Raytheon and Machlett should sue in the Italian courts on the basis of the Treaty, and argued that this amounted to an estoppel. The Chamber, however, found that there were difficulties in constructing an estoppel from a mere failure to mention a matter at a particular point in somewhat desultory diplomatic exchanges.

On the question whether local remedies were, or were not, exhausted by Raytheon and Machlett, the Chamber noted that the damage claimed in that case to have been caused to Raytheon and Machlett was said to have resulted from the “losses incurred by ELSI’s owners as a result of the involuntary change in the manner of disposing of ELSI’s assets”: and it was the requisition order that was said to have caused this change, and which was therefore at the core of the United States complaint. It was therefore right that local remedies be pursued by ELSI itself.

After examining the action taken by ELSI in its appeal against the requisition order and, later, by the trustee in bankruptcy, who claimed damages for the requisition, the Chamber considered that the municipal courts had been fully seized of the matter which was the substance of the Applicant’s claim before the Chamber. Italy, however, contended that it was possible to cite the provision of the treaties themselves before the municipal courts, in conjunction with article 2043 of the Italian Civil Code, which was never done.

After examining the jurisprudence cited by Italy, the Chamber concluded that it was impossible to deduce what the attitude of the Italian courts would have been if such a claim had been brought. Since it was for Italy to show the existence of a local remedy, and as Italy had not been able to satisfy the Chamber that there clearly remained some remedy which Raytheon and Machlett, independently of ELSI, and of ELSI’s trustee in bankruptcy, ought to have pursued and exhausted, the Chamber rejected the objection of non-exhaustion of local remedies.

II. *Alleged breaches of the Treaty of Friendship, Commerce and Navigation and its Supplementary Agreement* (paras. 64-135)

Paragraph 1 of the United States final submission claimed that:

“(1) the Respondent violated the international legal obligations which it undertook by the Treaty of Friendship, Commerce and Navigation between the two countries, and the Supplement thereto, and in particular, violated articles III, V, VII of the Treaty and article I of the Supplement”.

The acts of the Respondent which were alleged to violated its treaty obligations were described by the Applicant’s counsel in terms which the Chamber found convenient to cite at this point:

“First, the Respondent violated its legal obligations when it unlawfully requisitioned the ELSI plant on 1 April 1968 which denied the ELSI stockholders their direct right to liquidate the ELSI assets in an orderly fashion. Second, the Respondent violated its obligations when it allowed ELSI workers to occupy the plant. Third, the Respondent violated its obligations when it unreasonably delayed ruling on the lawfulness of the requisition for 16 months until immediately after the ELSI plant, equipment and work-in-process had all been acquired by ELTEL. Fourth and finally, the Respondent violated its obligations when it interfered with the ELSI bankruptcy proceedings, which allowed the Respondent to realize its previously expressed intention of acquiring ELSI for a price far less than its fair market value.”

The most important of these acts of the Respondent which the Applicant claimed to have been in violation of the FCN Treaty was the requisition of the ELSI plant by the Mayor of Palermo on 1 April 1968, which was claimed to have frustrated the plan for what the Applicant termed an “orderly liquidation” of the company. It was considered fair to describe the other impugned acts of the Respondent as ancillary to that core claim based on the requisition and its effects.

A. *Article III of FCN Treaty* (paras. 68-101)

The allegation by the United States of a violation of article III of the FCN Treaty by Italy related to the first sentence of the second paragraph, which provides:

“The nationals, corporations and associations of either High Contracting Party shall be permitted, in conformity with the applicable laws and regulations within the territories of the other High Contracting Party, to organize, control and manage corporations and associations of such other High Contracting Party for engaging in commercial, manufacturing, processing, mining, educational, philanthropic, religious and scientific activities.”

In terms of the instant case, the effect of this sentence was that Raytheon and Machlett were to be permitted, in conformity with the applicable laws and regulations within the territory of Italy, to organize, control and manage ELSI. The claim of the United States focused on the right to “control and manage”. The Chamber considered whether there was a violation of this article if, as the United States alleged, the requisition had had the effect of depriving ELSI of both the right and practical possibility of selling off its plant and assets for satisfaction of its liabilities to its creditors and satisfaction of its shareholders.

A requisition of that kind should normally amount to a deprivation, at least in important part, of the right to control and manage. The reference in article III to conformity with “the applicable laws and regulations” could not mean that, if an act was in conformity with the municipal law and regulations (as, according to Italy, the requisition was), that would of itself exclude any possibility that it was an act in breach of the FCN Treaty. Compliance with municipal law and compliance with the provisions of a treaty were different questions.

The treaty right to be permitted to control and manage could not be interpreted as a warranty that the normal exercise of control and management should never be disturbed; every system of law had to provide, for example, for interferences with the normal exercise of rights during public emergencies and the like.

The requisition had been found both by the Prefect and by the Court of Appeal of Palermo not to have been justified in the applicable local law; if therefore, as seemed to be the case, it had deprived Raytheon and Machlett of what were at that time their most crucial rights to control and manage, it might have appeared *prima facie* a violation of article III, paragraph 2.

According to the Respondent, however, Raytheon and Machlett were, because of ELSI’s financial position, already naked of those very rights of control and management of which they claimed to have been deprived. The Chamber had therefore to consider what effect, if any, the financial position of ELSI might have had in that respect, first as a practical matter, and then also as a question of Italian law.

The essence of the Applicant's claim had been throughout that Raytheon and Machlett, which controlled ELSI, were by the requisition deprived of the right, and of the practical possibility, of conducting an orderly liquidation of ELSI's assets, the plan for which liquidation was however very much bound up with the financial state of ELSI.

After noting that the orderly liquidation was an alternative of the aim of keeping the place going, and that it was hoped that the threat of closure might bring pressure to bear on the Italian authorities, and that the Italian authorities did not come to the rescue on terms acceptable to ELSI's management, the Chamber observed that the crucial question was whether Raytheon, on the eve of the requisition, and after the closure of the plant and the dismissal, on 29 March 1968, of the majority of the employees, was in a position to carry out its orderly liquidation plan, even apart from its alleged frustration by the requisition.

The successful implementation of a plan of orderly liquidation would have depended upon a number of factors not under the control of ELSI's management. Evidence had been produced by the Applicant that Raytheon was prepared to supply cash flow and other assistance necessary to effect the orderly liquidation, and the Chamber saw no reason to question that Raytheon had entered or was ready to enter into such a commitment; but other facts gave rise to some doubt.

After considering those other factors governing the matter — the preparedness of creditors to cooperate in an orderly liquidation, especially in case of inequality among them, the likelihood of the sale of the assets realizing enough to pay all creditors in full, the claims of the dismissed employees, the difficulty of obtaining the best price for assets sold with a minimum delay, in view of the trouble likely at the plant when the closure plans became known, and the attitude of the Sicilian administration — the Chamber concluded that all those factors pointed towards a conclusion that the feasibility at 31 March 1968 of a plan of orderly liquidation, an essential link in the chain of reasoning upon which the United States' claim rested, had not been sufficiently established.

Finally, there was, beside the practicalities, the position in Italian bankruptcy law. If ELSI was in a state of legal insolvency at 31 March 1968 and if, as contended by Italy, a state of insolvency entailed an obligation on the company to petition for its own bankruptcy, then the relevant rights of control and management would not have existed to be protected by the FCN Treaty. While not essential to the Chamber's conclusion stated above, an assessment of ELSI's solvency as a matter of Italian law was thus highly material.

After considering the decision of the Prefect and judgements of the courts of Palermo, the Chamber observed that whether their findings were to be regarded as determinations as a matter of Italian law that ELSI was insolvent on 31 March 1968, or as findings that the financial position of ELSI on that date was so desperate that it was past saving, made no difference; they reinforced the conclusion that the feasibility of an orderly liquidation was not sufficiently established.

If, therefore, the management of ELSI, at the material time, had no practical possibility of carrying out successfully a scheme of orderly liquidation under its own management, and might indeed already have forfeited any right to do so under Italian law, it could not be said that it was the requisition that deprived it of that faculty of control and management. There were several causes

acting together that had led to the disaster of ELSI, of which the effects of the requisition might no doubt have been one. The possibility of orderly liquidation was purely a matter of speculation. The Chamber was therefore unable to see here anything which could be said to amount to a violation by Italy of article III, paragraph 2, of the FCN Treaty.

B. *Article V, paragraphs 1 and 3, of FCN Treaty* (paras. 102-112)

The Applicant's claim under paragraphs 1 and 3 of article V of the FCN Treaty was concerned with protection and security of nationals and their property.

Paragraph 1 of article V provides for "the most constant protection and security" for nationals of each High Contracting Party, both "for their persons and property"; and also that, in relation to property, the term "nationals" shall be construed to "include corporations and associations"; and in defining the nature of the protection, the required standard is established by a reference to "the full protection and security required by international law". Paragraph 3 elaborated this notion of protection and security further, by requiring no less than the standard accorded to the nationals, corporations and associations of the other High Contracting Party; and not less than that accorded to the nationals, corporations and associations of any third country. It was, accordingly, considered that there were three different standards of protection, all of which had to be satisfied.

A breach of these provisions was seen by the Applicant to have been committed when the Respondent "allowed ELSI workers to occupy the plant". While noting the contention of Italy that the relevant "property", the plant in Palermo, belonged not to Raytheon and Machlett but to the Italian company ELSI, the Chamber examined the matter on the basis of the United States argument that the "property" to be protected was ELSI itself.

The reference in article V to the provision of "constant protection and security" could not be construed as the giving of a warranty that property should never in any circumstances be occupied or disturbed. In any event, considering that it was not established that any deterioration in the plant and machinery was attributable to the presence of the workers, and that the authorities were able not merely to protect the plant but even in some measure to continue production, the protection provided by the authorities could not be regarded as falling below "the full protection and security required by international law", or indeed as less than the national or third-State standards. The mere fact that the occupation was referred to by the Court of Appeal of Palermo as unlawful did not, in the Chamber's view, necessarily mean that the protection afforded fell short of the national standard to which the FCN Treaty refers. The essential question was whether the local law, either in its terms or its application, had treated United States nationals less well than Italian nationals. This, in the opinion of the Chamber, had not been shown. The Chamber, therefore, had to reject the charge of any violation of article V, paragraphs 1 and 3.

The Applicant saw a further breach of article V, paragraphs 1 and 3, of the FCN Treaty, in the time taken — 16 months — before the Prefect ruled on ELSI's administrative appeal against the Mayor's requisition order. For the reasons already explained in connection with article III, the Chamber rejected the contention that, had there been a speedy decision by the Prefect, the bankruptcy might have been avoided.

With regard to the alternative contention that Italy was obliged to protect ELSI from the deleterious effects of the requisition, *inter alia*, by providing an adequate method of overturning it, the Chamber observed that under article V the “full protection and security” should conform to the minimum international standard, supplemented by the criteria of national treatment and most-favoured-nation treatment. It was led to doubt whether in all the circumstances, the delay in the Prefect’s ruling could be regarded as falling below the minimum international standard. As regards the contention of failure to accord a national standard of protection, the Chamber, though not entirely convinced by the Respondent’s contention that such a lengthy delay as in ELSI’s case was quite usual, was nevertheless not satisfied that a “national standard” of more rapid determination of administrative appeals had been shown to have existed. It was therefore unable to see in that delay a violation of paragraphs 1 and 3 of article V of the FCN Treaty.

C. *Article V, paragraph 2, of FCN Treaty* (paras. 113-119)

The first sentence of article V, paragraph 2, of the FCN Treaty provides as follows:

“2. The property of nationals, corporations and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation.”

The Chamber noted a difference in terminology between the two authentic texts (English and Italian): the word “taking” was wider and looser than “*espropriazione*”.

In the contention of the United States, first, both the Respondent’s act of requisitioning the ELSI plant and its subsequent acts in acquiring the plant, assets, and work-in-progress, singly and in combination, constituted takings of property without due process of law and just compensation. Secondly, the United States claimed that, by interference with the bankruptcy proceedings, the Respondent proceeded through the ELTEL Company to acquire the ELSI plant and assets for less than fair market value.

The Chamber observed that the charge based on the combination of the requisition and subsequent acts was really that the requisition was the beginning of a process that led to the acquisition of the bulk of the assets of ELSI for far less than market value. What was thus alleged by the Applicant, if not an overt expropriation, might be regarded as a disguised expropriation because, at the end of the process, it was indeed title to property itself that was at stake. The United States had, however, during the oral proceedings disavowed any allegation that the Italian authorities were parties to a conspiracy to bring about the change of ownership.

Assuming though without deciding that “*espropriazione*” might be wide enough to include a disguised expropriation account had further to be taken of the Protocol appended to the FCN Treaty, extending article V, paragraph 2, to “interests held directly or indirectly by nationals” of the Parties.

The Chamber found that it was not possible in that connection to ignore ELSI’s financial situation and the consequent decision to close the plant and put an end to the company’s activities. It could not regard any of the acts com-

plained of which occurred subsequently to the bankruptcy as breaches of article V, paragraph 2, in the absence of any evidence of collusion, which was no longer even alleged. Even if it were possible to see the requisition as having been designed to bring about bankruptcy as a step towards disguised expropriation, then, if ELSI was already under an obligation to file a petition of bankruptcy or in such a financial state that such a petition could not be long delayed, the requisition was an act of supererogation. Furthermore this requisition, independently of the motives which allegedly inspired it, being by its terms for a limited period, and liable to be overturned by administrative appeal, could not, in the Chamber's view, amount to a "taking" contrary to article V unless it constituted a significant deprivation of Raytheon and Machlett's interest in ELSI's plant; as might have been the case if, while ELSI remained solvent, the requisition had been extended and the hearing of the administrative appeal delayed. In fact the bankruptcy of ELSI transformed the situation less than a month after the requisition. The requisition could therefore only be regarded as significant for this purpose if it caused or triggered the bankruptcy. This was precisely the proposition, which was irreconcilable with the findings of the municipal courts, and with the Chamber's conclusions above.

D. *Article I of Supplementary Agreement to FCN Treaty* (paras. 120-130)

Article I of the Supplementary Agreement to the FCN Treaty, which confers rights not qualified by national or most-favoured-nation standards, provides as follows:

"The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: (a) preventing their effective control and management of enterprises which they have been permitted to establish or acquired therein; or (b) impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise. Each High Contracting Party undertakes not to discriminate against nationals, corporations and associations of the other High Contracting Party as to their obtaining under normal terms the capital, manufacturing processes, skills and technology which may be needed for economic development."

The answer to the Applicant's claim that the requisition was an arbitrary or discriminatory act which violated both the "(a)" and the "(b)" clauses of the article was the absence of a sufficiently palpable connection between the effects of the requisition and the failure of ELSI to carry out its planned orderly liquidation. However, the Chamber considered that the effect of the word "particularly", introducing the clauses "(a)" and "(b)", suggested that the prohibition of arbitrary (and discriminatory) acts was not confined to those resulting in the situations described in "(a)" and "(b)", but was in effect a prohibition of such acts whether or not they produced such results. It was necessary, therefore, to examine whether the requisition was, or was not, an arbitrary or discriminatory act of itself.

The United States claimed that there was “discrimination” in favour of IRI, an entity controlled by Italy; there was however, no sufficient evidence before the Chamber to support the suggestion that there was a plan to favour IRI at the expense of ELSI, and the claim of “discriminatory measures” in the sense of the Supplementary Agreement had therefore to be rejected.

In order to show that the requisition order was an “arbitrary” act in the sense of the Supplementary Agreement, the Applicant had relied (*inter alia*) upon the status of that order in Italian law. It contended that the requisition “was precisely the sort of arbitrary action which was prohibited” by article I of the Supplementary Agreement, in that “under both the Treaty and Italian law, the requisition was unreasonable and improperly motivated”; it was “found to be illegal under Italian domestic law for precisely this reason”.

Though examining the decision of the Prefect of Palermo and the Court of Appeal of Palermo, the Chamber observed that the fact that an act of a public authority might have been unlawful in municipal law did not necessarily mean that that act was unlawful in international law. By itself, and without more, unlawfulness could not be said to amount to arbitrariness. The qualification given to an act by a municipal authority (e.g., as unjustified, or unreasonable or arbitrary) might be a valuable indication, but it did not follow that the act was necessarily to be classed as arbitrary in international law.

Neither the grounds given by the Prefect for annulling the requisition nor the analysis by the Court of Appeal of Palermo of the Prefect’s decision as a finding that the Mayor’s requisition was an excess of power with the result that the order was subject to a defect of lawfulness signified, in the Chamber’s view, necessarily and in itself any view by the Prefect, or by the Court of Appeal of Palermo, that the Mayor’s act was unreasonable or arbitrary. Arbitrariness was a wilful disregard of due process of law, an act which shocked or at least surprised a sense of juridical propriety. Nothing in the decision of the Prefect, or in the judgement of the Court of Appeal of Palermo, conveyed any indication that the requisition order of the Mayor was to be regarded in that light. Independently of the findings of the Prefect or of the local courts, the Chamber considered that it could not be said to have been unreasonable or merely capricious for the Mayor to seek to use his powers in an attempt to do something about the situation in Palermo at the moment of the requisition. The Mayor’s order was consciously made in the context of an operating system of law and of appropriate remedies of appeal and treated as such by the superior administrative authority and the local courts. These were not at all the marks of an “arbitrary” act. Accordingly, there was no violation of article I of the Supplementary Agreement.

E. *Article VII of FCN Treaty* (paras. 131-135)

Article VII of the FCN Treaty, in four paragraphs, was principally concerned with ensuring the right “to acquire, own and dispose of immovable property or interests therein [in the Italian text, “*beni immobili o ... altri diritti reali*”] within the territories of the other High Contracting Party”.

The Chamber noted the controversy between the Parties turning on the difference in meaning between the English “interests” and the Italian “*diritti reali*”, and the problems arising out of the qualification by the Treaty of the group of rights conferred by this article, laying down alternative standards, and

subject to a proviso. The Chamber considered, however, that for the application of this article there remained precisely the same difficulty as in trying to apply article III, paragraph 2, of the FCN Treaty: what really deprived Raytheon and Machlett, as shareholders, of their right to dispose of ELSI's real property was not the requisition but the precarious financial state of ELSI, ultimately leading inescapably to bankruptcy. In bankruptcy the right to dispose of the property of a corporation no longer belonged even to the company, but to the trustee acting for it; and the Chamber had already decided that ELSI was on a course to bankruptcy even before the requisition. The Chamber therefore did not find that article VII of the FCN Treaty had been violated.

Having found that the Respondent had not violated the FCN Treaty in the manner asserted by the Applicant, it followed that the Chamber rejected also the claim for reparation made in the Submissions of the Applicant.

*Operative clause* (para. 137)

“THE CHAMBER

(1) Unanimously,

*Rejects* the objection presented by the Italian Republic to the admissibility of the Application filed in this case by the United States of America on 6 February 1987;

(2) By four votes to one,

*Finds* that the Italian Republic has not committed any of the breaches, alleged in said Application, of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Rome on 2 February 1948, or of the Agreement Supplementing that Treaty signed by the Parties at Washington on 26 September 1951.

IN FAVOUR: *President* Ruda; *Judges* Oda, Ago and Sir Robert Jennings;

AGAINST: *Judge* Schwebel.

(3) By four votes to one,

*Rejects*, accordingly, the claim for reparation made against the Republic of Italy by the United States of America.

IN FAVOUR: *President* Ruda; *Judges* Oda, Ago and Sir Robert Jennings;

AGAINST: *Judge* Schwebel.”

Judge Oda appended a separate opinion (*I.C.J. Reports 1989*, pp. 83-93) and Judge Schwebel a dissenting opinion (*I.C.J. Reports 1989*, pp. 94-121) to the judgment.

(C) REQUEST FOR ADVISORY OPINION

*Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations\**

Consideration by the General Assembly

In its resolution 44/43 of 7 December 1989,<sup>209</sup> adopted without reference to a Main Committee, the General Assembly reiterated once again its urgent call for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986 in the case of “Military and Paramilitary Activities in and against Nicaragua”, in conformity with the relevant provisions of the Charter of the United Nations.

6. INTERNATIONAL LAW COMMISSION<sup>210</sup>

FORTY-FIRST SESSION OF THE COMMISSION<sup>211</sup>

The International Law Commission held its forty-first session at Geneva from 2 May to 21 July 1989.

During the session, the Commission considered the Special Rapporteur’s eighth report on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.<sup>212</sup> The Commission adopted the final text of a set of 32 draft articles on the topic, as well as a draft optional protocol on the status of the courier and the bag of special missions and a draft optional protocol on the status of the courier and the bag of international organizations of a universal character.

Regarding the topic “Draft code of crimes against the peace and security of mankind”, the Commission had before it the seventh report of the Special Rapporteur<sup>213</sup> and at the end of the debate it was generally agreed that each crime in the draft code should be dealt with in a separate provision.

Owing to lack of time, the Commission was unable to consider the Special Rapporteur’s second report<sup>214</sup> on the topic of “State responsibility” and deferred its consideration to the next session.

For the topic “International liability for injurious consequences arising out of acts not prohibited by international law”, the Commission considered the Special Rapporteur’s fifth report.<sup>215</sup>

Concerning “Jurisdictional immunities of States and their property”, the Commission had before it the second report of the Special Rapporteur,<sup>216</sup> which it considered together with the preliminary report<sup>217</sup> for the purpose of conducting the second reading of the draft articles.

The Commission also considered the topic of “The law of the non-navigational uses of international watercourses” and had before it the fifth report of the Special Rapporteur.<sup>218</sup>

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\*See chap. VII.

The Commission furthermore resumed its work on the topic “Relations between States and international organizations (second part of the topic)”, and had before it the fourth report of the Special Rapporteur.<sup>219</sup>

#### *Consideration by the General Assembly*

At the forty-fourth session, the General Assembly had before it the report of the International Law Commission on the work of its forty-first session.<sup>220</sup> By its resolution 44/35 of 4 December 1989,<sup>221</sup> adopted on the recommendation of the Sixth Committee,<sup>222</sup> the Assembly took note of the report, and urged Governments and, as appropriate, international organizations to respond in writing as fully and expeditiously as possible to the requests of the International Law Commission for comments, observations and replies to questionnaires and for materials on topics in its programme of work.

The General Assembly also adopted resolutions on the draft Code of Crimes against the Peace and Security of Mankind<sup>223</sup> and on the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto.<sup>224</sup>

## 7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW<sup>225</sup>

### TWENTY-SECOND SESSION OF THE COMMISSION<sup>226</sup>

The United Nations Commission on International Trade Law (UNCITRAL) held its twenty-second session at Vienna from 16 May to 2 June 1989.

During the session, the Commission reviewed the draft Convention on the Liability of Operators of Transport Terminals in International Trade and recommended that the General Assembly should convene an international conference on plenipotentiaries to conclude the Convention.

Concerning guarantees and stand-by letters of credit, the Commission had before it the report of the Working Group on International Contract Practices on the work of its twelfth session,<sup>227</sup> wherein the Working Group’s review of the International Chamber of Commerce draft Uniform Rules for Guarantees was set out. After deliberation, the Commission decided to begin work on a uniform law that would respond to an urgent need for uniform legislation in the field of guarantees and stand-by letters of credit.

On the subject of international counter-trade, the Commission had before it a report entitled “Draft outline of the possible content and structure of a legal guide on drawing up international counter-trade contracts”.<sup>228</sup> After discussion, which included views as to whether the Commission should continue work in the area, the Commission requested the secretariat to prepare for the next session of the Commission draft chapters of such a legal guide.

The Commission also had before it a report of the Secretary-General on current activities of international organizations related to the harmonization and unification of international trade law.<sup>229</sup>

That report updated the information contained in an earlier report on the same subject submitted to the Commission at its nineteenth session.<sup>230</sup> The current report dealt with the contracts in general; commodities; industrialization; transnational corporations; transfer of technology; industrial and intellectual property law; international payments; international transport; international commercial arbitration; private international law; trade facilitation; and other topics of international trade law, congresses and publications.

The Commission considered the status of signatures, ratifications, accessions and approvals of conventions that were the outcome of its work: the Convention on the Limitation Period in the International Sale of Goods of 1974,<sup>231</sup> the Protocol amending the Limitation Convention of 1980,<sup>232</sup> the United Nations Convention on Contracts for the International Sale of Goods of 1980<sup>233</sup> and the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) of 1978.<sup>234</sup> The Commission also considered the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958<sup>235</sup> which, although it had not emanated from the work of the Commission, was of particular interest to it with regard to its work in the field of international commercial arbitration. In addition, the Commission took note of the jurisdictions that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. The Commission had before it a note by the secretariat on the status of those Conventions and of the Model Law as at 16 May 1989.<sup>236</sup>

#### *Consideration by the General Assembly*

At its forty-fourth session, in its resolution 44/33 of 4 December 1989,<sup>237</sup> adopted on the recommendation of the Sixth Committee,<sup>238</sup> the General Assembly took note of the report of UNCITRAL; reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law and, in this connection, recommend that the Commission, through its secretariat, should continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law; called upon the Commission to continue to take account of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the General Assembly at its sixth<sup>239</sup> and seventh<sup>240</sup> special sessions; and decided that an international conference of plenipotentiaries would be convened at Vienna from 2 to 19 April 1991 to consider the draft convention prepared by the Commission and to embody the results of its work in a convention on the liability of operators of transport terminals in international trade.

8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES<sup>241</sup>

(a) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

By its resolution 44/28 of 4 December 1989,<sup>242</sup> adopted on the recommendation of the Sixth Committee,<sup>243</sup> the General Assembly approved the recommendations of the Secretary-General contained in section III of his report on the implementation of the United Nations Programme of Assistance,<sup>244</sup> and requested the Secretary-General to report to the General Assembly at its forty-sixth session on the implementation of the Programme during 1990 and 1991 and, following consultations with the Advisory Committee on the United Nations Programme of Assistance, to submit recommendations regarding the execution of the Programme in subsequent years.

(b) Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.

By its resolution 44/29 of 4 December 1989,<sup>245</sup> adopted on the recommendation of the Sixth Committee,<sup>246</sup> the General Assembly, recalling the existing international conventions relating to various aspects of the problem of international terrorism, *inter alia*, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,<sup>247</sup> the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,<sup>248</sup> the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971,<sup>249</sup> the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted at New York on 14 December 1973,<sup>250</sup> the International Convention against the Taking of Hostages, adopted at New York on 14 December 1979,<sup>251</sup> the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980,<sup>252</sup> the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988,<sup>253</sup> the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988,<sup>254</sup> and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988,<sup>255</sup> and taking note of the report of the Secretary-General,<sup>256</sup> once again unequivocally condemned, as criminal and unjustifiable, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security. By the same resolution, the General Assembly welcomed the efforts undertaken by the International Civil Aviation Organization aimed at promoting uni-

versal acceptance of, and strict compliance with, international air-security conventions, and welcomed its recent adoption of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; also welcomed the adoption by the International Maritime Organization of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf; urged the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purposes of detection; and requested the other relevant specialized agencies and inter-governmental organizations, in particular the Universal Postal Union, the World Tourism Organization and the International Atomic Energy Agency, within their respective spheres of competence, to consider what further measures could usefully be taken to combat and eliminate terrorism.

(c) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 44/30 of 4 December 1989,<sup>257</sup> adopted on the recommendation of the Sixth Committee,<sup>258</sup> the General Assembly, recalling the analytical study<sup>259</sup> submitted to the General Assembly at its thirty-ninth session by the United Nations Institute for Training and Research, noted with appreciation the views and comments submitted by Governments pursuant to Assembly resolutions 40/67, 41/73/ 42/149 and 43/162<sup>260</sup> and requested the Secretary-General:

(a) To continue to seek proposals of Member States concerning the most appropriate procedures to be adopted with regard to the consideration of the analytical study, as well as the codification and progressive development of the principles and norms of international law relating to the new international economic order;

(b) To include the proposals received in accordance with paragraph 2(a) of resolution 44/30 in a report to be submitted to the Assembly at its forty-sixth session;

(c) By the same resolution, the General Assembly recommended that the Sixth Committee should consider making a final decision at the forty-sixth session of the Assembly on the question of the appropriate forum within the framework of the Commission which would undertake the task of completing the elaboration of the process of codification and progressive development of the principles and norms of international law relating to the new international economic order, taking into account the proposals and suggestions which had been or would be submitted by Member States on the matter;

(d) Peaceful settlement of disputes between States

By its resolution 44/31 of 4 December 1989,<sup>261</sup> adopted on the recommendation of the Sixth Committee,<sup>262</sup> the General Assembly took note of the report of the Secretary-General,<sup>263</sup> submitted in accordance with its resolution 43/163 of 9 December 1988, which contained opinions, proposals and considerations for a broader implementation of the Manila Declaration on the Peaceful Settlement of International Disputes,<sup>264</sup> and once again urged States to observe and promote in good faith the provisions of the Manila Declaration.

(e) International Convention against the Recruitment, Use, Financing and Training of Mercenaries

By its resolution 44/34 of December 1989,<sup>265</sup> adopted on the recommendation of the Sixth Committee,<sup>266</sup> the General Assembly, recalling its resolution 35/48 of 4 December 1980, by which it had established the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and having considered the draft convention prepared by the Ad Hoc Committee in pursuance of the above-mentioned resolution<sup>267</sup> and finalized by the Working Group on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries,<sup>268</sup> which met during the forty-fourth session of the General Assembly, adopted and opened for signature and ratification or for accession the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which reads as follows:

**ANNEX**

International Convention against the Recruitment, Use, Financing and Training of Mercenaries

The States Parties to the present Convention,

*Reaffirming* the purposes and principles enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>269</sup>

*Being aware* of the recruitment, use, financing and training of mercenaries for activities which violate principles of international law, such as those of sovereign equality, political independence, territorial integrity of States and self-determination of peoples,

*Affirming* that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States and that any person committing any of these offences should be either prosecuted or extradited,

*Convinced* of the necessity to develop and enhance international cooperation among States for the prevention, prosecution and punishment of such offences,

*Expressing concern* at new unlawful international activities linking drug traffickers and mercenaries in the perpetration of violent actions which undermine the constitutional order of States,

*Also convinced* that the adoption of a convention against the recruitment, use, financing and training of mercenaries would contribute to the eradication of these nefarious activities and thereby to the observance of the purposes and principles enshrined in the Charter,

*Cognizant* that matters not regulated by such a convention continue to be governed by the rules and principles of international law,

*Have agreed* as follows:

*Article 1*

For the purposes of the present Convention,

1. A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain, and in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
  - (d) Is not a member of the armed forces of a party to the conflict; and
  - (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
2. A mercenary is also any person who, in any other situation:
- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
    - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
    - (ii) Undermining the territorial integrity of a State;
  - (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise of payment of material compensation;
  - (c) Is neither a national nor a resident of the State against which such an act is directed;
  - (d) Has not been sent by a State on official duty;
  - (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

#### *Article 2*

Any person who recruits, uses, finances or trains mercenaries, as defined in article I of the present Convention, commits an offence for the purposes of the Convention.

#### *Article 3*

1. A mercenary, as defined in article I of the present Convention, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of the Convention.
2. Nothing in this article limits the scope of application of article 4 of the present Convention.

#### *Article 4*

An offence is committed by any person who:

- (a) Attempts to commit one of the offences set forth in the present Convention;
- (b) Is the accomplice of a person who commits or attempts to commit any of the offences set forth in the present Convention.

#### *Article 5*

1. States Parties shall not recruit, use, finance or train mercenaries and shall prohibit such activities in accordance with the provisions of the present Convention.
2. States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination, as recognized by international law, and shall take, in conformity with the international law, the appropriate measures to prevent the recruitment, use, financing or training of mercenaries for that purpose.
3. They shall make the offences set forth in the present Convention punishable by appropriate penalties which take into account the grave nature of those offences.

#### *Article 6*

States Parties shall cooperate in the prevention of the offences set forth in the present Convention, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including the prohibition of illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of such offences;

(b) Coordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

*Article 7*

States Parties shall cooperate in taking the necessary measures for the implementation of the present Convention.

*Article 8*

Any State Party having reason to believe that one of the offences set forth in the present Convention has been, is being or will be committed shall, in accordance with its national law, communicate the relevant information, as soon as it comes to its knowledge, directly or through the Secretary-General of the United Nations, to the States Parties affected.

*Article 9*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in the present Convention which are committed:

- (a) In its territory or on board a ship or aircraft registered in that State;
- (b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in that territory.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 3 and 4 of the present Convention in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. The present Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

*Article 10*

1. Upon being satisfied that the circumstances so warrant, any State Party in whose territory the alleged offender is present shall in accordance with its laws, take him into custody or take such other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. The State Party shall immediately make a preliminary inquiry into the facts.

2. When a State Party, pursuant to this article, has taken a person into custody or has taken such other measures referred to in paragraph 1 of this article, it shall notify without delay either directly or through the Secretary-General of the United Nations:

- (a) The State Party where the offence was committed;
- (b) The State Party against which the offence has been directed or attempted;
- (c) The State Party of which the natural or juridical person against whom the offence has been directed or attempted is a national;
- (d) The State Party of which the alleged offender is a national or, if he is a stateless person, in whose territory he has his habitual residence;
- (e) Any other interested State Party which it considers it appropriate to notify.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To be communicated without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, the State in whose territory he has his habitual residence;
- (b) To be visited by a representative of that State.

4. The provisions of paragraph 3 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1(b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

5. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

*Article 11*

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in the present Convention shall be guaranteed at all stages of the proceedings provided for in the law of the State in question. Applicable norms of international law should be taken into account.

*Article 12*

The State Party in whose territory the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

*Article 13*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in the present Convention, including the supply of all evidence at their disposal necessary for the proceedings. The law of the State whose assistance is requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

*Article 14*

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned.

*Article 15*

1. The offences set forth in articles 2, 3 and 4 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 9 of the present Convention.

*Article 16*

The present Convention shall be applied without prejudice to:

- (a) The rules relating to the international responsibility of States;
- (b) The laws of armed conflict and international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war.

*Article 17*

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by a request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of the present Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 18*

1. The present Convention shall be open for signature by all States until 31 December 1990 at United Nations Headquarters in New York.

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

3. The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 19*

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

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

*Article 20*

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year after the date on which the notification is received by the Secretary-General of the United Nations.

*Article 21*

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

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

(f) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The Special Committee was convened in accordance with General Assembly resolution 43/170 of 9 December 1988 and met at United Nations Headquarters from 27 March to 14 April 1989.<sup>270</sup>

During the meeting, the Working Group considered the question of the maintenance of international peace and security and in that context discussed the two working papers on fact-finding.<sup>271</sup>

On the subject of the peaceful settlement of disputes between States, the Working Group considered the proposal contained in the working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations.<sup>272</sup> Regarding the same subject, the Special Committee had before it for review the progress report of the Secretary-General on the draft handbook on the peaceful settlement of disputes between States.<sup>273</sup>

The Working Group also discussed the matter of the rationalization of existing United Nations procedures.

*Consideration by the General Assembly*

By its resolution 44/37 of 4 December 1989,<sup>274</sup> adopted on the recommendation of the Sixth Committee,<sup>275</sup> the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and requested the Special Committee, at its next session from 12 February to 2 March 1990, to, *inter alia*, accord priority to 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 General Assembly also adopted decision 44/415 of 4 December 1989,<sup>276</sup> adopted on the recommendation of the Sixth Committee,<sup>277</sup> in which it commended the Special Committee for the completion of its work on the draft document on resort to a commission of good offices, mediation or conciliation within the United Nations. The draft document read as follows:

ANNEX

**Resort to a commission of good offices, mediation or conciliation within the United Nations**

States parties to disputes may wish to avail themselves of the possibility to resort to third-party assistance in the form of a commission of good offices, mediation or conciliation in order to settle their disputes by peaceful means. In doing so, they may be guided by the following:

1. Resort to a commission of good offices, mediation or conciliation within the United Nations may be considered by States as a procedure at their disposal for the peaceful settlement of international disputes in accordance with the provisions of the Charter of the United Nations.

2. Such a commission may be established for each particular case, in accordance with modalities described below, through the agreement of the States parties to a dispute, or, with their agreement, on the basis of a recommendation of the Security Council, or of the General Assembly or following the contacts of the States parties to a dispute with the Secretary-General. Other modalities and conditions may also be agreed upon by the States parties to a dispute for the establishment of such a commission.

3. When the States parties to a dispute accept to resort to a commission of good offices, mediation or conciliation as described in paragraph 2 above, the designation of members of the commission is proceeded with.

4. For each particular case the commission of good offices, mediation or conciliation may be constituted of persons nominated by up to three States, which are not parties to the dispute concerned.

Such States will be designated by the States parties to the dispute or, with their agreement, as the case may be, by the President of the Security Council or by the President of the General Assembly or by the Secretary-General.

5. Each designated State will appoint, upon approval by the States parties to the dispute, a highly qualified person, with adequate experience, who will act in the commission in his individual capacity.

The chairman of the commission will be selected from among its members by the States parties to the dispute. They may also agree in a particular case that the chairman be appointed by the Secretary General.

6. The proceedings of the commission may take place at United Nations Headquarters in New York, or in any other place agreed upon by the States parties to the dispute.

7. After taking note of the elements of the respective dispute, on the basis of submissions made by the States parties and, as appropriate, of information provided by the Secretary-General, the commission in performing its good offices functions will seek to bring the parties to enter immediately into direct negotiations for the settlement of the dispute, or to resume such negotiations or to resort to another means of peaceful settlement.

If the States parties to the dispute so request, the commission will seek to establish the aspects on which the States parties agree, as well as their differences of opinion and perception, and to elucidate the elements related to the dispute with a view to making suggestions for the beginning or the resuming of negotiations, including their framework and stages, as well as the problems to solve.

8. If the States parties to the dispute request the commission, at any time, to mediate, the commission will offer to the parties proposals which it deems adequate for facilitating the negotiations and seeking through mediation to bring closer their positions until an agreement is reached.

9. The States parties to the dispute may agree at any moment of the procedure to entrust the commission with functions of conciliation. The States parties to the dispute determine the legal basis on which the commission should perform its functions. If such a basis is not determined, the commission should be guided mainly by the rights and duties of States resulting from the Charter and by the applicable principles of international law. In performing its functions the commission formulates the terms which it deems adequate for the amicable settlement of the dispute and submits them to the parties.

The States parties to the dispute will be requested to pronounce themselves on these terms within a period of time established by the commission, which may be prolonged if the States parties to the dispute deem it necessary.

10. A period of time during which the commission should discharge its mission may be established by the States parties to the dispute or, where appropriate, following their contacts with the Secretary-General.

11. The States parties to the dispute may wish that the commission work in confidentiality. As long as the commission continues its efforts, no statement will be made public on its activity without the agreement of the States parties to the dispute.

12. The States parties to the dispute may wish that, upon conclusion of the commission's activity, the commission prepare a report and communicate it to them. The States parties to the dispute will decide if the report is to be made public.

Where appropriate, the commission may submit a report to the United Nations organ concerned in the form accepted by the States parties to the dispute.

13. Unless otherwise provided, any expenses of the commission shall be borne by the States parties to the dispute. They may request the Secretary-General to provide the commission with reasonable assistance and facilities as it may require.

14. The States parties to the dispute, as well as other States, shall act in accordance with the purposes and principles of the Charter and shall refrain from any action whatsoever which may aggravate the situation, endanger the maintenance of international peace and security or make more difficult or impede the peaceful settlement of the dispute.

15. Nothing in the present document shall be construed as prejudicing in any manner the provisions of the Charter, in particular those relating to the peaceful settlement of disputes.

(g) Report of the Committee on Relations with the Host Country

In accordance with General Assembly resolution 43/172 of 9 December 1988, the Committee on Relations with the Host Country continued its work, in conformity with General Assembly resolution 2819 (XXXVI) of 15 December 1971.<sup>278</sup> During the period under review, the Committee held five meetings, wherein a number of issues were discussed, including host country travel requests; immigration and custom procedures at United States airports; exemption from taxes; the possibility of establishing a commissary at United Nations Headquarters to assist diplomatic personnel and staff; and use of motor vehicles and parking by diplomatic personnel.

*Consideration by the General Assembly*

By its resolution 44/38 of 4 December 1989,<sup>279</sup> adopted on the recommendation of the Sixth Committee,<sup>280</sup> the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country, and expressed its appreciation for the efforts made by the host country and hoped that outstanding problems raised at the meetings of the Committee would be duly settled in a spirit of cooperation and in accordance with international law.

(h) International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across national frontiers and other transnational criminal activities: establishment of an international criminal court with jurisdiction over such crimes<sup>281</sup>

By its resolution 44/39 of 4 December 1989,<sup>282</sup> adopted on the recommendation of the Sixth Committee,<sup>283</sup> the General Assembly, mindful of the adoption on 19 December 1988 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which recognized illicit trafficking in narcotic drugs as an international criminal activity, requested the International Law Commission, when considering at its forty-second session the item entitled "Draft code of crimes against the peace and security of mankind", to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes which might be covered under such a code, including persons engaged in illicit trafficking in narcotic drugs across national frontiers, and to devote particular attention to the question in its report on the session; and decided to consider the question of establishing an international criminal court or other international criminal trial mechanism at its forty-fifth session when examining the report of the International Law Commission.

## 9. UNITED NATIONS DECADE OF INTERNATIONAL LAW

The General Assembly, by its resolution 44/23 of 17 November 1989,<sup>284</sup> adopted without reference to a Main Committee, declared the period 1990-1999 as the United Nations Decade of International Law, and considered that the main purposes of the Decade should be, *inter alia*:

(a) To promote acceptance of and respect for the principles of international law;

(b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

(c) To encourage the progressive development of international law and its codification;

(d) To encourage the teaching, study, dissemination and wider appreciation of international law.

## 10. RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS

By its resolution 44/186 of 19 December 1989,<sup>285</sup> adopted on the recommendation of the Fifth Committee,<sup>286</sup> the General Assembly, recalling Articles 100 and 105 of the Charter of the United Nations, recalling the Convention on the Privileges and Immunities of the United Nations,<sup>287</sup> the Convention on the Privileges and Immunities of the Specialized Agencies,<sup>288</sup> the Agreement on the Privileges and Immunities of the International Atomic Energy Agency<sup>289</sup> and the United Nations Development Programme Standard Basic Assistance Agreements; recalling also its resolution 76 (I) of 7 December 1946, in which it approved the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations to all members of the staff of the United Nations; recalling further its resolution 43/173 of 9 December 1988, the annex to which contained the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, including the principle that all persons under arrest or detention shall be provided whenever necessary with medical care and treatment; reiterating the obligation of all officials of the Organization in the conduct of their duties to observe fully both the laws and regulations of Member States and their duties and responsibilities to the Organization; mindful of the responsibilities of the Secretary-General to safeguard the functional immunity of all United Nations officials; mindful also of the importance in that respect of the provision by Member States of adequate and timely information concerning the arrest and detention of staff members and, more particularly, their granting of access to them; bearing in mind the considerations of the Secretary-General to guarantee minimum standards of justice and due process to United Nations officials; reaffirming its previous resolutions, in particular resolutions 42/219 of 21 December 1987 and 43/225 of 21 December 1988; took note with grave concern of the report submitted by the Secretary-General,<sup>290</sup> on behalf of the Administrative

Committee on Coordination, and of the developments indicated therein, in particular the reported case of abduction and killing, as well as the once again very high number of new cases of arrest and detention and the very negative developments in respect of various previously reported cases under that category; deplored the increase in the number of cases in which the safety, functioning and well-being of officials had been placed in jeopardy; and also deplored the substantially increased number of cases of arrest or detention of officials for which the organizations of the United Nations system had not been able fully to exercise their rights during the reporting period.

By the same resolution, the General Assembly called upon all Member States scrupulously to respect the privileges and immunities of all officials of the United Nations and the specialized agencies and related organizations and to refrain from any acts that would impede such officials in the performance of their functions, thereby seriously affecting the proper functioning of the organizations; urged those Member States holding under arrest or detention officials of the United Nations and the specialized agencies and related organizations to enable the Secretary-General or the executive head of the organization concerned fully to exercise the right of functional protection inherent in the relevant multilateral conventions and bilateral agreements, particularly with respect to immediate access to detained staff members; also called upon the staff of the United Nations and the specialized agencies and related organizations to comply fully with the provisions of Article 100 of the Charter of the United Nations and with the obligations resulting from the Staff Regulations and Rules of the United Nations, in particular regulation 1.8, and from the equivalent provisions governing the staff of the other agencies; noted with concern the restrictions on duty travel of officials as indicated in the report of the Secretary-General; took note with concern of the information in the report of the Secretary-General<sup>291</sup> related to taxation on salaries and emoluments as well as the status, privileges and immunities of officials; called upon the Secretary-General, as chief administrative officer of the United Nations, to continue personally to act as the focal point in promoting and ensuring the observance of the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations by using all such means as were available to him; and requested the Secretary-General, as Chairman of the Administrative Committee on Coordination, to review and appraise the measures already taken to enhance the proper functioning, safety and protection of international civil servants.

## **B. General Review of the legal activities of intergovernmental organizations related to the United Nations**

### **1. INTERNATIONAL LABOUR ORGANIZATION**

1. The International Labour Conference, which held its 76th session at Geneva in June 1989, adopted a Convention concerning indigenous and tribal peoples in independent countries.<sup>292</sup>

2. The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 9 to 22 March 1989 and presented its report.<sup>293</sup>

3. The Governing Body Committee on Freedom of Association met at Geneva and adopted reports Nos. 262,<sup>294</sup> 263<sup>294</sup> and 264<sup>294</sup> (242nd session of the Governing Body, February-March 1989); reports Nos. 265,<sup>295</sup> 266<sup>295</sup> and 267<sup>295</sup> (243rd session of the Governing Body, May-June 1989); and reports Nos. 268<sup>296</sup> and 269<sup>296</sup> (244th session of the Governing Body, November 1989).

4. Reference should also be made to the exchange of letters dated 21 December 1989 between the Director-General of the International Labour Office and the President of the Commission of the European Communities<sup>297</sup> concerning arrangements for cooperation between the International Labour Organization and the European Communities under the Agreement concerning liaison between the International Labour Organization and the European Economic Community concluded on 7 July 1958.<sup>298</sup>

## 2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

### (a) Constitutional and general legal matters

At the secretariat level, the legal activities of FAO are now coordinated by a single legal office directed by the Legal Counsel and consisting of the General Legal Affairs Service and the Development Law Service.

#### (i) *Regional representation on the Programme and Finance Committees*

Whereas Conference resolution 11/87 on the procedure for the election of the chairman and the members of the Programme and Finance Committees called for equitable regional representation on the said committees, practice showed that it was not always achieved.<sup>299</sup> As requested by the Council during its ninety-fourth session, the Committee on Constitutional and Legal Matters (CCLM) explored different possibilities with a view to bringing the practice in line with Conference resolution 11/87.

The first option considered by the CCLM consisted in expanding the criteria already set forth in the resolution by adding the need for substantial representation of regions that were priority areas for development assistance. The second option provided for a pre-election and nomination procedure to reach regional understandings among and within regions. A third option consisted in introducing a formal procedure for reaching regional understanding.

These three possibilities and the views of the Director-General thereon were examined during the ninety-fifth session of the Council. Both the Council and the Conference, at its twenty-fifth session, agreed that it would be preferable to maintain the flexibility inherent in the system in place and not to introduce any modification thereto. However, they called for respect of the criteria set forth in resolution 11/87.

#### (ii) *Draft agreement between FAO and UNIDO*

In its ninety-fifth session the Council decided to enter into a formal relationship agreement between FAO and UNIDO to ensure proper coordination in fields of activity which they share. This agreement was confirmed by the Conference in its twenty-fifth session.

*(iii) Declaration of Environmental Policies and Procedures  
related to Economic Development*

CCLM concluded that FAO's signature of the Declaration of Environmental Policies and Procedures related to Economic Development of 1 February 1980 and its participation in the inter-secretariat body set up under its aegis (Committee of International Development Institutions on the Environment (CIDIE)) would be consistent with the Basic Texts of the Organization and the mandate of FAO in the field of environment. At its ninety-fifth session, the Council agreed to the signature of the Declaration and to the participation of FAO in CIDIE.

*(iv) Immunity of the Organization from legal process in Italy*

At its ninety-fifth session, the Council was informed that two lawsuits against FAO were pending before the Italian courts: one brought by a former staff member seeking a ruling that Italian courts should apply Italian labour legislation to her employment relationship with FAO and the other brought by the liquidators of a firm that had formerly provided removal services of the Organization.

At its ninety-sixth session, the Council was informed that a Presidential Decree had been promulgated giving the Italian Avvocatura Generale dello Stato the necessary authority to defend the Organization's immunity in court. The Council was also informed that a first informal meeting had been held with the Italian Ministry of Foreign Affairs in September 1989 with the view to concluding an agreement on the interpretation of the provisions in the Headquarters Agreement on the immunity of the Organization.

*(v) Status of the European Economic Community  
with respect to FAO*

The Government of Spain, in its capacity as member State currently holding the Presidency of the Council of the European Communities and on behalf of the States members of the European Economic Community (EEC) which were also member nations of FAO, requested in a communication sent to the Director-General that the question of devising for EEC a status of member commensurate with its powers be placed on the agenda of the ninety-fifth session of the Council.

The Council noted that, since 1962, EEC had enjoyed observer status with FAO. The Council also took note of the statement included in the aforementioned communication to the effect that currently neither the member States nor EEC could participate fully in the work of FAO in the field of activity where member States had transferred authority to EEC.

The Council was informed that since under the FAO Constitution membership was reserved to States EEC could not apply for membership unless the Constitution and other Basic Texts had been amended appropriately.

Considering the complexity of the topic and the wide range of opinions expressed thereon by member nations, the Council invited the Director-General to explore the options for a form of membership of FAO for regional economic integration organizations to which member States had transferred competence in some

field of activity of FAO, along with the full constitutional, legal, financial and other implications for the Organization of such options. The Director-General was also invited to keep the Finance Committee and CCLM fully informed of progress and to report thereon to the Council at its ninety-eighth session.

(vi) *European Commission for the Control of Foot-and-Mouth Disease: amendment to the Commission's Constitution*

The European Commission for the Control of Foot-and-Mouth Disease adopted an amendment to paragraph 1 of article I of its Constitution which would enlarge the eligibility for membership to all States members of the FAO European Regional Conference and serviced by the FAO European Regional Office.

Article XIV of the FAO Constitution subjects the entry into force of such amendments to the concurrence of the Council, which was given by the Council at its ninety-sixth session in 1989.<sup>300</sup>

(vii) *Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO sessions*

Agreements concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text,<sup>301</sup> were concluded in 1989 with the Governments of the following countries acting as hosts to such Sessions: Argentina, Austria, Brazil, Bulgaria, Burundi, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Ecuador, Egypt, Ethiopia, Finland, France, Ghana, Greece, Guatemala, India, Indonesia, Israel, Italy, Jordan, Kenya, Libya, Morocco, Philippines, Poland, Portugal, Qatar, Republic of Korea, Seychelles, Spain, Sri Lanka, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Zimbabwe.

(viii) *Agreements based on the standard "Memorandum of Responsibilities" in respect of seminars, workshops, training courses or related study tours*

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text, were concluded in 1989 with the Governments of the following countries acting as hosts to such training activities: Austria, Burkina Faso, Cameroon, Costa Rica, Denmark, Dominican Republic, Ghana, Guyana, Malawi, Mexico,<sup>301</sup> Niger, Peru, Swaziland, Thailand, United Republic of Tanzania, Venezuela and Zimbabwe.

(ix) *Convention on Early Notification of a Nuclear Accident and Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*<sup>302</sup>

At its ninety-sixth session, the Council took note of the opinion of CCLM that the above Conventions were covered by the constitutional mandate of FAO and fell within its competence and that the accession of FAO would be a symbolic act confirming FAO's readiness to cooperate actively with States and other

organizations in taking measures within its field of competence in the case of nuclear accidents. The Council noted that there was no intention to duplicate efforts of other organizations, but that accession would signify the willingness of FAO to become part of the overall information system set up by these Conventions. Following the procedure indicated as appropriate by CCLM, the Council approved FAO's accession to the said Conventions and transmitted them to the Conference with a view to obtaining its authorization for FAO to become a party thereto. Such authorization was granted by the Conference at its twenty-fifth session.

(x) *Plant protection conventions*

a. International Plant Protection Convention

At its twenty-fifth session, the Conference noted that 15 acceptances were still necessary in order to bring the revised text of the International Plant Protection Convention into force. The revised text of the Convention incorporated amendments adopted by the Conference in resolution 14/79. The Conference reiterated its appeal to the Contracting Parties to accept the revised text.

b. Plant Protection Agreement for the Asia and Pacific Region

At the same session, the Conference urged the Contracting Parties to accept the amendments relating to the definition of the region approved by the Council in November 1983 (resolution 1/84), in order to bring those amendments into force as soon as possible.

(b) Activities of legal interest relating to commodities

(i) *Hard fibres*

The Intergovernmental Group on Hard Fibres held its twenty-third session in October 1989. It agreed to revise upwards the indicative price for sisal fibre upon recommendation by the Subgroup of Sisal and Henequen Producing Countries. It recommended that the quota system should be maintained in principle, although the global and national quotas should remain suspended. The Group also agreed, with the exception of two consuming countries, to raise the indicative price for sisal baler twines. For abaca, the Group recommended to raise the indicative price for the composite of three major brands of Philippine fibre. It decided, however, that the mechanism triggering automatic consultations between producers and consumers when the indicator price was approaching either limit of the range should remain suspended.

(ii) Jute, kenaf and allied fibres

a. Informal price arrangements for jute and kenaf

The informal price arrangements operated under the auspices of the FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres were maintained in 1989. At its twenty-fifth session in 1989, the Group agreed to revise upwards the indicative prices for Bangladesh jute and Thai kenaf.

b. Support to activities of the International Jute Organization (IJO)

FAO continued to provide support to the activities of the International Jute Organization through:

- (i) Technical assistance in developing and implementing its projects on jute agriculture and primary processing;
- (ii) Supply of statistical and economic information on jute and its competing synthetic materials;
- (iii) Regular participation in the work of the biannual sessions of its Council and Committee on Projects.

(c) Activities of legal interest relating to plant protection

Draft resolution 4/89 on the “Agreed interpretation of the International Undertaking on Plant Genetic Resources” and draft resolution 5/89 on “Farmers’ Rights” were negotiated by the Commission on Plant Genetic Resources and endorsed by the FAO Conference at its twenty-fifth session in November 1989.

During 1989, discussions were held on the further development of Farmers’ Rights and the appropriate financial mechanisms to implement them.

Pursuant to the request formulated by the Commission at its third session, FAO undertook a feasibility study for an *in situ* network of protected areas under FAO auspices and the development of a code of conduct for international collectors of germplasm. A code of conduct for biotechnology as it affected conservation and use of plant genetic resources was also being developed.

Many of the documents prepared for the sessions of the Commission on Plant Genetic Resources and its Working Group included considerations on the protection of genetic resources, biodiversity and biotechnology.

One of the main areas of activity on plant protection concerned the implementation on the part of Member States of various provisions of the International Code of Conduct on the Distribution and use of Pesticides. Specifically, advice and assistance was given to a number of national Governments on the establishment or strengthening of national legislative procedures designed to facilitate enforcement of regulations on the introduction, use and control of agrochemicals.

### 3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) Constitutional and procedural questions

(i) *Amendments to the Constitution*

At its 25th session the General Conference decided:

- To amend article VI.2 of the Constitution to read as follows:

“The Director-General shall be nominated by the Executive Board and appointed by the General Conference for a period of six years, under such conditions as the Conference may approve. The Direc-

tor-General may be appointed for a further term of six years but shall not be eligible for reappointment for a subsequent term. The Director-General shall be the chief administrative officer of the Organization.”<sup>303</sup>

- To replace the text of article IX.3 of the Constitution by the following:

“The Director-General may accept voluntary contributions, gifts, bequests and subventions directly from governments, public and private institutions, associations and private persons subject to the conditions specified in the Financial Regulations.”<sup>304</sup>

(ii) *Membership of the Organization*

At its second plenary meeting, on 17 October 1989, the General Conference decided to admit the Cook Islands and Kiribati as member States.

Under the terms of articles II and XV of the UNESCO Constitution, the Cook Islands became a member of the Organization on 25 October 1989 and Kiribati on 24 October 1989.

(b) *International regulations*

(i) *Instruments adopted by the General Conference of UNESCO*

- Convention on Technical and Vocational Education, adopted by the General Conference of UNESCO at its twenty-fifth session, on 10 November 1989.<sup>305</sup>

In accordance with the terms of its article 10 this Convention enters into force three months after the third instrument of ratification, acceptance, accession or approval has been deposited, but solely with respect to the States that have deposited their respective instruments by that date. It will enter into force for each other State three months after that State has become a party to it.

- Recommendation on the safeguarding of Traditional Culture and folklore, adopted by the General Conference at its twenty-fifth session, on 15 November 1989.<sup>305</sup>

Considering that folklore forms part of the universal heritage of humanity, the General Conference adopted the Recommendation at its twenty-fifth session.

The Recommendation defines and identifies folklore and makes suggestions for its conservation, preservation and dissemination through the establishment of national archives and museums, the development of educational programmes, and through publication and international cooperation.

The General Conference suggests that member States bring this Recommendation to the attention of both authorities responsible for the safeguarding of folklore and various institutions and organizations concerned with folklore. The General Conference also encourages contact with appropriate international organizations dealing with the

protection of folklore. The General Conference invites member States to report on the actions they have taken to put the Recommendation into effect.

(ii) *Proposals concerning the preparation of new instruments*

The General Conference, having examined the question of the desirability of adopting an international convention on the recognition of studies, degrees and diplomas in higher education, decided that the recognition of studies, degrees and diplomas be regulated at the international level and that the method adopted should be an international convention. The General Conference invited the Director-General to follow the procedure set out in article 10 of the Rules of Procedure concerning Recommendations to member States and International Conventions, so that a final draft of a convention might be submitted to it at its twenty-sixth session (1991).

(c) Reports by member States

At its 25th session, the General Conference noted the synthesis of national reports on measures taken by member States to apply the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974), and called upon all member States to play an active part in the preparation of their national reports within the Permanent System of Reporting.

At the same session, the General Conference noted also the fourth report of the Joint ILO/UNESCO Committee of Experts on the Application of the 1966 Recommendation concerning the Status of Teachers and the observations of the Executive Board thereon (25 C/29 Addendum) and invited the Director-General to bring the report of the Joint Committee, together with the observations of the Executive Board, to the attention of member States and their National Commissions, international teachers organizations and other organizations having relations with UNESCO, and of the United Nations.

The General Conference took note of the report of the Committee on Conventions and Recommendations of the Executive Board regarding the follow-up to the first consultation on the implementation of the Revised Recommendation concerning Technical and Vocational Education (25 C/28).

(d) Human rights

*Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence*

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 9 to 12 May 1989 (spring session) and from 21 to 26 September 1989 (fall session), 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 spring session, the Committee examined 30 communications, of which 21 were examined with a view toward their admissibility and 9 were examined on their substance. Of the 21 communications examined as to admissibility, 2

were declared admissible, 1 was declared irreceivable and 8 were struck from the list since they were considered as having been settled. The examination of 19 communications was suspended. The Committee presented its report to the Executive Board at its 131st session.

At its fall session, the Committee had before it 32 communications, of which 22 were examined as to their admissibility and 10 were examined on their substance. Of the 22 communications examined as to their admissibility, one was declared irreceivable and 4 were struck from the list since they were considered as having been settled. The examination of 26 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 132nd session.

(e) Copyright and neighbouring rights

*Draft Recommendations to member States on the Safeguarding of Works in the Public Domain*

Pursuant to resolution 15.2 adopted by the General Conference at its twenty-fourth session, a Special Committee of Governmental experts met at UNESCO headquarters in Paris from 3 to 7 April 1989 to formulate recommendations to member States concerning the safeguarding of works in the public domain. The report of the Special Committee was unanimously adopted (document 25 C/32, annex 2) as were its recommendations concerning the safeguarding of works in the public domain (document 25 C/32, annex 1). These recommendations are aimed at both defining what are works in the public domain and establishing measures to protect these works. These measures include guidelines for steps member States should take as well as suggestions for international cooperation.

These draft recommendations were submitted for approval and adoption by the General Conference pursuant to article IV, paragraph 4, of the Constitution (document 25 C/32).

*Conference on Piracy*

Participants at the Conference on Piracy, which met at UNESCO headquarters in Paris (18-21 September 1989), requested the intervention of public powers and professional organizations in global action as new technologies facilitate the unauthorized reproduction and public dissemination of intellectual property, and throw out of balance the equilibrium between access to information and culture and protection for the creators of intellectual property. The conference participants advocated adherence to international conventions and the obligations stemming from them as well as the establishment of national legislation and legal and administrative infrastructures to inform the public about copyright and to fight against piracy.

*Recommendation on the Safeguarding of Traditional Culture and Folklore*

Considering that folklore forms part of the universal heritage of humanity, the General Conference of UNESCO adopted the Recommendation at its twenty-fifth session.<sup>307</sup>

#### 4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

##### (a) Work programme of the Legal Committee of ICAO

During the 27th session of the Assembly, the Legal Commission had for its consideration the general work programme of the Legal Committee as approved by the Council on 29 June 1988 and amended by the Council on 6 March and 29 June 1989.

The Commission noted that on 29 June 1989 the Council had decided to include in the general work programme of the Legal Committee with the highest and overriding priority the subject "Preparation of a new legal instrument regarding the marking of explosives for detectability".

As a result of its deliberations, the Commission agreed that the general work programme of the Legal Committee should include the items listed below in their order of priority:

- (i) Preparation of a new legal instrument regarding the marking of explosives for detectability;
- (ii) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the Warsaw System;<sup>308</sup>
- (iii) Legal aspects of global air-ground communications;
- (iv) Institutional and legal aspects of future air navigation systems;
- (v) United Nations Convention on the Law of the Sea<sup>309</sup> — implications, if any, for the application of the Chicago Convention,<sup>310</sup> its annexes and other international air law instruments;
- (vi) Liability of air traffic control agencies;
- (vii) Study of the instruments of the Warsaw System.

The Assembly adopted the recommendations and decisions made by the Legal Commission regarding the general work programme of the Legal Committee and adopted resolution A27-8, which in its two resolving clauses:

- *Strongly endorsed* the decision of the Council to include in the general work programme of the Legal Committee, with the highest and overriding priority, the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;
- *Called upon* the Council to convene a meeting of the Legal Committee, if possible in the first half of 1990, to prepare a draft international instrument for this purpose, with a view to its adoption at a diplomatic conference as soon as practicable thereafter in accordance with the ICAO procedures set out in Assembly resolution A7-6.

As a consequence of the Council's decision, a Rapporteur was appointed by the Chairman of the Legal Committee to prepare a report concerning the new legal instrument regarding the marking of explosives for detectability.

During its 128th session, in November 1989, the Council approved the general work programme of the Legal Committee and decided to convene a session of the special Subcommittee of the Legal Committee at Montreal from 9 to 19 January 1990 and the 27th session of the Legal Committee from 27 March to 12 April 1990. To implement those decisions, the Chairman of the Legal

Committee established the special Subcommittee with the following terms of reference: "To study, in the light of the Council decision of 29 June 1989 and Assembly resolution A27-8, as well as in the light of the Rapporteur's report, the subject of a draft instrument relating to the marking of explosives for detectability, and to prepare a draft instrument for further consideration by the 27th session of the Legal Committee."

The Assembly reconfirmed the decision of its 23rd session that only problems of sufficient magnitude and practical importance requiring urgent international action should be included in the work programme in the legal field.

The Assembly decided that the Secretary General should continue to monitor the work of the United Nations Committee on the Peaceful Uses of Outer Space and should bring to the attention of the Council appropriate subjects requiring study by the Legal Committee without duplicating the work of the Outer Space Committee.

(b) Other resolutions adopted by the 27th session of the ICAO Assembly which are of legal significance

(i) *Resolution A27-1. Ratification of the Protocol incorporating article 3 bis into the Chicago Convention*

This resolution appeals urgently to all Contracting States which have not yet done so to ratify, as soon as possible, the Protocol incorporating article 3 bis into the Chicago Convention.

(ii) *Resolution A27-2. Amendment to article 56 of the Convention on International Civil Aviation*<sup>10</sup>

By this resolution, the Assembly adopted at Montreal on 6 October 1989 the Protocol relating to an amendment to article 56 of the Convention on International Civil Aviation. The Protocol, which increases the membership of the Air Navigation Commission of ICAO from 15 to 19, shall come into force in respect of the States which have ratified it on the date on which the 108th instrument of ratification is deposited.

(iii) *Resolution A27-3. Ratification of ICAO international instruments*

This resolution notes with concern the continuing slow progress of ratification of the Protocols of Amendment to the Chicago Convention (in particular those introducing articles 3 bis and 83 bis as well as the new Final Clause) and urges Contracting States which have not yet done so to ratify those and other air law instruments developed and adopted under the auspices of the Organization, in particular Montreal Protocols Nos. 3 and 4 of 1975, as soon as possible.

The Assembly also directs the Secretary-General to take all practical measures within the Organization's means in cooperation with States to provide assistance, if requested, to States encountering difficulties in the process of ratification and implementation of the air law instruments, including the organization of and the participation in workshops and seminars to further the process of ratification of the international air law instruments.

(iv) *Resolution A27-4. Registration of aeronautical agreements and arrangements with ICAO*

All Contracting States are reminded of the importance of registration of cooperative agreements and arrangements relating to international civil aviation with ICAO in accordance with articles 81 and 83 of the Convention on International Civil Aviation and the Rules of Registration with ICAO of Aeronautical Agreements and Arrangements (document 6685). The Secretary-General is directed to remind States of the importance of registration without undue delay of such agreements and arrangements and to provide assistance to States encountering difficulties in registering their aeronautical agreements and arrangements with the Council of ICAO.

(v) *Resolution A27-7. Consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference*

The purpose of this resolution, which supersedes resolution A26-7, is to facilitate the implementation of all relevant Assembly resolutions on aviation security by making their texts more readily available, understandable and logically organized, and to ensure that such a consolidated statement remains up to date and reflects the policies of the Organization as they exist at the end of each regular Assembly session.

(vi) *Resolution A27-9. Acts of unlawful interference aimed at the destruction of civil aircraft in flight*

Member States are urged by this resolution to intensify their efforts to implement fully the Standards, Recommended Practices and Procedures related to aviation security developed by ICAO and to take any appropriate additional security measures whenever an increase in the level of threat so requires. In addition, they are urgently requested to accelerate studies and research related to security equipment and to the detection of explosives, with a view to their widespread application as soon as practicable, and to take an active part in the development of an international regime for the marking of explosives for detectability.

(vii) *Resolution A27-12. Role of ICAO in the suppression of illicit transport of narcotic drugs by air*

This resolution urges the Council of ICAO to elaborate with a high degree of priority concrete measures in order to prevent and to eliminate the possible use of illicit drugs and abuse of other drugs and substances by crew members, air traffic controllers, mechanics and other staff of international civil aviation, and to continue its work in order to prevent the illicit transport of narcotic drugs and other substances.

Further, Contracting States are called upon to continue their efforts to prevent the illicit trafficking of drugs by air, to take appropriate legislative measures to ensure that the crime of illicit transport of narcotic drugs and other psychotropic substances by air is punishable by severe penalties and to become parties, as soon as practicable, to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.<sup>311</sup>

(viii) *Resolution A27-16. Computer Reservation Systems*

The Council is requested to carry out, as a matter of the highest priority, studies on a code of conduct regarding computer reservation systems which can be applied worldwide and which might lead to a multilateral agreement guaranteeing for airlines the basic principles of bilateral air transport agreements, providing for equitable treatment and giving equal opportunities to the designated airlines in the exercise of their rights. The Council is also requested to draw up a model clause on computer reservation systems to be embodied in bilateral air transport agreements.

(c) *Privileges, immunities and facilities*

On 8 March 1989, at its 126th session, the Council considered a comparative study of the ICAO Headquarters Agreement with the Government of Canada and similar agreements entered into by other specialized agencies with their host countries. On 5 June, the Council examined a paper listing the views and points of concern expressed by the Council on 8 March. As a result of its deliberations, the Council established a Working Group under the chairmanship of the President of the Council to meet representatives of the Government of Canada, with a view to finding solutions to remedy difficulties encountered regarding the application of the Headquarters Agreement.

The 27th session of the Assembly recalled resolution A26-3 and appealed once again to all Contracting States to become parties to the Convention on the Privileges and Immunities of the Specialized Agencies of 1947<sup>312</sup> and to apply it to the Organization.

(d) *Other legal aspects of aviation security*

On 30 January 1989, the Council considered the report of the Chairman of the Committee on Unlawful Interference, entitled "Reports on acts of unlawful interference in 1988 (Pan Am 103 incident)", and decided to establish an Ad Hoc Group of Specialists on the Detection of Explosives. The Council, on 16 February 1989, adopted a resolution in which it urged member States "to expedite, in the light of Assembly resolution A26-7, appendix C, research and development on detection of explosives and on security equipment, to continue to exchange such information and to consider how to achieve an international regime for the marking of explosives for detectability". The Ad Hoc Group met at Montreal from 6 to 10 March 1989 and concluded that it would be possible to enhance the detectability of plastic explosives through the use of an additive at the manufacturing stage. Its conclusions were endorsed by the Committee on Unlawful Interference, which subsequently considered a proposal for the development of a new instrument regarding the marking of explosives for detectability prepared by the United Kingdom of Great Britain and Northern Ireland and Czechoslovakia.

As state above, the Council decided to include in the general work programme of the Legal Committee with the highest and overriding priority the subject "Preparation of a new legal instrument regarding the marking of explosives for detectability". The Assembly unanimously adopted resolution A27-8; subsequently the Council decided to convene the Special Subcommittee of the Legal Committee from 9 to 19 January 1990 and the Legal Committee from 27 March to 12 April 1990 to implement the resolution.

On 9 June, the Council considered and approved a draft working paper reporting to the 27th session of the Assembly on the action taken by the Council in the legal and related fields regarding the implementation of Assembly resolution A26-7 (Consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference). The Council decided that all factual information provided in the report should be updated in the light of subsequent relevant developments and that, if necessary, an addendum should be issued to reflect the latest pertinent information received during the remaining part of the current triennium. The Assembly at its 27th session adopted resolution A27-7.

During its consideration of this subject, the Council noted the increase of parties to the Tokyo,<sup>313</sup> the Hague<sup>314</sup> and the Montreal Conventions.<sup>315</sup> These three aviation security conventions continue to rank among the most widely accepted multilateral international conventions.

The Council further noted the pertinent information on recent occurrences of unlawful interference received from States concerned pursuant to article 11 of the Hague Convention and article 13 of the Montreal Convention, as well as the information received on the domestic legislative implementation of those two conventions.

Furthermore, the Council noted the information presented by Contracting States on cooperation with other States in the suppression of acts of unlawful interference with civil aviation in the different regions of the world, including information on practical instances and modalities of inserting into their bilateral air services agreements a clause on aviation security along the lines of the model clause recommended by the Council in its resolution of 25 June 1986.

As recommended by the Committee on Unlawful Interference, the Council on 30 June adopted a resolution recommending that Contracting States continue their efforts on a bilateral or regional basis to complement and reinforce the application of the international conventions and ICAO Standards on aviation security. At the same time, the Council recommended to Contracting States to take into account the model agreement attached to the resolution. The model agreement is intended only for the guidance of States; it is not compulsory and in no way limits the contractual freedom of States to expand or limit its scope or to use a different approach.

#### (e) ICAO/Inmarsat Cooperation Agreement

The ICAO signed, on 27 June 1989, an Agreement of Cooperation between the ICAO and the International Maritime Satellite Organization (Inmarsat), which entered into force on 20 October 1989.

## 5. WORLD HEALTH ORGANIZATION

### (a) Constitutional and legal developments

1. The amendments to articles 24 and 25 of the Constitution, adopted in 1986 by the thirty-ninth World Health Assembly to increase the membership of the Executive Board from 31 to 32, had been accepted by 43 member States as at 31 December 1989.

2. An Agreement for cooperation between the World Health Organization and the United Nations Industrial Development Organization was signed on 19 April 1989 by the Director-Generals of the two Organizations and approved on 19 May 1989 by the forty-second World Health Assembly.<sup>316</sup>

(b) Health legislation

WHO continued to function as a global clearing house for published information on all aspects of health legislation, including legislation on the human environment. The cornerstone of the information transfer system remains the quarterly journal *International digest of health legislation* (and its French-language counterpart, *Recueil international de législation sanitaire*). The system depends on close cooperation with recognized centres of expertise on various aspects of health legislation and on the systematic sharing of materials with other agencies, both within and outside the United Nations system, engaged in information transfer in other fields of legislation that are relevant to the health sector.

6. WORLD BANK

(a) International Development Association

*Ninth Replenishment*

The representatives of the donor countries of IDA and Switzerland (the “deputies”) successfully completed their negotiations of the Ninth Replenishment of the resources of IDA in 1989. The deputies are senior officials of the ministries of finance or development, experienced in multilateral financial negotiations.

In the course of their meetings, the deputies had detailed discussions on the operational objectives of IDA, the size of the replenishment and the sharing of the burden of contributions among donors. They also agreed on a formal report and the text of a draft resolution containing the terms and conditions of the replenishment which they forwarded to the Executive Directors of IDA with a recommendation that they be sent to the Board of Governors for approval.

The deputies recommended a replenishment of SDR 11.68 billion (\$15.1 billion at 14 December 1989 exchange rates) to be committed over the period from 1 July 1990 to 30 June 1993. To these resources will be added grant co-financing from Switzerland and the use of about SDR 1.58 billion in repayments of earlier credits, which will enable IDA to commit SDR 13.26 (\$17.1 billion) over the three-year period.

(b) Multilateral Investment Guarantee Agency

*Signatory and Contracting States*

By the end of 1989, the MIGA Convention<sup>317</sup> had been signed by 83 countries. Fifty-nine of them had also ratified the Convention and 55 of those 59 countries had fulfilled all membership requirements and were members of MIGA.

### *Beginning of guarantee operations*

As of 31 December 1989, MIGA had registered a total of 149 applications for guarantee which were submitted by investors from 15 countries for projects in 48 developing countries.<sup>318</sup>

In December 1989, the MIGA Board of Directors approved the first four proposed guarantee projects, two of which were for investments in Chile, one in Indonesia and one in Ghana. One of the Chilean projects was for the reinsurance of a guarantee issued by the Canadian Export Development Corporation (EDC).

#### (c) International Finance Corporation and Multilateral Investment Guarantee Agency Foreign Investment Advisory Service

The Foreign Investment Advisory Service (FIAS), originally established by the Corporation in 1986, was restructured in 1989 as a joint service of the Corporation and the Agency.

FIAS provides advice at the request of member countries on policies, regulations and institutional arrangements to attract more foreign investment in priority sectors, while safeguarding national interests. FIAS can help Governments formulate investment strategies, prepare investment regulations, find cost-effective ways to interest foreign firms in local investment possibilities, evaluate investment proposals, provide appropriate support to investments, encourage stronger links between foreign investments and the domestic economy and monitor the entire process of increasing foreign investment and improve it.

#### (d) International Centre for Settlement of Investment Disputes

##### (i) *Signatures and ratifications*

During 1989, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)<sup>319</sup> was signed by Tonga, bringing to 98 the total number of signatory States. In addition, Honduras and Turkey ratified the ICSID Convention in 1989; with those ratifications, the total number of Contracting States reached 91.

##### (ii) *Disputes before the Centre*

At the end of January 1989, the arbitration in *Occidental of Pakistan Inc. v. Islamic Republic of Pakistan* (case ARB/87/4) was discontinued following an amicable settlement of their dispute by the parties.

On 15 June 1989, the Secretary-General registered a request for arbitration in *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and Free Zones* (case ARB/89/1).

In 1988, an ad hoc Committee was constituted in accordance with article 52 of the ICSID Convention to consider a request made by the respondent in *Maritime International Nominees Establishment (MINE) v. Republic of Guinea* (case ARB/84/4) for annulment of the award that had been rendered in that case. In its decision, rendered on 22 December 1989, the ad hoc Committee rejected the respondent's request for annulment of the part of the award holding that the

respondent had been in breach of contract, but granted the request for annulment of the award's ruling on damages.

As of 31 December 1989, there were eight cases pending before the Centre. These included the *Manufacturers Hanover Trust* proceeding, mentioned above, and the following further seven cases:

- (i) *Amco/Indonesia* (case ARB/81/1) (resubmission);
- (ii) *Klöckner/Cameroon* (case ARB/81/2) (annulment proceeding);
- (iii) *Colt Industries Operating Corp., Firearms Division v. Government of the Republic of Korea* (case ARB/84/2);
- (iv) *SPP (ME) v. Arab Republic of Egypt* (case ARB/84/3);
- (v) *Société d'Etudes de Travaux et de Gestion (SETIMEG) S.A. v. Republic of Gabon* (case ARB/87/1);
- (vi) *Mobil Oil Corporation, Mobil Petroleum Company, Inc., Mobil Oil New Zealand Limited v. New Zealand Government* (case ARB/87/2);
- (vii) *Asian Agricultural Products Ltd. v. Democratic Socialist Republic of Sri Lanka* (case ARB/87/3).

## 7. INTERNATIONAL MONETARY FUND

### MEMBERSHIP

Angola became a member of the Fund on 19 September 1989, increasing the total number of members in the Fund to 152. The new member's quota in the Fund is SDR 145.0 million, and with the admission of Angola, the total of members' quotas in the Fund has been increased to SDR 90,132.6 million.

### DEBT AND DEBT SERVICE REDUCTION OPERATIONS

On 23 May 1989, the Executive Board of the Fund adopted broad guidelines for the Fund's role in the evolving debt strategy and, in particular, for Fund support for debt and debt service reduction operations. This support would be linked to medium-term adjustment programmes with a strong element of structural reform, adopted in the context of stand-by or extended arrangements. Particular emphasis would be given to measures that would improve the climate for saving and investment in borrowing countries and help reverse capital flight and attract private capital inflows and direct investments.

On modalities of Fund support for debt and debt service reduction, the Executive Board decided that:

(a) Part of a member's access under an extended or stand-by arrangement could be set aside, in appropriate cases, to support operations involving principal reduction, such as debt buybacks or exchanges. The exact size of the set-aside would be determined on a case-by-case basis, but would involve a figure of around 25 per cent. of the arrangement, determined on the basis of existing access policy;

(b) The Fund would be prepared to approve, in appropriate cases, requests for additional resources of up to 40 per cent. of a member's quota, where such support would be decisive in facilitating further cost-effective operations and

catalysing other resources. The additional resources from the Fund are to be used for interest support in connection with debt reduction or debt service reduction operations, and the amount of additional resources would be determined on a case-by-case basis, in the light of the magnitude of the member's balance of payments need and the strength of its adjustment programme as well as its own efforts to contribute resources and support of the operations;

(c) The Fund may approve, on a case-by-case basis, an arrangement outright before the conclusion of an agreement on an appropriate financing package between the member and commercial bank creditors if it is judged that prompt Fund support is essential for programme implementation, that negotiations between the member and the banks have begun and that it can be expected that a financing package consistent with external viability will be agreed within a reasonable period of time.

In the context of the guidelines on the role of the Fund in the debt strategy mentioned above, the Executive Board in December 1989 adopted a decision relating to expectations of early repurchase by members with respect to purchases of additional resources for interest support under stand-by or extended arrangements, and purchases of amounts set aside under such arrangements to support operations involving debt reduction.

#### RATE OF CHARGE ON USE OF ORDINARY RESOURCES

The Executive Board of the Fund decided in June 1989 that, during financial year 1990 (from 1 May 1989 to 30 April 1990), the rate of charge referred to in rule I-6(4) shall be a proportion of the SDR interest rate under rule T-1, and that the proportion shall be 96.3 per cent. for the financial year.

#### UNDP-FINANCED TECHNICAL COOPERATION ACTIVITIES

The Fund and the United Nations Development Programme in July 1989 signed an Executive Agency Agreement, under which the Fund will be in a position to accept requests to undertake UNDP-financed technical cooperation activities with member Governments. Activities financed by UNDP and executed by the Fund will be carried out under technical assistance programmes agreed with recipient Governments.

This financing will augment the existing Fund programmes of technical assistance.

#### SUPPLEMENTARY FINANCING FACILITY (SFF) SUBSIDY ACCOUNT

In July 1989, the Executive Board of the Fund approved payments totalling the equivalent of SDR 13,657,139 to 15 eligible low-income member countries under the Supplementary Financing Facility Subsidy Account. Those payments brought the cumulative amount of all payments from the Subsidy Account since its establishment to SDR 447.5 million.

The Subsidy Account was established in 1980 to reduce the cost to eligible low-income developing members of using the Fund's resources under the SFF established in 1979 and is being financed mainly from repayments of Trust Fund loans and from voluntary contributions.

Procedures for dealing with members with overdue financial obligations to the Fund

In August 1989, the Executive Board adopted procedures for dealing with members with overdue financial obligations to the Fund. Those procedures aimed at preventing the emergence of overdue financial obligations to the Fund and the elimination of existing overdues, including protracted arrears.

With respect to the Fund's response to overdue obligations, the procedures provide for a sequence of actions by management, the staff and the Executive Board, and these actions may be summarized as follows:

(a) Whenever a member fails to settle an obligation on time, the staff immediately sends a cable urging the member to make the payment promptly;

(b) When an obligation has been outstanding for two weeks, the management sends a communication to the Governor for that member stressing the seriousness of the failure to meet obligations to the Fund and urging full and prompt settlement;

(c) The Managing Director notifies the Executive Board normally one month after an obligation has become overdue;

(d) When the longest-overdue obligation has been outstanding for six weeks, the Managing Director informs the member concerned that unless the overdue obligations are settled, a complaint will be issued to the Executive Board in two weeks' time. The Managing Director would in each case recommend to the Executive Board whether a communication should be sent to a selected set of Fund Governors, or to all Fund Governors. If it were considered that it should be sent to a selected set of Governors, an informal meeting of the Executive Board would be held, some six weeks after the emergence of overdues, to consider the thrust of the communication. Alternatively, if it were considered that the communication should be sent to all Fund Governors, a formal Board meeting would be held to consider a draft text and the preferred timing;

(e) A complaint by the Managing Director is issued two months after an obligation has become overdue and is given substantive consideration by the Board one month later. At that stage, the Board usually decides to limit the member's use of the Fund's general resources and, if the member has overdue obligations in the SDR Department, to suspend its right to use SDRs, and provides for a subsequent review of the decision;

(f) The annual report and the financial statements identify those members with overdue obligations outstanding for more than six months.

With respect to the "declaration of ineligibility", the procedures provide the following:

(a) If a member persists in its failure to settle its overdue obligations to the Fund, the Executive Board declares the member ineligible to use the general resources of the Fund. The timing of the declaration of ineligibility would vary according to the Board's assessment of the specific circumstances and of the efforts being made by the member to fulfil its financial obligations to the Fund;

(b) For members with protracted arrears willing to cooperate with the Fund in settling these overdues, the Fund would adopt an intensified collaborative approach, which incorporates exceptional efforts by the international financial community;

(c) For members that are judged not to be cooperating actively with the Fund, remedial measures would be applied;

(d) Members not showing a clear willingness to cooperate with the Fund would be informed that in these circumstances the provision of technical assistance would be inappropriate, but the Fund may reconsider providing technical assistance once the member has resumed active cooperation;

(e) A further remedial measure in cases of protracted arrears would be communications with all Governors of the Fund and with heads of certain international financial institutions. Use of such communications would normally be raised for the Board's consideration at the time of the first post-ineligibility review of the member's arrears.

With regard to a "declaration of censure or non-cooperation", the procedures provide that such a declaration would come as an intermediate step between a declaration of ineligibility and a resolution on compulsory withdrawal. The decision as to whether to issue such a declaration would be based on an assessment of the member's performance in the settlement of its arrears to the Fund and of its efforts, in consultation with the Fund, to follow appropriate policies for the settlement of its arrears; three related tests would be germane to this decision, i.e.: (a) the member's performance in meeting its financial obligations to the Fund taking account of exogenous factors that may have affected the member's performance, (b) whether the member had made payments to other creditors while continuing to be in arrears to the Fund, and (c) the preparedness of the member to adopt comprehensive adjustment policies.

With respect to "other remedial measures", consideration would be given to introducing a provision into the Articles of Agreement under which the voting and related rights of a member that had been declared ineligible to use the Fund's general resources could be suspended. Subsequently, in 1990, the Executive Board recommended, and the Board of Governors approved, a proposed Third Amendment of the Articles providing for the suspension of voting and related rights of members that do not fulfil their obligations under the Articles. The proposed Amendment will enter into force when it has been accepted by three fifths of the members having 85 per cent. of the total voting power.

## 8. UNIVERSAL POSTAL UNION

At the twentieth Congress, held in Washington from 13 November to 14 December 1989, the Universal Postal Union conducted a review of all the Acts of the Union.

The 1989 Washington Congress made some amendments to the Constitution of the Universal Postal Union. These were included in the Fourth Additional Protocol.

It also revised and updated the following Acts of the Universal Postal Union:

- General Regulations of the Universal Postal Union;
- Universal Postal Convention and the Final Protocol thereto;<sup>320</sup>
- Money Orders Agreement;
- Giro Agreement;
- Cash-on-Delivery Agreement.

All these Acts were signed on 14 December 1989 in Washington, and they entered into force on 1 January 1991. Pursuant to Article 102 of the Charter of the United Nations, they will be registered with the Secretariat of the United Nations.

Congress also adopted a number of decisions, in the form of resolutions and recommendations which do not modify the Acts of the Union. Attention should be drawn, in particular, to the following decisions:

(a) General issues

(i) *Washington General Action Plan (resolution C 91)*

In an effort to define strategies for improving services and examine the impact of increased pressure from private competition, the Congress organized a general debate on the topic of "Caring for the customer". This led to the adoption of the Washington General Action Plan, which sets forth the priorities of the Universal Postal Union for the next five years, with special emphasis on six key sectors: knowledge of the market, commercial strategies, quality of service and operational strategies, management independence, human resources and increased role of the Executive Council, the Consultative Council for Postal Studies and the International Bureau.

(ii) *Permanent project to safeguard and enhance the quality of and to modernize the international postal service (resolution C 22)*

Congress adopted a permanent project to enhance the quality of and to modernize the international postal service. Thus, the Universal Postal Union will go beyond its traditional legislative role and focus on quality control, transport flow studies, market research, analysis of the strategies of the competition, development of an electronic mail system (EMS) and setting-up of new services.

(iii) *Rapid mechanism for decisions between congresses; complementary studies*

Congress set up, effective immediately, a more expeditious mechanism for making decisions and taking measures between congresses, by transferring to the Executive Council legislative functions in regard to execution regulations and strengthening the role of the Consultative Council for Postal Studies in setting and revising technical standards. A complementary study was requested of the Executive Council on the following matters:

- Second phase of the transfer to the Executive Council of some of the legislative functions of Congress (resolution C 2);
- Study of the structure of the Convention, the Agreements and their Detailed Regulations (resolution C 14);
- Reinforcement of the priority activities of the Union (resolution C 67);
- Subsequent improvement of the management of the Union's work (resolution C 8).

(b) International postal issues

(i) *Postal financial services (resolution C 3)*

Congress abolished the Collection of Bills Agreement, the International Savings Agreement and the Subscriptions to Newspapers and Periodicals Agreement. It also deleted the provisions concerning postal travellers' cheques from the Money Orders Agreement and the provisions concerning "Giro travellers' cheques" and those concerning "Negotiation by giro transfer of instruments payable at giro centres" from the Giro Agreement. However, it left administrations the possibility of retaining or subsequently reintroducing between themselves all or part of the provisions relating to the above-mentioned services.

(ii) *Standardization of the conditions of admission and supplementary services provided in the postal parcels service (resolution C 15)*

Congress invited the administrations to standardize the services they provide in connection with postal parcels in order to simplify the way they present the service to customers and retain or recover the postal share of the parcels market.

(iii) *Introduction and extension of the postal parcels service (resolution C 16)*

Congress instructed the Executive Council to examine the problems preventing certain administrations from acceding to the Postal Parcels Agreement and called upon those administrations to sign the Agreement. The Council was also instructed to study the possibility of making the postal parcels service mandatory within the Union.

(iv) *Adapting postal parcel services to the demands of the international market (resolution C 27)*

Congress instructed the Consultative Council for Postal Studies to study the possibility of identifying and developing a range of new postal parcel products/services suited to the demands of the international market, with particular reference to marketing, quality-of-service standards, administrations' payments and charges collected from customers.

(v) *Transit systems for parcel mails (resolution C 26)*

Congress instructed the Executive Council to undertake a study with a view to having a single system that applies to both letter post and parcel post, considering that transit of surface parcel mails is administered differently from that of letter-post mail.

(vi) *Philatelic code of ethics for the use of UPU member countries (recommendation C 80)*

Congress recommended that the administrations of member countries of the Union should observe the procedures described in the philatelic code of ethics for the use of UPU member countries (recommendation C 80) when issuing and providing postage stamps and postal items for philatelic purposes.

## 9. INTERNATIONAL MARITIME ORGANIZATION

### (a) Membership of the Organization

On 27 June 1988, Solomon Islands became the 132nd member of the Organization, in accordance with article 5 of the IMO Convention.<sup>321</sup> In 1989, two new countries became members of the International Maritime Organization: Malawi (19 January), in accordance with article 5 of the IMO Convention; and Monaco (22 December), in accordance with article 7 of the IMO Convention. As at 31 December 1989, the number of members of IMO was 134. There was also one associate member.

### (b) Review of legal activities of IMO

#### (i) *Liability for damage caused by hazardous and noxious substances*

The Legal Committee made good progress in its consideration of the complex issues arising in connection with the preparation of a draft convention relating to liability for damage caused by the maritime carriage of hazardous and noxious substances<sup>322</sup> and decided to retain this item, which was considered of top priority, in its work programme for further substantial consideration.

#### (ii) *Carriage of passengers and their luggage*

The Legal Committee reached agreement on a draft protocol to revise the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974,<sup>323</sup> and concluded that the text was ready for submission to a diplomatic conference to be convened early in 1990.

#### (iii) *Maritime liens and mortgages*

Pursuant to the agreement between IMO and UNCTAD, the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects has undertaken and completed the examination of a draft convention on Maritime Liens and Mortgages.<sup>324</sup>

#### (iv) *Law of the Sea*

Suitable arrangements have been made to keep the United Nations Office for Ocean Affairs and Law of the Sea and the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea duly informed of developments in the work of IMO and vice versa.

(v) *Participation in official inquiries into maritime casualties*

The Legal Committee considered and agreed on a revised draft of a proposed resolution on participation in official inquiries into maritime casualties. The Assembly at its 16th session considered and approved the draft resolution, taking into account the comments made in the Legal Committee (A.637(16)).<sup>325</sup>

(vi) *Legal implications of United Nations work regarding illicit drug trafficking*

At the request of the Facilitation Committee, during 1989, the Legal Committee considered a number of legal issues of interest to IMO which had arisen in connection with the work of the United Nations on drug abuse control and illicit trafficking in narcotic and psychotropic substances. In particular, the Committee examined the draft convention on the subject and its conclusions have been transmitted to the Secretariat to the United Nations for the information of the relevant United Nations Conference held in November 1988.<sup>326</sup>

(vii) *Marking of explosives for detectability*

The Legal Committee took note of information on action taken in the International Civil Aviation Organization concerning the development of an international regime for the marking of plastic or sheet explosives in order that such material might be detected and prevented from being loaded on board aircraft.<sup>327</sup> The Committee indicated that it would be willing to consider any proposals on legal aspects affecting IMO which might emerge from work being undertaken on the subject.

(viii) *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988*<sup>328</sup>

This Convention was adopted by the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation on 10 March 1989 and opened for signature on that date. In accordance with its terms, the Convention is to enter into force 90 days following the date on which 15 States have become Contracting States. By 9 March 1989, the last day it was open for signature, the Convention had been signed, subject to ratification, by 42 States. As at 31 December 1989, six States had deposited the requisite instruments in relation to the Convention.

(ix) *International Convention on Salvage, 1989*<sup>329</sup>

The International Conference on Salvage, held in London from 17 to 28 April 1989, adopted the International Convention on Salvage, 1989. The Convention was opened for signature at the headquarters of the Organization on 1 July 1989. As at 31 December 1989 the Convention had been signed, *ad referendum*, by one State.

(x) *Protocol of 1988 relating to the International Convention for the Safety of Life at Sea (SOLAS), 1974*<sup>330</sup>

This Protocol, which was adopted by the International Conference on the Harmonized System of Survey and Certification on 11 November 1988, was opened for signature on 1 March 1989. In accordance with article V, entry into force of the Protocol requires that 15 Contracting Governments to the 1974 Convention, the combined merchant fleets of which constitute not less than 50 per cent. of the gross tonnage of the world's merchant shipping, express their consent to be bound by it. As at 31 December 1989, five States had signed the Protocol subject to ratification.

(xi) *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988*<sup>331</sup>

This Protocol was adopted by the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation on 10 March 1988 and opened for signature on that date. In accordance with its terms, the Protocol is to enter into force 90 days following the date on which three Contracting States to the Convention have become Contracting States to the Protocol. By 9 March 1989, the last day it was open for signature, the Protocol had been signed, subject to ratification, by 40 States. As at 31 December 1989, six States had deposited the requisite instruments in relation to the Protocol.

(xii) *1976 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*<sup>332</sup>

The conditions for the entry into force of this Protocol were met on 30 January 1989. In accordance with article IV.1, the Protocol entered into force on 30 April 1989.

(xiii) *Protocol of 1988 relating to the International Convention on Load Lines, 1966*<sup>333</sup>

This Protocol, which was adopted by the International Conference on the Harmonized System of Survey and Certification on 11 November 1988, was opened for signature on 1 March 1989. In accordance with article V, entry into force of the Protocol requires that 15 Contracting Governments to the 1966 Convention, the combined merchant fleets of which constitute not less than 50 per cent. of the gross tonnage of the world's merchant shipping, express their consent to be bound by it. As at 31 December 1989, five States had signed the Protocol subject to ratification.

AMENDMENTS TO LEGAL INSTRUMENTS

(xiv) *1987 amendments to the Annex to the Convention on Facilitation of International Maritime Traffic, 1965, as amended*

These amendments were adopted by the Facilitation Committee on 17 September 1987 by resolution FAL.1(17). The conditions for their entry into force

were met on 1 October 1988 and the amendments therefore entered into force on 1 January 1989, in accordance with the terms of the resolution of the Facilitation Committee.

(xv) *1987 (Annex I) amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973*

These amendments were adopted by the Marine Environment Protection Committee (MEPC) on 1 December 1987 by resolution MEPC.29(25). The conditions for their entry into force were met on 1 October 1988 and the amendments therefore entered into force on 1 April 1989, in accordance with the terms of the resolution of MEPC.

(xvi) *1985 amendments to the Convention and Operating Agreement of Inmarsat, 1976*

Amendments to the Convention and the Operating Agreement of the International Maritime Satellite Organization (Inmarsat) were adopted and confirmed, respectively, on 16 October 1985 by the Assembly of Inmarsat at its fourth session. The conditions for their entry into force were met on 15 June 1989 and the amendments therefore entered into force on 13 October 1989, in accordance with the provisions of the Convention and Operating Agreement.

(xvii) *1988 amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974*

These amendments were adopted by the Maritime Safety Committee (MSC) on 21 April 1988 by resolution MSC.11(55). The conditions for their entry into force were met on 21 April 1989 and the amendments therefore entered into force on 22 October 1989, in accordance with the terms of the resolution of MSC.

(xviii) *1988 amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974*

These amendments were adopted by the Maritime Safety Committee on 28 October 1988 by resolution MSC.12(56). The conditions for their entry into force were met on 28 October 1989. The amendments will enter into force on 29 April 1990, in accordance with the terms of the resolution of MSC.

(xix) *1988 amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, concerning Radiocommunications for the Global Maritime Distress and Safety System*

These amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System on 9 November 1988 by resolution of the Conference. The conditions for their entry into force were met on 1 February 1990. The amendments will enter into force on 1 February 1991, in accordance with the decision of the Conference.

(xx) *1988 amendments to the 1978 SOLAS Protocol resulting from the introduction of the Global Maritime Distress and Safety System*

These amendments were adopted by the Conference of Parties to the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System on 10 November 1988 by resolution of the Conference. The conditions for their entry into force were met on 1 February 1990. The amendments will enter into force on 1 February 1992, in accordance with the decision of the Conference.

(xxi) *1987 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended*

These amendments were adopted by the Assembly on 19 November 1987 by resolution A.626(15). The conditions for their entry into force were met on 19 May 1988 and the amendments therefore entered into force on 19 November 1989, in accordance with the terms of the Assembly resolution.

## 10. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

### (a) Third Replenishment of IFAD's Resources

1. The Governing Council, at its twelfth session reconvened in connection with the Third Replenishment of IFAD's Resources, adopted, on 8 June 1989, resolution 56/XII on the Third Replenishment of IFAD's Resources,<sup>334</sup> the operative paragraphs of which are reproduced below:

“The Governing Council of IFAD

“I. *Resolves:*

“1. *Definitions*

“The terms used in this resolution have the meanings herein set forth:

(a) ‘Fund’ or ‘IFAD’: the International Fund for Agricultural Development;

(b) ‘Agreement’: the Agreement Establishing IFAD;

(c) ‘Replenishment’: the Third Replenishment of the resources of the Fund through contributions in accordance with this resolution;

(d) ‘Member’: a Member of the Fund;

(e) ‘Consultation’: the committee of senior representatives of the Members established pursuant to resolution 48/XI of the Governing Council to discuss various aspects of the Replenishment;

(f) ‘Instrument of Contribution’: a written commitment whereby a Member confirms its intention to make a contribution to the resources of the Fund under the Replenishment;

(g) ‘contribution’: the amount that a Member is legally committed to pay into the resources of the Fund under its Instrument of Contribution;

(h) ‘additional contribution’: a Member's contribution under the Replenishment of the resources of the Fund as defined in section 3 of article 4 of the Agreement;

(i) ‘supplementary contribution’: the contribution voluntarily made as a special effort in a freely convertible currency by a Member of Category III in support of the core replenishment, and the matching voluntarily of those contributions by Members of category I and referred to in attachments A and C to this resolution;

(j) ‘increase in contribution’: an increase by a Member, pursuant to section 4 of article 4 of the Agreement, of the amount of its additional contribution;

(k) ‘special contribution’: a contribution from a non-member to the resources of the Fund as defined in section 6 of article 4 of the Agreement;

(l) ‘unqualified contribution’: the contribution covered by an unqualified Instrument of Contribution as defined in provision (b) of paragraph 5 of this resolution;

(m) ‘qualified contribution’: the contribution covered by a qualified Instrument of Contribution as defined in provision (c) of paragraph 5 of this resolution;

(n) ‘complementary contribution’: the amount made available by a Member to the Fund during the Replenishment period on a voluntary basis and referred to in paragraph 3(d) of this resolution;

(o) ‘unit of obligation’: a freely convertible currency or Special Drawing Right (SDR) of the International Monetary Fund, as selected by each Member and in which its contribution is denominated in accordance with its pledge as specified in attachments A, B or C to this resolution;

(p) ‘payment of’ or ‘to pay’ a contribution: payment of, or to pay, a contribution in cash or by deposit of promissory notes or similar obligations;

(q) ‘instalment’: one of the instalments in which a contribution is to be paid;

(r) ‘dollar’ or ‘\$’: United States dollar.

#### “2. *General Clause*

(a) The Governing Council accepts the conclusions of the Ad Hoc Working Group and invites Members to make additional and other contributions to the resources of the Fund under the Replenishment.

(b) The level of Replenishment is \$522,904,000, in freely convertible currencies, with each category contributing the amount specified in paragraph 3 below. In seeking that objective, the Replenishment has been accomplished through the good will of Members of all categories, including the special effort voluntarily made on the part of category III Members to ensure the availability of maximum resources to the Fund in freely convertible currencies and in turn due to the willingness of category I to match category III contributions, referred to herein on a 3:1 ratio.

(c) Supplementary contributions were formulated in response to particular reasons of the Replenishment and shall not be regarded as constituting a precedent for any future replenishment of the resources of the Fund.

#### “3. *Additional and other contributions*

“The Fund is authorized, in accordance with the Agreement and the provisions of this resolution, to accept from Members for the resources of the Fund:

(a) additional contributions in freely convertible currencies from Members of categories I and II, including supplementary contributions from Members of category I, currently totalling \$345,528,000 from category I and totalling \$124,400,000 from category II, contributed in sums as indicated for the respective Members, in terms of the applicable unit of obligation, as set out in attachments A and B to this resolution;

- (b) (i) Supplementary contributions in freely convertible currencies from category III in amounts not less than those indicated for the respective Member, in terms of the applicable unit of obligation, in attachment C to this resolution;
  - (ii) Supplementary contributions to category I in amounts not less than those indicated in attachment A to this resolution;
  - (iii) Attachment C to this resolution indicates the pledges in freely convertible currencies of supplementary contributions of category III, which currently total \$52,976,000, and matching pledges of supplementary contributions for category I as set forth in attachment A, which currently total \$158,928,000. To the extent that the current supplementary contributions of category III as shown in attachment C are increased up to a level of \$75,000,000 not later than 15 September 1989, category I has agreed to increase its supplementary contributions in the proportion of 3:1 to category III contributions, the objective being to supplement the level of Replenishment referred to in paragraph 2(b) of this resolution. Upon receipt of formal pledges of further supplementary contributions of category III Members, the President shall communicate revised attachments A and C to all Members of the Fund not later than 29 September 1989;
  - (iv) The supplementary portion of the contributions of category I shall be paid in parallel instalments to the remainder of its additional contributions in accordance with the provisions of paragraphs 8 and 12. However, supplementary contributions of category I shall become available for use by the Fund pro rata in the proportion 3:1 as supplementary contributions of category III become available;
- (c) An increase in contribution to the resources of the Fund for the Replenishment;
- (d) Complementary contributions, not forming part of the pledged contributions included in attachments A, B and C to this resolution.
- “4. *Special contributions*  
 “During the Replenishment period, the Fund may accept special contributions from entities other than Members. The President shall notify the Executive Board of all such contributions.
- “5. *Instrument of contribution*  
 (a) *General clause*  
 (i) Members making contributions under this resolution shall deposit with the Fund, preferably not later than 30 June 1990, an Instrument of Contribution<sup>a</sup> specifying therein the amount of its contribution in the applicable unit of obligation as set forth in attachments A, B and C to this resolution.

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<sup>a</sup>An illustrative format of an Instrument of Contribution is given in attachment D to this resolution, which the Member may follow in preparing its Instrument of Contribution.”

(ii) Any Member which has not been able to make a pledge of its contribution under this resolution may deposit its Instrument of Contribution in accordance with the requirements of provision (i) of this paragraph. The President shall take such steps as may be necessary for the implementation of this provision and shall keep the Executive Board informed, in accordance with paragraph 15 of this resolution.

(b) *Unqualified contribution.* Except as provided in (c) below, the Instrument of Contribution shall constitute an unqualified commitment by the Member to make payment of the contribution in the manner and on the terms set forth in or contemplated by this resolution.

(c) *Qualified contribution.* As an exceptional case, where an unqualified contribution commitment cannot be given by a Member due to its legislative procedures, the Fund may accept from that Member an Instrument of Contribution that contains a formal notification by that Member that it will pay the first instalment of its contribution without qualification but that payment of the remaining instalments is subject to the enactment of the necessary appropriation legislation and compliance with other legislative requirements. Such a qualified Instrument, however, shall include an express undertaking on the part of the Member to seek the necessary appropriations at a rate so as to complete payment of its total contribution not later than 30 June 1992, except as the Executive Board shall otherwise determine. The Fund shall be notified as soon as possible after such appropriation has been obtained and such other legislative requirements have been fulfilled. For the purposes of this resolution, a qualified contribution shall be deemed to be unqualified to the extent that appropriations have been obtained, other legislative requirements have been met and the Fund has been notified.

“6. *Effectiveness*

(a) *Effectiveness of Replenishment.* The Replenishment shall come into effect on the date when the Instruments of Contribution relating to contributions from categories I and II have been deposited with the Fund in the aggregate total amount equivalent to at least 50 per cent. of the respective total contribution of each such category as set forth in attachments A and B to this resolution.

(b) *Effectiveness of individual Instruments of Contribution.* Instruments of Contribution deposited on or before the effective date of the Replenishment shall take effect on the date the Replenishment becomes effective, and Instruments of Contribution deposited after that date shall take effect on their respective dates of deposit.

“7. *Advance contribution*

“Notwithstanding the provisions of paragraph 5 above, any Member may notify the Fund that a specified portion of its contribution shall be treated as an advance contribution to the resources of the Fund until this Replenishment becomes effective.

“8. *Instalment payments*<sup>b</sup>

(a) *Unqualified contributions*

(i) Each contributing Member shall, at its option, pay its unqualified contribution in a single sum, in two or in no more than three equal

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<sup>b</sup>“Payments from categories I, II and III shall be consistent with the provisions of section 5(c) of article 4 and section 2(b) of article 7 of the Agreement.”

instalments, as specified in the Instrument of Contribution. The single sum or the first instalment shall be due on the thirtieth day after the Member's Instrument of Contribution enters into effect, and any other instalment shall be due on the first anniversary of the entry into effect of the Replenishment but the balance, if any, of the payment shall be made not later than 30 June 1992, except as the Executive Board shall otherwise determine.

- (ii) Instalment payments in respect of each unqualified contribution shall be, at the option of the Member, either (i) in equal amounts or (ii) in progressively graduated amounts with the first instalment amounting to at least 30 per cent. of the contribution, the second instalment amounting to at least 35 per cent. and the third instalment, if any, covering the remaining balance. In special circumstances, the Executive Board may upon the request of a Member agree to vary the prescribed percentages or the number of instalments of a Member subject to the requirement that such a variation shall not affect adversely the operational needs of the Fund.

(b) *Payments of a qualified contribution.* Payment in respect of a qualified contribution shall be made within ninety (90) days as and to the extent each instalment has become unqualified and becomes due in accordance with provision (a)(i) of this paragraph.

(c) *Advance contribution and amount of instalments.* The Member who shall make advance contribution of no less than 40 per cent. of its total contribution may, in consultation with the Executive Board, vary the amounts of the second and third instalments free of any restriction on the size of such instalments prescribed in the provisions of (a)(ii) above, subject to the total amount of its contribution.

(d) *Schedule of payments.* To the extent the payments are to depart from the requirements of provision (a)(i) and percentages of instalments specified in (a)(ii) of this paragraph, at the time of depositing its Instrument of Contribution, each Member preferably should indicate to the Fund its proposed schedule of instalment payments on the basis of the arrangements set forth in this paragraph.

(e) *Optional arrangements.* A Member may at its option pay its contribution in fewer instalments or in larger percentage portions or at earlier dates than those specified in this paragraph, provided that such payment arrangements are no less favorable to the Fund.

“9. *Mode of payment*

(a) *Form of payment.* All payments in respect of each contribution shall be made in cash or, at the option of the Member, by the deposit of non-negotiable, irrevocable, non-interest-bearing promissory notes or other similar obligations of the Member, encashable by the Fund at par on demand in accordance with such drawdown arrangements as the Executive Board shall determine on the basis of the operational requirements of the Fund.

(b) *Freedom from restriction of use.* In accordance with the requirements of paragraph (a) of section 5 of article 4 of the Agreement, all freely convertible currency contributions shall be made free of any restrictions as to their use by the Fund.

(c) *Increase in cash payment.* To the extent possible, the Members may favourably consider payment of larger portions of their contributions in cash.

“10. *Encashment of promissory notes or similar obligations*

“It is expected that the Fund would commence drawing down against promissory notes or other similar obligations made as payment of contributions under the resolution only in 1992.

“11. *Currency of payment*

“All contributions referred to in attachments A, B and C shall be paid in freely convertible currencies or in SDRs as specified in the respective Instruments of Contribution.

“12. *Delay in deposit of an Instrument of Contribution and/or reduction in payment*

(a) *Option of commensurate modification.* In the case of an undue delay in the deposit of an Instrument of Contribution or in payment or of substantial reduction in its contribution by a Member, any other Member may, notwithstanding any provision to the contrary in this resolution, at its option, after consultation with the Executive Board, make a commensurate modification, ad interim, in its schedule of payment or amount of contribution. In exercising this option, a Member shall act solely with a view to safeguarding the objectives of the Replenishment and avoiding any significant disparity between the relative proportion of Members’ total contributions until such time that the Member whose delay in the deposit of an Instrument of Contribution and/or payment or reduction in its share caused such a move by another Member has acted to remedy the situation on its part or the Member exercising the option revokes its decision taken under this provision.

(b) *Member not modifying commitment.* Members that do not wish to exercise their option referred to in (a) above may indicate so in their respective Instruments of Contribution.

“13. *Meeting of the Consultation*

“If, during the period covered by the Replenishment, delays in the making of any contributions cause or threaten to cause a suspension in the Fund’s lending operations or otherwise prevent the substantial attainment of the goals of the Replenishment, the Fund shall convene a meeting of the Consultation to review the situation and consider ways of fulfilling the conditions necessary for the continuation of the Fund’s lending operations or for the substantial attainment of those goals.

“14. *Exchange rates*

“For the purposes of freely convertible currency contributions and pledges under this resolution, the rate of exchange to be applied to convert the unit of obligation into the dollar shall be the average month-end exchange rate of the International Monetary Fund over the period from 30 November 1988 to 30 April 1989 between the currencies to be converted, rounded to the fourth decimal point.

“15. *Review by the Executive Board*

“The Executive Board shall periodically review the status of contributions under the Replenishment and shall take such actions, as may be appropriate, for the implementation of the provisions of this resolution.”

(b) Membership of the International Labour Organization  
Administrative Tribunal

2. IFAD's Personnel Policies Manual, which provides the terms and conditions of employment in IFAD, did not initially provide for IFAD's membership of an Administrative Tribunal. The only casual remedy available to IFAD staff members with a complaint relating to the conditions of their employment was that of a three-man tribunal provided in section 4.10.2 of the Manual:

“4.10.2. *Representation*

(a) The President shall institute and maintain a simple procedure whereby the views of employees, individually or collectively, may be represented to him on any matter arising from or in connection with the conditions and terms of their employment.

Such representation shall be subject to the understanding that the President will retain, under the provisions governing his constitutional responsibility as expressed in the Agreement and in these policies, the right of final determination of matters within his authority.

(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee or the President may refer the matter for final determination to a three-member tribunal comprising one member nominated by the employee, one member nominated by the President and an independent Chairman agreed between the two parties. The decision of the Tribunal shall be binding on the parties.”

3. It was increasingly felt that there was a need for a revision of the original remedy to bring IFAD into line with other United Nations specialized agencies. Accordingly, the Executive Board, at its thirty-third session in April 1988, on the recommendation of the President of IFAD, approved the amendment of the Personnel Policies Manual so as to permit IFAD to join an administrative tribunal.<sup>335</sup> The International Labour Organization Administrative Tribunal (ILOAT) was considered the most suitable tribunal. Consequently, to enable IFAD to accept the jurisdiction of ILOAT, at its thirty-third session in November 1988, the Executive Board amended paragraph 4.10.2(b) of the Personnel Policy Manual to read:

“(b) Should a matter affecting an individual employee not be resolved as a result of representation under this procedure, the employee may refer the matter for final determination to the International Labour Organization Administrative Tribunal.”<sup>336</sup>

(c) Cooperation with the United Nations bodies and agencies  
and regional organizations

4. *Office of the United Nations High Commissioner for Refugees.* IFAD and UNHCR both have common developing member States which place great importance on agricultural and rural development. The sustenance and betterment of refugees and returnees through UNHCR often involves the socio-economic development of the areas in which they may be residing in the host country or to which they may be returning. In view of that, UNHCR is now giving increased attention in its operations to linkages between refugee aid and development. Many

of the projects selected by UNHCR for its financial assistance fall within the scope of IFAD's development mandate, as a large number of refugees and displaced persons in developing countries belong to the poorest segments of rural populations. Taking into account the common objectives of both organizations and in accordance with article 8.2 of the Agreement Establishing IFAD, IFAD in June 1988 signed a Cooperation Agreement with UNHCR.<sup>337</sup>

5. The Agreement provides the basis upon which both organizations can cooperate and carry out their mandates jointly in areas of common interest in developing countries that are members of both UNHCR and IFAD and permits each to benefit from the other's resources and expertise. The Agreement enables IFAD and UNHCR to mobilize additional resources and to seek jointly alternative ways of finding more constructive and durable solutions for refugees and returnees than mere care and maintenance. The Agreement, in particular, provides that IFAD and UNHCR will closely cooperate in the identification, preparation and appraisal of projects which are likely to be suitable for financing, either exclusively by UNHCR or jointly by IFAD and UNHCR, as appropriate. The parties will also collaborate in the implementation of the projects by, *inter alia*, the coordination of their respective activities. To ensure effective coordination, IFAD and UNHCR will conduct joint reviews of projects. However, UNHCR may independently monitor project implementation so as to ensure the employment of refugees and returnees in development activities.

6. *United Nations Industrial Development Organization.* In June 1989, IFAD concluded a Cooperation Agreement with UNIDO. The Agreement replaced the cooperation arrangement between IFAD and UNIDO that existed before the latter became a specialized agency of the United Nations.<sup>338</sup> Under the new Cooperation Agreement, both parties will cooperate in the identification, preparation and implementation of projects which are compatible with IFAD's mandate. Special emphasis will be given to the following areas of cooperation:

- Survey and studies with particular reference to linkage between agriculture and industry, including the issue of new and renewable;
- Energy resources;
- Preparation of feasibility studies and appraisal of agro-industrial projects;
- Rural industrialization;
- Combating desertification and drought;
- Promotion and development of standardization and institutions and training of agro-industrial extension workers;
- Promotion of small- and medium-scale enterprises aiming at increasing processing of agricultural raw materials;
- Rehabilitation and expansion of production and formulation facilities for pesticides, fertilizers and soil conditioners, as well as the promotion of their safe and efficient use;
- Production of simple agricultural tools and machinery most appropriate to local needs;
- Upgrading existing repair and maintenance workshops;
- Development of agro-industrial entrepreneurs;
- Promotion and upgrading of the nutritional value of agricultural products by biotechnology and genetic engineering technologies.

7. *Cooperation Council for the Arab States of the Gulf (GCC)*. In the context of intensifying cooperation with regional organizations, IFAD concluded, in August 1989, a Cooperation Agreement with GCC.<sup>339</sup> Under this Agreement, both parties will cooperate on matters related to agricultural and rural development, food production, nutrition and related research activity of common interest. The Agreement provides that IFAD and GCC will exchange information and documents regarding areas of cooperation and potential investment projects and research programmes in the agricultural and rural development field. GCC will communicate to IFAD proposals concerning areas of cooperation and projects and research programmes which are prima facie suitable for further processing. On its behalf, IFAD will keep GCC informed of inter-country studies and/or projects benefiting from its assistance in countries of common membership and may examine proposals concerning studies and projects relevant to agricultural and rural development and prima facie suitable for further processing. The Agreement provides also that GCC will assume responsibility for the coordination of activities of its member countries with the projects and research programmes agreed by IFAD and GCC and supported by IFAD.

## 11. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

In addition to providing legal advice and assistance to the principal organs of UNIDO, the Director-General and various departments in the Organization, the Legal Service of UNIDO continued to deal with subjects related to the completion of the conversion of UNIDO into a specialized agency. These activities can be summed up as follows:

### (a) *Constitutional matters*

After the withdrawal of Australia of its membership in UNIDO effective 31 December 1988, 151 States were members of UNIDO by the end of 1989.<sup>340</sup>

### (b) *Conference agreements*

UNIDO concluded agreements with the Governments of Italy, Malta and the USSR regarding UNIDO Consultation meetings in those countries.<sup>341</sup>

### (c) *Agreements with intergovernmental, non-governmental, governmental and other organizations*

Based on the Guidelines regarding Relationship Agreements with organizations of the United Nations System other than the United Nations, and with other Intergovernmental and Governmental Organizations, and regarding Appropriate Relations with Non-governmental and other Organizations, adopted by the General Conference,<sup>342</sup> UNIDO concluded the following agreements in 1989:

- (i) As approved by the Industrial Development Board at its second,<sup>343</sup> third<sup>344</sup> and fifth<sup>345</sup> sessions, UNIDO concluded relationship agreements with the following intergovernmental organizations not in the United Nations system.<sup>341</sup>

—Relationship Agreement with the African Regional Organization for Standardization (ARSO), signed on 1 and 11 December 1989;  
—Relationship Agreement with the Arab Union for Cement and Building Materials (AUCBM), signed on 4 June and 4 August 1989;  
—Relationship Agreement with the Caribbean Development Bank (CARIBANK), signed on 24 October and 16 November 1989;  
—Relationship Agreement with the International Lead and Zinc Study Group (ILZSG), signed on 13 October 1989;  
—Agreement with the Organization of African Unity (OAU), signed on 25 July 1989.

- (ii) On 13 July 1989 UNIDO signed an Agreement with the Permanent Secretariat of the Latin American Economic System (SELA) concerning the second programme of cooperation between SELA and UNIDO.<sup>341</sup>
- (iii) UNIDO concluded Agreements or working arrangements with the following Governments or governmental organizations:<sup>341</sup>
  - “Relevé de conclusions” of discussions with the Government of Algeria during the Director-General’s visit to Algeria, on cooperation between Algeria and UNIDO;
  - Agreement with Italy on basic terms and conditions governing UNIDO projects envisaged by the five-year work programme for the International Centre for Genetic Engineering and Biotechnology and related trust fund agreement;
  - Trust fund agreement with the Research Area of Trieste in connection with the above Agreement on basic terms and conditions;
  - Agreement with the Research Area of Trieste in connection with the Agreement of 29 June 1988 between UNIDO and Italy on basic terms and conditions governing the UNIDO project concerning the preparatory phase for the establishment of an International Centre for Science and High Technology.

*(d) Agreements with the United Nations or its organs*

- (i) As in previous years, UNIDO concluded an agreement with the United Nations on arrangements for the sale of UNIDO publications.<sup>341</sup>
- (ii) UNIDO signed a working arrangement with the Secretariat of the Economic and Social Commission for Asia and the Pacific, and a Memorandum of Understanding with UNDP concerning the integration of the UNIDO field service within the UNDP field office.<sup>341, 346</sup>

*(e) Agreements with specialized agencies*

UNIDO signed a Relationship Agreement with IFAD, an Agreement for cooperation with UNESCO and an Agreement with WHO, the latter together with a Protocol regarding the entry into force of the Agreement.<sup>341</sup>

*(f) Standard Basic Cooperation Agreement*

Agreements were concluded with Cameroon, Ecuador, Lebanon, Mauritania, Papua New Guinea and Saint Lucia.

(g) *Agreements with publishing houses regarding  
UNIDO publications*

On the basis of the model agreement elaborated by the Legal Service, UNIDO has concluded agreements with the publishing houses Harvester-Wheatsheaf of Hemel Hempstead and Basil Blackwell of Oxford, both of the United Kingdom.

## 12. INTERNATIONAL ATOMIC ENERGY AGENCY

### AMENDMENT TO ARTICLE VI.A.1 OF THE IAEA STATUTE<sup>347</sup>

During 1989, eight more member States — Bangladesh, Côte d'Ivoire, Ghana, Italy, Jamaica, Libyan Arab Jamahiriya, Tunisia and Uganda — accepted the amendment,<sup>348</sup> bringing the total number of acceptances to 76. The amendment thus entered into force on 28 December 1989, the date on which acceptance by two thirds of all member States was effected.

### CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL<sup>349</sup>

Three more States — Argentina, China and Finland — expressed consent to be bound by the Convention. By the end of 1989, 46 States and one regional organization — Euratom — had signed the Convention and 23 States were party to it.

### CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT<sup>350</sup>

### CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY<sup>351</sup>

During 1989, 13 more States — Cyprus, France, Germany (Federal Republic of), Iceland, Israel, Monaco, Pakistan, Saudi Arabia, Spain, Thailand, Tunisia, Uruguay and Yugoslavia — expressed consent to be bound by the Notification Convention. By the end of 1989, 72 States had signed the Convention on Early Notification of a Nuclear Accident and 44 States and one international organization had become party to it.

By 1989, 12 States — Austria, Cyprus, France, Germany (Federal Republic of), Israel, Monaco, Pakistan, Saudi Arabia, Spain, Thailand, Tunisia and Uruguay — adhered to the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. Thus, at the end of 1989, 70 States had signed the Convention and 38 States and one international organization had become parties.

### VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE<sup>352</sup>

Three States — Chile, Hungary and Mexico — expressed consent to be bound by the Convention during 1989. By the end of the year, 10 States had signed the Convention and 12 States were party to it.

#### JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION<sup>353</sup>

The Joint Protocol was signed by two more States — France and Hungary — and ratified by three States — Chile, Denmark and Egypt. Thus, by the end of 1989, the Joint Protocol had been signed by 22 States and 3 States had adhered to it. Two of the ratifying States are party to the Vienna Convention and one is party to the Paris Convention. Pursuant to article VII of the Joint Protocol, adherence of at least five States party to the Vienna Convention and five States party to the Paris Convention is required for its entry into force.

#### EXAMINATION OF THE QUESTION OF LIABILITY FOR NUCLEAR DAMAGE

In 1989, IAEA continued consideration of the question of liability for nuclear damage. In response to resolution GC(XXXII)/RES/491 adopted by the IAEA General Conference on 23 September 1988, the Agency Board of Governors, on 23 February 1989, established an open-ended working group which was assigned the task of considering ways and means of complementing and strengthening the existing civil liability regime and also the question of international (State) liability. The working group held two sessions. At its second session, held from 30 October to 3 November 1989, the working group recommended that: the IAEA Director General should bring the need for revision of the existing civil liability conventions to the attention of IAEA member States, States party to the Vienna Convention on Civil Liability for Nuclear Damage and to the Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention);<sup>354</sup> the IAEA Director General, as the depositary of the Vienna Convention, should ascertain from its parties whether they desired that a revision conference should be convened in accordance with article XXVI of the Convention; in view of the close relationship between the issues of civil and State liability, the work of the working group should be subsumed under a new open-ended Standing Committee on Liability for Nuclear Damage with an expanded mandate to include issues of civil and State liability and the relationship between them. (The new Standing Committee replaces the Standing Committee on civil liability established in 1963.)

#### SAFEGUARDS AGREEMENTS<sup>355</sup>

During 1989, Safeguards Agreements were concluded between IAEA and eight States: Bhutan, Lao People's Democratic Republic, Tunisia, Viet Nam, United States of America, Algeria, Antigua and Barbuda, and India. The agreements with Bhutan, Lao People's Democratic Republic, Tunisia and Viet Nam were concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons;<sup>356</sup> the agreement with the United States was concluded on the basis of Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco);<sup>357</sup> the agreement with Antigua and Barbuda was concluded on the basis of the Non-Proliferation Treaty and the Tlatelolco Treaty.<sup>358</sup>

The agreements with Bhutan,<sup>358</sup> the United States<sup>360</sup> and India,<sup>361</sup> as well as the Safeguards Agreement concluded in 1988 with China,<sup>362</sup> entered into force; the agreement with Algeria<sup>363</sup> entered into force provisionally. In addition, Spain acceded to the Non-Proliferation Treaty-based Safeguards Agreement between IAEA, Euratom and the non-nuclear-weapon States of the European Community.<sup>364</sup> As a consequence, the application of safeguards under five agreements<sup>365</sup> in Spain was suspended. An agreement between the United States, Japan and the Agency expired in accordance with the underlying agreement for cooperation.<sup>366</sup>

By the end of 1989, there were 172 Safeguards Agreements in force with 101 States,<sup>367</sup> 80 of which agreements were concluded pursuant to the Non-Proliferation Treaty and/or the Tlatelolco Treaty with 84 non-nuclear weapon States.

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#### NOTES

<sup>1</sup>For detailed information, see *The United Nations Disarmament Yearbook*, vol. 14:1989 (United Nations publication, Sales No. E. 90.IX.4).

<sup>2</sup>Adopted without a vote.

<sup>3</sup>*Ibid.*

<sup>4</sup>Adopted by a recorded vote of 138 to 8, with 9 abstentions.

<sup>5</sup>Adopted without a vote.

<sup>6</sup>Adopted by a recorded vote of 153 to 1, with 1 abstention.

<sup>7</sup>Adopted without a vote.

<sup>8</sup>Adopted without a vote.

<sup>9</sup>Adopted by a recorded vote of 129 to 1, with 25 abstentions.

<sup>10</sup>Adopted by a recorded vote of 154 to none with 1 abstention.

<sup>11</sup>Adopted by a recorded vote of 137 to none, with 17 abstentions.

<sup>12</sup>Both adopted by recorded votes.

<sup>13</sup>Adopted without a vote.

<sup>14</sup>Adopted by a recorded vote of 147 to 1, with 6 abstentions.

<sup>15</sup>Adopted by a recorded vote of 136 to 13, with 5 abstentions.

<sup>16</sup>Adopted on 15 December 1989 by a recorded vote.

<sup>17</sup>Adopted on 15 December 1989 by a recorded vote.

<sup>18</sup>General Assembly resolution 44/106 of 15 December 1989, entitled "Amendment of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water." United Nations, *Treaty Series*, vol. 480, p. 43.

<sup>19</sup>General Assembly resolution 2373 (XXII), annex; the text also appears in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987 (United Nations publication, Sales No. E.88.IX.5).

<sup>20</sup>For details on the evolution and conclusion of the Non-Proliferation Treaty, see *The United Nations and Disarmament: 1945-1970* (United Nations publication, Sales No. 70.IX.1), chap.13.

<sup>21</sup>United Nations, *Treaty Series*, vol. 402, p. 71; the text also appears in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987.

<sup>22</sup>United Nations, *Treaty Series*, vol. 634, p. 281; the text also appears in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987.

<sup>23</sup>Registered with the United Nations as Treaty No. 24592 for inclusion in the *Treaty Series*; the text is reproduced in *The United Nations Disarmament Yearbook*, vol. 10:1985 (United Nations publication, Sales No. E.86.IX.7) and in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987.

<sup>24</sup>General Assembly resolution 2222 (XXI), annex; the text also appears in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987.

<sup>25</sup>General Assembly resolution 2660 (XXV), annex; the text also appears in *Status of Multilateral Arms Regulation and Disarmament Agreement*, 1987.

<sup>26</sup>*Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 27 (A/39/27)*, appendix III (CD/540), 242nd meeting.

<sup>27</sup>*Ibid.*, *Forty-fourth Session, Plenary meetings*, 40th meeting.

- <sup>28</sup>Ibid., *Twenty-second Session, Plenary meetings*, 1672nd meeting.
- <sup>29</sup>Ibid., *Twenty-ninth Session, Supplement No. 27 (A/9627)*, annex II, document CCD/425.
- <sup>30</sup>The First Review Conference of the parties to the Treaty is covered in *The United Nations and Disarmament: 1970-1975* (United Nations publication, Sales No. E.76.IX.1), chap IV; the Second Review Conference, in *The United Nations Disarmament Yearbook*, vol. 5:1980, chap. VII; and the Third Review Conference, in *The United Nations Disarmament Yearbook*, vol. 10:1985.
- <sup>31</sup>See General Assembly resolutions 44/113 A and 44/113 B, adopted on 15 December 1989 by recorded vote.
- <sup>32</sup>See General Assembly resolutions 44/108 and 44/121, adopted on 15 December 1989, the former without a vote and the latter by a recorded vote.
- <sup>33</sup>See General Assembly resolution 44/109, adopted on 15 December 1989 by a recorded vote.
- <sup>34</sup>See General Assembly resolution 44/104, adopted on 15 December 1989 by a recorded vote.
- <sup>35</sup>See General Assembly resolution 44/119 F, adopted on 15 December 1989 by a recorded vote.
- <sup>36</sup>See General Assembly resolution 44/120, adopted on 15 December 1989 by a recorded vote.
- <sup>37</sup>*International Legal Materials*, vol. 18 (1979), p. 1419.
- <sup>38</sup>Adopted on 25 October 1989.
- <sup>39</sup>United Nations, *Treaty Series*, vol. 1015, p. 163.
- <sup>40</sup>Adopted on 15 December 1989 by a recorded vote of 124 to 2, with 26 abstentions.
- <sup>41</sup>Adopted on 15 December 1989 without a vote.
- <sup>42</sup>General Assembly resolution 2660 (XXV), annex. The text of the Treaty is reproduced in *Status of Multilateral Arms Regulation and Disarmament Agreements*, 1987 (United Nations publication, Sales No. E.88.IX.5). For a detailed account of the negotiations leading to conclusion of the Treaty, see *The United Nations and Disarmament: 1945-1970* (United Nations publication, Sales No. 70.IX.1), chap. 8, and *The United Nations and Disarmament: 1970-1975* (United Nations publication, Sales No. E.76.IX.1), chap. VI.
- <sup>43</sup>See General Assembly resolution 44/116 O, adopted on 15 December 1989 by consensus; France noted that it had not participated in the vote.
- <sup>44</sup>Adopted as a whole on 15 December 1989 by 153 votes to 1.
- <sup>45</sup>See General Assembly resolutions: 44/116 C (Conventional disarmament), 44/116 F (Conventional disarmament), 44/116 N (International arms transfers), 44/116 S (Conventional disarmament on a regional scale), 44/117 B (Regional disarmament) and decision 44/430 regarding 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.
- <sup>46</sup>See also General Assembly resolutions 44/114 B, 44/116 J and 44/116 L.
- <sup>47</sup>Adopted by a recorded vote of 114 to none, with 7 abstentions.
- <sup>48</sup>See A/44/819.
- <sup>49</sup>Adopted by a recorded vote of 101 to none, with 8 abstentions.
- <sup>50</sup>Adopted without a vote.
- <sup>51</sup>See A/44/734.
- <sup>52</sup>A/44/301.
- <sup>53</sup>Adopted by a recorded vote of 137 to 3, with 14 abstentions.
- <sup>54</sup>See A/44/787.
- <sup>55</sup>A/44/487 and Add.1 and 2.
- <sup>56</sup>For the report of the Subcommittee, see A/AC.105/430.
- <sup>57</sup>See *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 20 (A/44/20)*, chap. II, sect. C.
- <sup>58</sup>Adopted without a vote.
- <sup>59</sup>See A/44/814.
- <sup>60</sup>They are: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution

2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

<sup>61</sup> Adopted by a recorded vote of 128 to 1, with 24 abstentions.

<sup>62</sup> See A/44/821.

<sup>63</sup> General Assembly resolution 2734 (XXV).

<sup>64</sup> For the report of the session, see *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 25* (A/44/25).

<sup>65</sup> Adopted without a vote.

<sup>66</sup> See A/44/746/Add.7.

<sup>67</sup> Adopted without a vote.

<sup>68</sup> See A/44/746/Add.7.

<sup>69</sup> Adopted without a vote.

<sup>70</sup> See A/44/746/Add.7.

<sup>71</sup> Adopted without a vote.

<sup>72</sup> See A/44/746/Add.7.

<sup>73</sup> Adopted by a recorded vote of 131 to 1, with 23 abstentions.

<sup>74</sup> See A/44/746/Add.3.

<sup>75</sup> A/44/266-E/1989/65 and Add.1 and 2.

<sup>76</sup> Adopted by a recorded vote of 139 to 1, with no abstentions.

<sup>77</sup> See A/44/861.

<sup>78</sup> A/44/628.

<sup>79</sup> Adopted by a recorded vote of 118 to 23, with 2 abstentions.

<sup>80</sup> See A/44/746/Add.2.

<sup>81</sup> A/44/510.

<sup>82</sup> Adopted without a vote.

<sup>83</sup> See A/44/746/Add.6.

<sup>84</sup> *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 39* (A/44/39), annex I.

<sup>85</sup> *Report of the United Nations Conference on Technical Cooperation among Developing Countries, Buenos Aires, 30 August-12 September 1978* (United Nations publication, Sales No. E.78.II.A.11 and corrigendum), chap. I.

<sup>86</sup> Adopted without a vote.

<sup>87</sup> See A/44/746/Add.2.

<sup>88</sup> A/44/554.

<sup>89</sup> Adopted by a recorded vote of 131 to 1, with 23 abstentions.

<sup>90</sup> See A/44/749.

<sup>91</sup> United Nations publication, Sales No. E.89.IV.1.

<sup>92</sup> General Assembly resolution 2542 (XXIV).

<sup>93</sup> Adopted without a vote.

<sup>94</sup> See A/44/756.

<sup>95</sup> See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

<sup>96</sup> Adopted without a vote.

<sup>97</sup> See A/44/756.

<sup>98</sup> A/44/400

<sup>99</sup> *Ibid.*, sect. III. A

<sup>100</sup> *Ibid.*, sect. IV.C.

<sup>101</sup> E/CONF.82/15 and Corr.1 and 2.

<sup>102</sup> Adopted without a vote.

<sup>103</sup> See A/44/850.

<sup>104</sup> A/44/572.

<sup>105</sup> Adopted without a vote.

<sup>106</sup> See A/44/850.

<sup>107</sup> Adopted without a vote.

<sup>108</sup> See A/44/850.

<sup>109</sup> Adopted without a vote.

<sup>110</sup> See A/44/823.

<sup>111</sup> *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 12* (A/44/12).

- <sup>112</sup>Ibid., *Supplement No. 12A (A/44/12/Add.1)*.
- <sup>113</sup>Ibid., *Forty-fourth Session, Third Committee*, 44th and 47th meetings, and corrigendum.
- <sup>114</sup>United Nations, *Treaty Series*, vol. 189, p. 137.
- <sup>115</sup>Ibid., vol. 606, p. 267.
- <sup>116</sup>See A/41/572, annex.
- <sup>117</sup>A/44/527 and Corr.1 and 2, annex.
- <sup>118</sup>A/44/523, annex.
- <sup>119</sup>United Nations, *Treaty Series*, vol. 993, p. 3.
- <sup>120</sup>Ibid., vol. 999, p. 171.
- <sup>121</sup>Ibid.
- <sup>122</sup>Adopted by a recorded vote of 59 to 26, with 48 abstentions.
- <sup>123</sup>See A/44/824.
- <sup>124</sup>General Assembly resolution 217 A (III).
- <sup>125</sup>Adopted without a vote.
- <sup>126</sup>See A/44/824.
- <sup>127</sup>*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40)*.
- <sup>128</sup>United Nations, *Treaty Series*, vol. 78, p. 277.
- <sup>129</sup>Adopted without a vote.
- <sup>130</sup>See A/44/848.
- <sup>131</sup>A/44/440.
- <sup>132</sup>United Nations, *Treaty Series*, vol. 660, p. 195.
- <sup>133</sup>Adopted without a vote.
- <sup>134</sup>See A/44/716.
- <sup>135</sup>*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 18 (A/44/18)*.
- <sup>136</sup>United Nations, *Treaty Series*, vol. 1015, p. 243.
- <sup>137</sup>Adopted by a recorded vote of 214 to 1, with 27 abstentions.
- <sup>138</sup>See A/44/716.
- <sup>139</sup>A/44/442.
- <sup>140</sup>United Nations, *Treaty Series*, vol. 1249, p. 13.
- <sup>141</sup>Adopted without a vote.
- <sup>142</sup>See A/44/802.
- <sup>143</sup>A/44/457.
- <sup>144</sup>United Nations, *Treaty Series*, vol. 1465, p. 85.
- <sup>145</sup>Adopted without a vote.
- <sup>146</sup>See A/44/827.
- <sup>147</sup>A/44/443.
- <sup>148</sup>*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 and corrigendum (A/44/46 and Corr.1)*, sect. IV and annex IV.
- <sup>149</sup>General Assembly resolution 44/25, annex.
- <sup>150</sup>Adopted without a vote.
- <sup>151</sup>See A/44/736.
- <sup>152</sup>See League of Nations, *Official Journal, Special Supplement No. 21*, October 1924, p. 43.
- <sup>153</sup>General Assembly resolution 1386 (XIV).
- <sup>154</sup>Ibid., third preambular paragraph.
- <sup>155</sup>General Assembly resolution 41/85, annex.
- <sup>156</sup>General Assembly resolution 40/33, annex.
- <sup>157</sup>General Assembly resolution 3318 (XXIX).
- <sup>158</sup>Adopted without a vote.
- <sup>159</sup>See A/44/849.
- <sup>160</sup>A/44/539.
- <sup>161</sup>See A/44/98, annex.
- <sup>162</sup>See A/44/668.
- <sup>163</sup>E/C.12/1989/3.
- <sup>164</sup>Adopted by a recorded vote of 151 to 2, with 2 abstentions.
- <sup>165</sup>See A/44/848.
- <sup>166</sup>Adopted without a vote.
- <sup>167</sup>See A/44/799.

- <sup>168</sup>A/44/525. For the updated report, see E/CN.4/1989/47 and Add.1.
- <sup>169</sup>Adopted without a vote.
- <sup>170</sup>See A/44/848.
- <sup>171</sup>General Assembly resolution 44/132 of 5 December 1989, adopted without a vote; see A/44/826, E/CN.4/Sub.2/1988/22 and A/44/606 and Add.1.
- <sup>172</sup>General Assembly resolutions 44/133 and 44/134, both adopted without a vote; see A/44/826.
- <sup>173</sup>Adopted without a vote.
- <sup>174</sup>See A/44/848.
- <sup>175</sup>E/CN.4/1988/22 and Add.1 and 2 and E/CN.4/1989/25.
- <sup>176</sup>Adopted without a vote.
- <sup>177</sup>See A/44/848.
- <sup>178</sup>See *Official Records of the Economic and Social Council 1980, Supplement No. 3* and corrigendum (E/1980/13 and Corr.1), chap. XXVI, sect. A.
- <sup>179</sup>*Ibid.*, 1986, *Supplement No. 2* (E/1986/22), chap. II, sect. A.
- <sup>180</sup>Adopted without a vote.
- <sup>181</sup>See A/44/848.
- <sup>182</sup>A/44/622.
- <sup>183</sup>A/41/324, annex.
- <sup>184</sup>Adopted without a vote.
- <sup>185</sup>See A/44/717.
- <sup>186</sup>A/44/548.
- <sup>187</sup>Adopted by a recorded vote of 125 to 10, with 21 abstentions.
- <sup>188</sup>See A/44/717.
- <sup>189</sup>A/44/526, annex.
- <sup>190</sup>Adopted without a vote.
- <sup>191</sup>See A/44/799.
- <sup>192</sup>General Assembly resolution 41/128, annex.
- <sup>193</sup>E/CN.4/1989/10.
- <sup>194</sup>Adopted without a vote.
- <sup>195</sup>See A/44/848.
- <sup>196</sup>A/C.3/44/1 and A/C.3/44/4.
- <sup>197</sup>Adopted without a vote.
- <sup>198</sup>See A/44/825.
- <sup>199</sup>General Assembly resolution 217 A (III).
- <sup>200</sup>Adopted by a recorded vote of 139 to none, with 16 abstentions.
- <sup>201</sup>UNESCO, *Records of the General Conference, Sixteenth Session*, vol. 1, Resolutions, p. 135.
- <sup>202</sup>*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122. See also United Nations publication sales No. E.97.V.10.
- <sup>203</sup>For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/44/650 and Corr.1).
- <sup>204</sup>Adopted by recorded vote of 138 to 2, with 6 abstentions.
- <sup>205</sup>A/44/650 and Corr.1.
- <sup>206</sup>For the composition of the Court, see General Assembly decision 43/327.
- <sup>207</sup>As of 31 December 1989, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with the declaration filed under Article 36, paragraph 2, of the Statute of the International Court of Justice stood at 49.
- <sup>208</sup>For complete text of cases, see *I.C.J. Yearbook 1988-89*, *ibid.*, 1989-90.
- <sup>209</sup>Adopted by a recorded vote of 91 to 2, with 41 abstentions.
- <sup>210</sup>For the membership of the Commission, see *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10* (A/44/10), chap. I, para. 2.
- <sup>211</sup>For detailed information on the work of the Commission, see *ibid.*, *Forty-fourth Session, Supplement No. 10* (A/44/10).
- <sup>212</sup>For a summary of the debate, see *Yearbook of the International Law Commission 1989*, vol. II (Part Two), pp. 75 et seq., paras. 296-488.
- <sup>213</sup>A/CN.4/419 and Add.1.
- <sup>214</sup>A/CN.4/425 and Add.1.
- <sup>215</sup>A/CN.4/423.
- <sup>216</sup>A/CN.4/422 and Add.1.
- <sup>217</sup>A/CN.4/415.

- <sup>218</sup>A/CN.4/421 and Add.1 and 2.
- <sup>219</sup>A/CN.4/4424.
- <sup>220</sup>*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10 (A/44/10)*.
- <sup>221</sup>Adopted without a vote.
- <sup>222</sup>See A/44/767.
- <sup>223</sup>General Assembly resolution 44/32; see A/44/765.
- <sup>224</sup>General Assembly resolution 44/36; see A/44/767.
- <sup>225</sup>For the membership of the Commission, see *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 17 (A/44/17)*, chap. I, sect. B.
- <sup>226</sup>For detailed information on the work of the Commission, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XX: 1989 (United Nations publication, Sales No. E.90.V.9).
- <sup>227</sup>A/CN.9/316.
- <sup>228</sup>A/CN.9/322.
- <sup>229</sup>A/CN.9/324.
- <sup>230</sup>A/CN.9/281.
- <sup>231</sup>*Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, New York, 20 May-14 June 1974* (United Nations publication, Sales No. E.74.V.8), p. 101.
- <sup>232</sup>*Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.82.V.5), p. 191.
- <sup>233</sup>*Ibid.*, p. 178.
- <sup>234</sup>*Official Records of the United Nations Conference on the Carriage of Goods by Sea, Hamburg, 6-31 March 1978* (United Nations publication, Sales No. E.80.VIII.1), document A/CONF/.89/13, annex I.
- <sup>235</sup>United Nations, *Treaty Series*, vol. 330, p. 3.
- <sup>236</sup>A/CN.9/325.
- <sup>237</sup>Adopted without a vote.
- <sup>238</sup>See A/44/723.
- <sup>239</sup>General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).
- <sup>240</sup>General Assembly resolution 3362 (S-VII).
- <sup>241</sup>See also above, sections 6 on the International Law Commission and 7 on UNCITRAL.
- <sup>242</sup>Adopted without a vote.
- <sup>243</sup>See A/44/761.
- <sup>244</sup>A/44/712.
- <sup>245</sup>Adopted without a vote.
- <sup>246</sup>See A/44/762.
- <sup>247</sup>United Nations, *Treaty Series*, vol. 704, No. 10106.
- <sup>248</sup>*Ibid.*, vol. 860, p. 105.
- <sup>249</sup>*Ibid.*, vol. 974, p. 177.
- <sup>250</sup>*Ibid.*, vol. 1035, p. 167.
- <sup>251</sup>General Assembly resolution 34/146, annex.
- <sup>252</sup>*International Legal Materials*, vol. 18 (1970), p. 1419.
- <sup>253</sup>ICAO document 9518; United Nations, *Treaty Series*, vol. 1589, p. 474.
- <sup>254</sup>IMO document SUA/CONF/15/Rev. 1.
- <sup>255</sup>IMO document SUA/CONF/16/Rev. 2.
- <sup>256</sup>A/44/456 and Add.1.
- <sup>257</sup>Adopted by a recorded vote of 126 to 1, with 24 abstentions.
- <sup>258</sup>See A/44/763.
- <sup>259</sup>A/39/504/Add.1, annex III.
- <sup>260</sup>A/41/536, A/42/483 and Add.1 and 2, A/44/455 and Add.1.
- <sup>261</sup>Adopted by a recorded vote of 131 to none, with 21 abstentions.
- <sup>262</sup>See A/44/764.
- <sup>263</sup>A/44/460 and Add.1.
- <sup>264</sup>General Assembly resolution 37/10.
- <sup>265</sup>Adopted without a vote.
- <sup>266</sup>See A/44/766.
- <sup>267</sup>*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 43, and corrigendum (A/44/43) and Corr.1*, sects. II.C and III.

- <sup>268</sup>A/C.6/44/L.9, annex.
- <sup>269</sup>General Assembly resolution 2625 (XXV), annex.
- <sup>270</sup>For the report of the Special Committee, see *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33* (A/44/33).
- <sup>271</sup>A/AC.182/L.60 and A/AC.182/L.62.
- <sup>272</sup>A/AC.182/L.52/Rev.2.
- <sup>273</sup>A/AC.182/L.61.
- <sup>274</sup>Adopted without a vote.
- <sup>275</sup>See A/44/768.
- <sup>276</sup>Adopted without a vote.
- <sup>277</sup>See A.44/768, para. 13, and A/44/PV.72.
- <sup>278</sup>For the report of the Committee, see *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 26* (A/44/26).
- <sup>279</sup>Adopted without a vote.
- <sup>280</sup>See A/44/769.
- <sup>281</sup>See also sect. 3(c) above.
- <sup>282</sup>Adopted without a vote.
- <sup>283</sup>See A/44/770.
- <sup>284</sup>Adopted without a vote.
- <sup>285</sup>Adopted without a vote.
- <sup>286</sup>See A/44/880.
- <sup>287</sup>General Assembly resolution 22 (A) (I).
- <sup>288</sup>General Assembly resolution 179 (II).
- <sup>289</sup>United Nations, *Treaty Series*, vol. 374, p. 147.
- <sup>290</sup>A/C.5/44/11.
- <sup>291</sup>*Ibid.*, sects. III and IV.
- <sup>292</sup>ILO *Official Bulletin*, vol. LXXII, 1989, Series A, No. 2, pp. 59-72; English, French, Spanish. Regarding preparatory work see: *First Discussion* — Partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), ILC, 75th Session (1988), Report VI(1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference) and Report VI(2), 127 and 112 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also, ILC, 75th Session (1988) *Record of Proceedings*, No. 32; No. 36, pp. 2-4, 17-24; English, French, Spanish. *Second Discussion* — Partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), ILC 76th Session (1989), Report IV(1), Report IV(2A) and Report IV(2B), 16, 68 and 27 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also, ILC, 76th Session (1989) *Record of Proceedings*, No. 25; No. 25A; No. 31, pp. 1-17; No. 32, pp. 6, 11-13; English, French, Spanish. See also chap. IV of this *Yearbook*.
- <sup>293</sup>The report has been published as report III (Part 4) to the 76th session of the Conference and comprises two volumes: vol. A: "General report and observations concerning particular countries" (report III (Part 4A)), 518 pages; English, French, Spanish; vol. B: "General survey of the reports relating to the Social Security (Minimum Standards) Convention (No. 102), 1952, the Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131), 1967, insofar as they apply to old-age benefits" (report III (Part 4B)), 163 pages; English, French, Spanish.
- <sup>294</sup>ILO *Official Bulletin*, vol. LXXII, 1989, Series B, No. 1.
- <sup>295</sup>*Ibid.*, vol. LXXII, 1989, Series B, No. 2.
- <sup>296</sup>*Ibid.*, vol. LXXII, 1989, Series B, No. 3.
- <sup>297</sup>To be published in the ILO *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2.
- <sup>298</sup>See ILO *Official Bulletin*, vol. XLI, 1958, No. 8, pp. 565-567, and United Nations *Treaty Series*, vol. 312, p. 387.
- <sup>299</sup>Conference resolution 11/87 called on members of the Council, when electing members of the Programme and Finance Committees, to bear in mind the need for just and equitable representation of the various regions, the fact that all regions that so wish should be represented and the importance of rotation among countries in each region.
- <sup>300</sup>Concurrence was given under resolution 2/96 of the Council.
- <sup>301</sup>Certain departures from the standard text or amendments thereto were introduced at the request of the host Government.
- <sup>302</sup>See sect. 12 below, on IAEA.
- <sup>303</sup>Resolution 25/C 29.3, *Records of the General Conference*, vol. I (Resolutions).
- <sup>304</sup>Resolution 25/C 29.4, *ibid.*
- <sup>305</sup>25 C/Resolutions, annex I: Conventions and Recommendations.

- <sup>306</sup>25 C/Resolution 1.24.
- <sup>307</sup>See subsection (b) above on International regulations.
- <sup>308</sup>Protocols to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air. ICAO documents 91.47 and 91.48.
- <sup>309</sup>*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122; see also United Nations publication, Sales No. E.97.V.10.
- <sup>310</sup>Convention on International Civil Aviation. United Nations, *Treaty Series*, vol. 15, p. 295.
- <sup>311</sup>United Nations document E/CONF.82/15 and Corr.1 and 2. English only.
- <sup>312</sup>United Nations, *Treaty Series*, vol. 33, p. 261.
- <sup>313</sup>Convention on Offences and Certain Other Acts Committed on Board Aircraft. United Nations, *Treaty Series*, vol. 704, p. 219.
- <sup>314</sup>Convention for the Suppression of Unlawful Seizure of Aircraft. *Ibid.*, vol. 860, p. 105.
- <sup>315</sup>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. *Ibid.*, vol. 974, p. 177.
- <sup>316</sup>See also chap. II.B.3. of the present *Yearbook*.
- <sup>317</sup>United Nations, *Treaty Series*, vol. 1508, p. 99.
- <sup>318</sup>These numbers include 24 registrations for projects in 17 countries which were not yet members of MIGA.
- <sup>319</sup>United Nations, *Treaty Series*, vol. 575, p. 159.
- <sup>320</sup>*Ibid.*, vol. 1415, p. 65.
- <sup>321</sup>United Nations, *Treaty Series*, vol. 289, p. 3.
- <sup>322</sup>LEG 60/3, LEG/CONF.6/C.1/WP.22, LEG 60/3/2, LEG 60/3/3 and LEG 60/3/4.
- <sup>323</sup>LEG 60/4.
- <sup>324</sup>LEG/MLM/26 and LEG/MLM/27.
- <sup>325</sup>LEG 60/6/Add.1 and LEG 60/WP.3.
- <sup>326</sup>LEG 59/9, LEG 59/9/Add.1 and LEG 59/9/1.
- <sup>327</sup>LEG 61/8.
- <sup>328</sup>*International Legal Materials*, vol. 27, p. 672.
- <sup>329</sup>United States Senate Treaty Document 102-12; see chap. IV of the present *Yearbook* for the text of the Convention.
- <sup>330</sup>IMO (092) | SH8C (1988).
- <sup>331</sup>*International Legal Materials*, vol. 27, p. 685.
- <sup>332</sup>United Nations, *Treaty Series*, vol. 1545, p. 339.
- <sup>333</sup>IMO | HSSC | Conf | 12.
- <sup>334</sup>The text of the resolution and related attachments are contained in the Report of the twelfth session of the Governing Council of IFAD, Rome 1989. The attachments to the resolution indicate the pledges of each of the three categories of IFAD. At the time of the adoption of the resolution, the pledges from categories I, II and III amounted to, respectively, US\$378,078,000, \$124,400,000 (including \$9,000,000 to be allocated later on the basis of the final notification of contributions from the Islamic Republic of Iran, the Libyan Arab Jamahiriya and Qatar) and \$63,826,000.
- <sup>335</sup>EB 88/33/R.19.
- <sup>336</sup>EB 88/35/R.78.
- <sup>337</sup>EB 88/33/R.23 and EB 89/36/R.17.
- <sup>338</sup>EB 87/30/R.27.
- <sup>339</sup>EB 89/38/NF.2.
- <sup>340</sup>GC.3/35.
- <sup>341</sup>Annual report of UNIDO 1989 (IBD.6 | 10), appendix J.
- <sup>342</sup>GC.1/INF.6.
- <sup>343</sup>GC.2/2.
- <sup>344</sup>GC.2/3.
- <sup>345</sup>GC.3/9.
- <sup>346</sup>See also chap. II.B.3 of the present *Yearbook*.
- <sup>347</sup>INFCIRC/9/Rev.2.
- <sup>348</sup>INFCIRC/371.
- <sup>349</sup>INFCIRC/274/Rev.1.
- <sup>350</sup>INFCIRC/335.
- <sup>351</sup>INFCIRC/336.
- <sup>352</sup>United Nations, *Treaty Series*, vol. 1063, p. 265.
- <sup>353</sup>INFCIRC/402.

<sup>354</sup>United Nations, *Treaty Series*, vol. 956, p. 251.

<sup>355</sup>See also chap. II.B.4 of the present *Yearbook*.

<sup>356</sup>General Assembly resolution 2373 (XXII); see also United Nations, *Treaty Series*, vol. 729, p. 161.

<sup>357</sup>United Nations, *Treaty Series*, vol. 634, p. 281; see also chap. III.B.1 of the present *Yearbook*.

<sup>358</sup>*Ibid.*

<sup>359</sup>INFCIRC/371.

<sup>360</sup>INFCIRC/366.

<sup>361</sup>INFCIRC/374.

<sup>362</sup>INFCIRC/369.

<sup>363</sup>INFCIRC/361.

<sup>364</sup>INFCIRC/193.

<sup>365</sup>INFCIRC/99, 221, 291, 292 and 305.

<sup>366</sup>INFCIRC/119.

<sup>367</sup>IAEA also applies safeguards to nuclear facilities in Taiwan Province of China.

## Chapter IV

### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Treaties concerning international law concluded under the auspices of the United Nations

##### BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DIS- POSAL. DONE AT BASEL ON 22 MARCH 1989.<sup>1</sup>

###### PREAMBLE

*The Parties to this Convention,*

*Aware* of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

*Mindful* of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement, of hazardous wastes and other wastes,

*Mindful also* that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

*Convinced* that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of their disposal,

*Noting* that States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

*Fully recognizing* that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

*Recognizing also* the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

*Convinced* that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

*Aware also* that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

*Considering* that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

*Convinced* that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

*Noting* that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

*Taking into account* the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organizations,

*Mindful* of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

*Affirming* that States are responsible for the fulfilment of their international obligations concerning the protection of human health and preservation of the environment, and are liable in accordance with international law,

*Recognizing* that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

*Aware* of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

*Aware also* of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

*Concerned* about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

*Taking into account also* the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

*Recognizing* the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on promotion of the transfer of environmental protection technology,

*Recognizing also* that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

*Convinced also* that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and ultimate disposal of such wastes is environmentally sound, and

*Determined* to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

*Have agreed* as follows:

### *Article 1*

#### SCOPE OF THE CONVENTION

1. The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention:

(a) Wastes that belong to any category contained in annex I, unless they do not possess any of the characteristics contained in annex III, and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.

3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

### *Article 2*

#### DEFINITIONS

For the purposes of this Convention:

1. “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;

2. “Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;

3. “Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;

4. “Disposal” means any operation specified in annex IV to this Convention;

5. “Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;

6. “Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in article 6;

7. “Focal point” means the entity of a Party referred to in article 5 responsible for receiving and submitting information as provided for in articles 13 and 15;

8. “Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

9. “Area under the national jurisdiction of a State” means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;

10. “State of export” means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;

11. “State of import” means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

12. “State of transit” means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;

13. “States concerned” means Parties which are States of export or import, or transit States, whether or not Parties;

14. “Person” means any natural or legal person;

15. “Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

16. “Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;

17. “Carrier” means any person who carries out the transport of hazardous wastes or other wastes;

18. “Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

19. “Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;

20. “Political and/or economic integration organization” means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

21. "Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in article 9.

### *Article 3*

#### NATIONAL DEFINITIONS OF HAZARDOUS WASTES

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

### *Article 4*

#### GENERAL OBLIGATIONS

1. (a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes or other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

2. Each party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which

will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous waste and other wastes be provided to the States concerned, according to annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Cooperate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic;

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall:

(a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

8. Each Party shall require that hazardous wastes or other wastes to be exported are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound manage-

ment of wastes subject to this Convention shall be decided by the Parties at their first meeting.

9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner;

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import;

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of the Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.

12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise of ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

#### *Article 5*

##### DESIGNATION OF COMPETENT AUTHORITIES AND FOCAL POINT

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit;

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities;

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

## Article 6

### TRANSBOUNDARY MOVEMENT BETWEEN PARTIES

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in annex VA, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:

(a) The notifier has received the written consent of the State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:

(a) By the State of export, the requirements of paragraph 9 of this article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter and the State of export, respectively;

(b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this article that apply to the exporter and State of export shall apply *mutatis mutandis* to the importer or disposer and State of import, respectively;

(c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export, via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

#### *Article 7*

##### TRANSBOUNDARY MOVEMENT FROM A PARTY THROUGH STATES WHICH ARE NOT PARTIES

Paragraph 2 of article 6 of the Convention shall apply *mutatis mutandis* to transboundary movement of hazardous wastes and other wastes from a Party through a State or States which are not Parties.

#### *Article 8*

##### DUTY TO RE-IMPORT

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within

90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

### *Article 9*

#### ILLEGAL TRAFFIC

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) Without notification pursuant to the provisions of this Convention to all States concerned; or

(b) Without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) With consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) That does not conform in a material way with the documents; or

(e) That results in deliberate disposal (e.g., dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,

shall be deemed to be illegal traffic.

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

(a) Taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) Are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period as the states concerned shall agree. To this end, the Parties concerned shall cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through coop-

eration, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall cooperate with a view to achieving the objects of this article.

### *Article 10*

#### INTERNATIONAL COOPERATION

1. The Parties shall cooperate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall:

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Cooperate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Cooperate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Cooperate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also cooperate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Cooperate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to cooperate in order to assist development countries in the implementation of subparagraphs (a), (b), and (c) of paragraph 2 of article 4.

4. Taking into account the needs of developing countries, cooperation between Parties and the competent international organizations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

## *Article 11*

### BILATERAL, MULTILATERAL AND REGIONAL AGREEMENTS

1. Notwithstanding the provisions of article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

## *Article 12*

### CONSULTATIONS ON LIABILITY

The Parties shall cooperate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

## *Article 13*

### TRANSMISSION OF INFORMATION

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those states are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of:

(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to article 3;

and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:

(a) Competent authorities and focal points that have been designated by them pursuant to article 5;

(b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:

(i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;

(ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;

(iii) Disposals which did not proceed as intended;

(iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;

(c) Information on the measures adopted by them in implementation of this Convention;

(d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;

(e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to article 11 of this Convention;

(f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;

(g) Information on disposal options operated within the area of their national jurisdiction;

(h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

(i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of such notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considering that its environment may be affected by that transboundary movement has requested that this should be done.

## Article 14

### FINANCIAL ASPECTS

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or subregional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

## Article 15

### CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.

4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.

5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

(a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

(b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, *inter alia*, available scientific, technical, economic and environmental information;

(c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience

gained in its operation and in the operation of the agreements and arrangements envisaged in article 11;

(d) Consider and adopt protocols as required; and

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

## *Article 16*

### SECRETARIAT

1. The functions of the Secretariat shall be:

(a) To arrange for and service meetings provided for in articles 15 and 17;

(b) To prepare and transmit reports based upon information received in accordance with articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;

(c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

(d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(e) To communicate with focal points and competent authorities established by the Parties in accordance with article 5 of this Convention;

(f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;

(g) To receive and convey information from and to Parties on:

- Sources of technical assistance and training;
- Available technical and scientific know-how;
- Sources of advice and expertise; and
- Availability of resources

with a view to assisting them, upon request, in such areas as:

- The handling of the notification system of this Convention;
- The management of hazardous wastes and other wastes;
- Environmentally sound technologies relating to hazardous wastes and other wastes, such as low- and non-waste technology;
- The assessment of disposal capabilities and sites;
- The monitoring of hazardous wastes and other wastes; and
- Emergency responses;

(h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;

(i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To cooperate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to article 15.

3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

### *Article 17*

#### AMENDMENT OF THE CONVENTION

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be

provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the depositary to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the depositary. Amendments adopted in accordance with paragraph 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted the amendments to the protocol concerned, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

### *Article 18*

#### ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes of this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in article 17, paragraphs 2, 3 and 4;

(b) Any party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the depositary, in writing, within six months from the date of the communication of the adoption by the depositary. The depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendment thereto shall take due account, *inter alia*, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

#### *Article 19*

##### VERIFICATION

Any party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

#### *Article 20*

##### SETTLEMENT OF DISPUTES

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

- (a) Submission of the dispute to the International Court of Justice; and/or
- (b) Arbitration in accordance with the procedures set out in annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

### *Article 21*

#### SIGNATURE

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989, and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

### *Article 22*

#### RATIFICATION, ACCEPTANCE, FORMAL CONFIRMATION OR APPROVAL

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the depositary.

2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the depositary, who will inform the Parties of any substantial modification in the extent of their competence.

### *Article 23*

#### ACCESSION

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the depositary of any substantial modification in the extent of their competence.

3. The provisions of article 22, paragraph 2, shall apply to political and/or economic integration organizations which accede to this Convention.

## Article 24

### RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.
2. Political and/or economic integration organizations, in matters within their competence, in accordance with article 22, paragraph 3, and article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

## Article 25

### ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.
2. For each State or political and/or economic integration organization which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organization shall not be counted as additional to those deposited by member States of such organization.

## Article 26

### RESERVATIONS AND DECLARATIONS

1. No reservation or exception may be made to this Convention.
2. Paragraph 1 of this article does not preclude a State or political and/or economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

### *Article 27*

#### WITHDRAWAL

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the depositary.

2. Withdrawal shall be effective one year from receipt of notification by the depositary, or on such later date as may be specified in the notification.

### *Article 28*

#### DEPOSITORY

The Secretary-General of the United Nations shall be the depositary of this Convention and of any protocol thereto.

### *Article 29*

#### *Authentic texts*

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Basel on the 22nd day of March 1989.

#### ANNEX I

#### **Categories of Wastes to be Controlled**

#### *Waste streams*

- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from the manufacture, formulation and use of wood-preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment

- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium; selenium compounds
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead; lead compounds
- Y32 Inorganic fluorine compounds, excluding calcium fluoride
- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorus compounds
- Y38 Organic cyanides
- Y39 Phenols: phenol compounds including chorophenols
- Y40 Ethers
- Y41 Halogenated organic solvents
- Y42 Organic solvents excluding halogenated solvents
- Y43 Any congener of polychlorinated dibenzo-furan
- Y44 Any cogenor of polychlorinated dibenzo-p-dioxin
- Y45 Organohalogen compounds other than substances referred to in this annex (e.g., Y39, Y41, Y42, Y43, Y44)

## ANNEX II

### Categories of Wastes Requiring Special Consideration

- Y46 Wastes collected from households
- Y47 Residues arising from the incineration of household wastes

## ANNEX III

### List of Hazardous Characteristics

<i>UN Class*</i>	<i>Code</i>	<i>Characteristics</i>
1	H1	<p>Explosive</p> <p>An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.</p>
3	H3	<p>Flammable liquids</p> <p>The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, closed-cup test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)</p>
4.1	H4.1	<p>Flammable solids</p> <p>Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.</p>
4.2	H4.2	<p>Substances or wastes liable to spontaneous combustion</p> <p>Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.</p>
4.3	H4.3	<p>Substances or wastes which, in contact with water, emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.</p>
5.1	H5.1	<p>Oxidizing</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause, or contribute to, the combustion of other materials.</p>
5.2	H5.2	<p>Organic peroxides</p> <p>Organic substances or wastes which contain the bivalent -O-O- structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.</p>

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\*Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988).

6.1	H6.1	Poisonous (Acute) Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2	Infectious substances Substances or wastes containing viable microorganisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8	Corrosives Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9	H10	Liberation of toxic gases in contact with air or water Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	Toxic (Delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12	Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13	Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

### Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterize potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in annex I, in order to decide if these materials exhibit any of the characteristics listed in this annex.

## ANNEX IV

### Disposable operations

#### A. OPERATIONS WHICH DO NOT LEAD TO THE POSSIBILITY OF RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT REUSE OR ALTERNATIVE USES

*Section A encompasses all such disposal operations which occur in practice.*

- D1 Deposit into or onto land (e.g., landfill, etc.)
- D2 Land treatment (e.g., biodegradation of liquid or sludgy discards in soils, etc.)
- D3 Deep injection (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

- D4 Surface impoundment (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
- D5 Specially engineered landfill (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including seabed insertion
- D8 Biological treatment not specified elsewhere in this annex which results in final compounds or mixtures which are discarded by means of any of the operations in section A
- D9 Physico-chemical treatment not specified elsewhere in this annex which results in final compounds or mixtures which are discarded by means of any of the operations in section A (e.g., evaporation, drying, calcination, neutralization, precipitation, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g., emplacement in containers in a mine, etc.)
- D13 Blending or mixing prior to submission to any of the operations in section A
- D14 Repackaging prior to submission to any of the operations in section A
- D15 Storage pending any of the operations in section A

**B. OPERATIONS WHICH MAY LEAD TO RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT REUSE OR ALTERNATIVE USES**

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in section A.

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation /regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10
- R12 Exchange of wastes for submission to any other operations numbered R1-R11
- R13 Accumulation of material intended for any operation in section B

**ANNEX V A**

**Information to be provided on notification**

1. Reason for waste export
2. Exporter of the waste<sup>a</sup>
3. Generator(s) of the waste and site of generation<sup>a</sup>
4. Disposer of the waste and actual site of disposal<sup>a</sup>
5. Intended carrier(s) of the waste or their agents, if known<sup>a</sup>

6. Country of export of the waste  
Competent authority<sup>b</sup>
7. Expected countries of transit  
Competent authority<sup>b</sup>
8. Country of import of the waste  
Competent authority<sup>b</sup>
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)<sup>c</sup>
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance<sup>d</sup>
13. Designation and physical description of the waste including Y number and UN number and its composition<sup>e</sup> and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g., bulk, drummed, tanker)
15. Estimated quantity in weight/volume<sup>f</sup>
16. Process by which the waste is generated<sup>g</sup>
17. For wastes listed in annex I, classifications from annex II: hazardous characteristic, M number and UN class
18. Method of disposal as per annex III
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

#### NOTES

<sup>a</sup>Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.

<sup>b</sup>Full name and address, telephone, telex or telefax number.

<sup>c</sup>In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.

<sup>d</sup>Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.

<sup>e</sup>The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.

<sup>f</sup>In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.

<sup>g</sup>Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

#### ANNEX V B

##### **Information to be provided on the movement document**

1. Exporter of the waste<sup>a</sup>
2. Generator(s) of the waste and site of generation<sup>a</sup>
3. Disposer of the waste and actual site of disposal<sup>a</sup>

4. Carrier(s) of the waste<sup>a</sup> or his agent(s)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and M number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents.
10. Type and number of packages.
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

#### NOTES

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill out any form.

<sup>a</sup>Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

## ANNEX VI

### Arbitration

#### *Article 1*

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with articles 2 to 10 below.

#### *Article 2*

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of article 20 and include, in particular, the articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

#### *Article 3*

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

#### *Article 4*

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months' period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

#### *Article 5*

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

#### *Article 6*

1. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.

3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

#### *Article 7*

The tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

#### *Article 8*

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

#### *Article 9*

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

#### *Article 10*

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seised thereof, to another tribunal constituted for this purpose in the same manner as the first.

**B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations.**

1. INTERNATIONAL LABOUR ORGANIZATION

Convention concerning Indigenous and Tribal Peoples in Independent Countries. Adopted by the General Conference of the International Labour Organization at Geneva on 27 June 1989<sup>2</sup>

The General Conference of the International Labour Organization,  
*Having been convened* at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

*Noting* the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

*Recalling* the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

*Considering* that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of earlier standards, and

*Recognizing* the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

*Noting* that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

*Calling attention to* the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international cooperation and understanding, and

*Noting* that the following provisions have been framed with the cooperation of the United Nations, the Food and Agricultural Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as of the Inter-American Indian Institute, at the appropriate levels and in their respective fields, and that it is proposed to continue this cooperation in promoting and securing the application of these provisions, and

*Having decided upon* the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

*Having determined* that these proposals shall take the form of an International Convention revising the Indigenous and Tribal Populations Convention, 1957;

Adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal People's Convention, 1989:

## PART I. GENERAL POLICY

### *Article 1*

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

### *Article 2*

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

### *Article 3*

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

### *Article 4*

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

### *Article 5*

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and cooperation of the peoples affected.

### *Article 6*

1. In applying the provisions of this Convention, Governments shall:

(a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) Establish means for the full development of these people's own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### *Article 7*

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and cooperation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities for the implementation of these activities.

4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### *Article 8*

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this article shall not prevent members of these peoples from exercising the rights granted to all citizens and assuming the corresponding duties.

#### *Article 9*

1. To the extent compatible with the national legal system and internationally recognized human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### *Article 10*

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural

2. Preference shall be given to methods of punishment other than confinement in prison.

*Article 11*

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

*Article 12*

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II. LAND

*Article 13*

1. In applying the provisions of this Part of the Convention Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term "lands" in articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

*Article 14*

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

*Article 15*

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, Governments

shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### *Article 16*

1. Subject to the following paragraphs of this article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

#### *Article 17*

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

#### *Article 18*

Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and Governments shall take measures to prevent such offences.

*Article 19*

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) The provision of more land for these peoples when they have not the area necessary for providing essentials of a normal existence, or for any possible increase in their numbers;

(b) The provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

*Article 20*

1. Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general:

(a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) Equal remuneration for work of equal value;

(c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations.

3. The measures shall include measures to ensure:

(a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

*Article 21*

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

*Article 22*

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, Governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in cooperation with these peoples, who shall be consulted on the organization and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organization and operation of such special training programmes, if they so decide.

*Article 23*

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the people concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

*Article 24*

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

*Article 25*

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be coordinated with other social, economic and cultural measures in the country.

#### PART VI. EDUCATION AND MEANS OF COMMUNICATION

##### *Article 26*

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least equal footing with the rest of the national community.

##### *Article 27*

1. Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, and their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognize the right of these peoples to establish their own education institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

##### *Article 28*

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

*Article 29*

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

*Article 30*

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

*Article 31*

Education measures shall be taken among all sections of the national community, and particularly among those that are in the most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND COOPERATION ACROSS BORDERS

*Article 32*

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

*Article 33*

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) The planning, coordination, execution and evaluation, in cooperation with the peoples concerned, of the measures provided for in this Convention;

(b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in cooperation with the peoples concerned.

PART IX. GENERAL PROVISIONS

*Article 34*

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

*Article 35*

The application of the provisions of this Convention shall not adversely affect the rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

*Article 36*

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

*Article 37*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 38*

1. This Convention shall be binding only upon those members of the International Labour Organization whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any member twelve months after the date on which its ratification has been registered.

*Article 39*

1. A member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

*Article 40*

1. The Director-General of the International Labour Office shall notify all members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

*Article 41*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

*Article 42*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 43*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) The ratification by a member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 39 above, if and when the new revising Convention shall have come into force;

(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the members.

2. This Convention shall in any case remain in force in its actual form and content for those members which shall have ratified it but have not ratified the revising Convention.

*Article 44*

The English and French versions of the text of this Convention are equally authoritative.

## 2. INTERNATIONAL MARITIME ORGANIZATION

### International Convention on Salvage. Done at London on 28 April 1989<sup>3</sup>

*The State Parties to the present Convention,*

*Recognizing* the desirability of determining by agreement uniform international rules regarding salvage operations,

*Noting* that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

*Conscious* of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

*Convinced* of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

*Have agreed* as follows:

#### **Chapter I. General provisions**

##### *Article 1*

##### DEFINITIONS

For the purpose of this Convention:

(a) *Salvage operation* means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever;

(b) *Vessel* means any ship or craft, or any structure capable of navigation;

(c) *Property* means any property not permanently and intentionally attached to the shoreline and includes freight at risk;

(d) *Damage to the environment* means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;

(e) *Payment* means any reward, remuneration or compensation due under this Convention;

(f) *Organization* means the International Maritime Organization;

(g) *Secretary-General* means the Secretary-General of the Organization.

*Article 2*

APPLICATION OF THE CONVENTION

This Convention shall apply whenever judicial or arbitral proceedings to matters dealt with in this Convention are brought in a State Party.

*Article 3*

PLATFORMS AND DRILLING UNITS

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources.

*Article 4*

STATE-OWNED VESSELS

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

*Article 5*

SALVAGE OPERATIONS CONTROLLED BY PUBLIC AUTHORITIES

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

*Article 6*

SALVAGE CONTRACTS

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

#### *Article 7*

##### ANNULMENT AND MODIFICATION OF CONTRACTS

A contract or any terms thereof may be annulled or modified if:

- (a) The contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) The payment under the contract is in an excessive degree too large or too small for the services actually rendered.

#### **Chapter II. Performance of salvage operations**

#### *Article 8*

##### DUTIES OF THE SALVOR AND OF THE OWNER AND MASTER

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:

- (a) To carry out the salvage operations with due care;
- (b) In performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
- (c) Whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) To accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided, however, that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable;

2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

- (a) To cooperate fully with him during the course of the salvage operations;
- (b) In so doing, to exercise due care to prevent or minimize damage to the environment; and
- (c) When the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

### *Article 9*

#### RIGHTS OF COASTAL STATES

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

### *Article 10*

#### DUTY TO RENDER ASSISTANCE

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

### *Article 11*

#### COOPERATION

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for cooperation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

### **Chapter III. Rights of salvors**

### *Article 12*

#### CONDITIONS FOR REWARD

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful effect.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

### *Article 13*

#### CRITERIA FOR FIXING THE REWARD

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

- (a) The salvaged value of the vessel and other property;
- (b) The skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) The measure of success obtained by the salvor;
- (d) The nature and degree of the danger;
- (e) The skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) The time used and expenses and losses incurred by the salvors;
- (g) The risk of liability or other risks run by the salvors or their equipment;
- (h) The promptness of the services rendered;
- (i) The availability and use of vessels or other equipment intended for salvage operations;
- (j) The state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

### *Article 14*

#### SPECIAL COMPENSATION

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent. of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in

mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent. of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(*h*), (*i*) and (*j*).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

### *Article 15*

#### APPORTIONMENT BETWEEN SALVORS

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

### *Article 16*

#### SALVAGE OF PERSONS

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

### *Article 17*

#### SERVICES RENDERED UNDER EXISTING CONTRACTS

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

*Article 18*

THE EFFECT OF SALVOR'S MISCONDUCT

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of a fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

*Article 19*

PROHIBITION OF SALVAGE OPERATIONS

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

*Article 20*

MARITIME LIEN

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his state, including interest and costs, has been duly tendered or provided.

*Article 21*

DUTY TO PROVIDE SECURITY

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them, including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

*Article 22*

INTERIM PAYMENT

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

*Article 23*

LIMITATION OF ACTIONS

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

2. The persons against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant.

3. An action for indemnity by a person may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

*Article 24*

INTEREST

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

*Article 25*

STATE-OWNED CARGOES

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings *in rem* against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognized principles of international law.

*Article 26*

HUMANITARIAN CARGOES

No provision of this Convention shall be used as the basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

*Article 27*

PUBLICATION OF ARBITRAL AWARDS

States Parties shall encourage, as far as possible and with the consent of the Parties, the publication of arbitral awards made in salvage cases.

**Chapter V. Final clauses**

*Article 28*

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be open for signature at the headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) Signature without reservation as to ratification, acceptance or approval;  
or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval;

(c) Accession.

*Article 29*

ENTRY INTO FORCE

1. This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

### *Article 30*

#### RESERVATIONS

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:

(a) When the salvage operation takes place in inland waters and all vessels involved are of inland navigation;

(b) When the salvage operations take place in inland waters and no vessel is involved;

(c) When all interested parties are nationals of that State;

(d) When the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the seabed.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

### *Article 31*

#### DENUNCIATION

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

### *Article 32*

#### REVISION AND AMENDMENT

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

### *Article 33*

#### DEPOSITARY

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) Inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
    - (i) Each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
    - (ii) The date of the entry into force of this Convention;
    - (iii) The deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
    - (iv) Any amendment adopted in conformity with article 32;
    - (v) The receipt of any reservation, declaration or notification made under this Convention;
  - (b) Transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### *Article 34*

#### LANGUAGES

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

### 3. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Treaty on Intellectual Property in respect of Integrated Circuits.  
Done at Washington on 26 May 1989<sup>4</sup>

#### *Article 1*

##### ESTABLISHMENT OF A UNION

The Contracting Parties constitute themselves into a Union for the purposes of this Treaty.

#### *Article 2*

##### DEFINITIONS

For the purposes of this Treaty:

- (i) “integrated circuit” means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function;
- (ii) “layout-design (topography)” means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;
- (iii) “holder of the right” means a natural person who, or the legal entity which, according to the applicable law, is to be regarded as the beneficiary of the protection referred to in article 6;
- (iv) “protected layout-design (topography)” means a layout-design (topography) in respect of which the conditions of protection referred to in this Treaty are fulfilled;
- (v) “Contracting Party” means a State, or an intergovernmental organization meeting the requirements of item (x), party to this Treaty;
- (vi) “territory of a Contracting Party” means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;
- (vii) “Union” means the Union referred to in article 1.
- (viii) “Assembly” means the Assembly referred to in article 9;
- (ix) “Director General” means the Director General of the World Intellectual Property Organization;

- (x) “intergovernmental organization” means an organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

### Article 3

#### THE SUBJECT MATTER OF THE TREATY

(1) [*Obligation to protect layout-designs (topographies)*] (a) Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful under article 6 and appropriate legal remedies where such acts have been committed.

(b) The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article.

(c) Notwithstanding article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

(2) [*Requirement of originality*] (a) The obligation referred to in paragraph 1(a) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators’ own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfils the conditions referred to in subparagraph (a).

### Article 4

#### THE LEGAL FORM OF THE PROTECTION

Each Contracting Party shall be free to implement its obligations under this Treaty through a special law on layout-designs (topographies) or its law on copyright, patents, utility models, industrial designs, unfair competition or any other law or a combination of any of those laws.

### Article 5

#### NATIONAL TREATMENT

(1) [*National treatment*] Subject to compliance with its obligation referred to in article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory,

- (i) To natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties; and
- (ii) To legal entities which or national persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) [*Agents, addresses for service, court proceedings*] Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) [*Application of paragraphs (1) and (2) to intergovernmental organizations*] Where the Contracting Party is an intergovernmental organization, “nationals” in paragraph (1) means nationals of any of the States members of that organization.

## *Article 6*

### THE SCOPE OF THE PROTECTION

(1) [*Acts requiring the authorization of the holder of the right*] (a) Any Contracting Party shall consider unlawful the following acts if performed without the authorization of the holder of the right:

- (i) The act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in article 3(2),
- (ii) The act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated.

(b) Any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right.

(2) [*Acts not requiring the authorization of the holder of the right*] (a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without authorization of the holder of the right, of the act of reproduction referred to in paragraph (1)(a)(i) where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) (“the first layout-design (topography)”), creates a layout-design (topography) complying

with the requirement of originality referred to in article 3(2) (“the second layout-design (topography)”), that third party may incorporate the second layout-design (topography) in an integrated circuit or perform any of the acts referred to in paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(c) The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party.

(3) [*Measures concerning use without the consent of the holder of the right*] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive licence, in circumstances that are not ordinary, for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right (“non-voluntary licence”), after unsuccessful efforts, made by the said third party in line with normal commercial practices, to obtain such authorization, where the granting of the non-voluntary licence is found, by the granting authority, to be necessary to safeguard a national purpose deemed to be vital by that authority; the non-voluntary licence shall be available for exploitation only in the territory of that country and shall be subject to the payment of an equitable remuneration by the third party to the holder of the right.

(b) The provisions of this Treaty shall not affect the freedom of any Contracting Party to apply measures, including the granting, after a formal proceeding by its executive or judicial authority, of a non-voluntary licence, in application of its laws in order to secure free competition and to prevent abuses by the holder of the right.

(c) The granting of any non-voluntary licence referred to in subparagraph (a) or subparagraph (b) shall be subject to judicial review. Any non-voluntary licence referred to in subparagraph (a) shall be revoked when the conditions referred to in that subparagraph shall cease to exist.

(4) [*Sale and distribution of infringing integrated circuits acquired innocently*] Notwithstanding paragraph (1)(a)(ii), no Contracting Party shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography).

(5) [*Exhaustion of rights*] Notwithstanding paragraph (1)(a)(ii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that paragraph where the act is performed in respect of a protected layout-design (topography), or in respect of any integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

## Article 7

### EXPLOITATION; REGISTRATION, DISCLOSURE

(1) [*Faculty to require exploitation*] Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design (topography).

(b) Where the filing of an application for registration according to subparagraph (a) is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date.

(c) Registration under subparagraph (a) may be subject to the payment of a fee.

## Article 8

### THE DURATION OF THE PROTECTION

Protection shall last at least eight years.

## Article 9

### ASSEMBLY

(1) [*Composition*] (a) The Union shall have an Assembly consisting of the Contracting Parties.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) Subject to subparagraph (d), the expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.

(d) The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(2) [*Functions*] (a) The Assembly shall deal with matters concerning the maintenance and development of the Union and the application and operation of this Treaty.

(b) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General for the preparation of such diplomatic conference.

(c) The Assembly shall perform the functions allocated to it under article 14 and shall establish the details of the procedures provided for in that article, including the financing of such procedures.

(3) [*Voting*] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization shall exercise its right to vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty and which are present at the time the vote is taken. No such intergovernmental organization shall exercise its right to vote if any of its member States participates in the vote.

(4) [*Ordinary sessions*] The Assembly shall meet in ordinary session once every two years upon convocation by the Director General.

(5) [*Rules of procedure*] The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

## Article 10

### INTERNATIONAL BUREAU

(1) [*International Bureau*] (a) The International Bureau of the World Intellectual Property Organization shall:

- (i) Perform the administrative tasks concerning the Union, as well as any tasks specially assigned to it by the Assembly;
- (ii) Subject to the availability of funds, provide technical assistance, on request, to the Governments of Contracting Parties that are States and are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(b) No Contracting Party shall have any financial obligations; in particular, no Contracting Party shall be required to pay any contributions to the International Bureau on account of its membership in the Union.

(2) [*Director General*] The Director General shall be the chief executive of the Union and shall represent the Union.

## Article 11

### AMENDMENT OF CERTAIN PROVISIONS OF THE TREATY

(1) [*Amending of certain provisions by the Assembly*] The Assembly may amend the definitions contained in article 2(i) and (ii), as well as articles 3(1)(c), 9(1)(c) and (d), 9(4), 10(1)(a) and 14.

(2) [*Initiation and notice of proposals for amendment*] (a) Proposals under this article for amendment of the provisions of this Treaty referred to in paragraph (1) may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(c) No such proposal shall be made before the expiration of five years from the date of entry into force of this Treaty under article 16(1).

(3) [*Required majority*] Adoption by the Assembly of any amendment under paragraph (1) shall require four fifths of the votes cast.

(4) [*Entry into force*] (a) Any amendment to the provisions of this Treaty referred to in paragraph (1) shall enter into force three months after written notification of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three fourths of the Contracting Parties members of the Assembly at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all States and intergovernmental organizations what were Contracting Parties at the time the amendment was adopted by the Assembly or that become Contracting Parties thereafter, except Contracting Parties which have notified their denunciation of this Treaty in accordance with article 17 before the entry into force of the amendment.

#### *Article 12*

##### SAFEGUARD OF PARIS AND BERNE CONVENTIONS

This Treaty shall not affect the obligations that any Contracting Party may have under the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works.

#### *Article 13*

##### RESERVATIONS

No reservations to this Treaty shall be made.

#### *Article 14*

##### SETTLEMENT OF DISPUTES

(1) [*Consultations*] (a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

(2) [*Other means of settlement*] If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

(3) [*Panel*] (a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall convene a panel of three members to examine the matter. The members of the panel shall not, unless the parties to the dispute agree otherwise, be from either party to the dispute. They shall be selected from a list of designated governmental experts established by the Assembly. The terms of reference for the panel shall be agreed upon by the parties to the dispute. If such agreement is not achieved within three months, the Assembly shall set the terms of reference for the panel after having consulted the parties to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views. If both parties to the dispute so request, the panel shall stop its proceedings.

(b) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution of their dispute. The panel shall take into account the comments and shall promptly transmit its report to the Assembly. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the parties to the dispute.

(4) [*Recommendation by the Assembly*] The Assembly shall give the report of the panel prompt consideration. The Assembly shall, by consensus, make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel.

#### *Article 15*

##### BECOMING PARTY TO THE TREATY

(1) [*Eligibility*] (a) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(b) Any intergovernmental organization which meets the requirements of article 2(x) may become party to this Treaty. The Organization shall inform the Director General of its competence, and any subsequent changes in its competence, with respect to the matters governed by this Treaty. The Organization and its member States may, without, however, any derogation from the obligations under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty.

- (2) [*Adherence*] A State or intergovernmental organization shall become party to this Treaty by:
- (i) Signature followed by the deposit of an instrument of ratification, acceptance or approval, or
  - (ii) The deposit of an instrument of accession.
- (3) [*Deposit of instruments*] The instruments referred to in paragraph (2) shall be deposited with the Director General.

### *Article 16*

#### ENTRY INTO FORCE OF THE TREATY

(1) [*Initial entry into force*] This Treaty shall enter into force, with respect to each of the first five States or intergovernmental organizations which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

(2) [*States and intergovernmental organizations not covered by the initial entry into force*] This Treaty shall enter into force with respect to any State or intergovernmental organization not covered by paragraph (1) three months after the date on which that State or intergovernmental organization has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument; in the latter case, this Treaty shall enter into force with respect to the said State or intergovernmental organization on the date thus indicated.

(3) [*Protection of layout-designs (topographies) existing at the time of entry into force*] Any Contracting Party shall have the right not to apply this Treaty to any layout-design (topography) that exists at the time this Treaty enters into force in respect of that Contracting Party, provided that this provision does not affect any protection that such layout-design (topography) may, at that time, enjoy in the territory of that Contracting Party by virtue of international obligations other than those resulting from this Treaty or the legislation of the said Contracting Party.

### *Article 17*

#### DENUNCIATION OF THE TREATY

(1) [*Notification*] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [*Effective Date*] Denunciation shall take effect one year after the day on which the Director General has received the notification of denunciation.

### *Article 18*

#### TEXTS OF THE TREATY

(1) [*Original texts*] This Treaty is established in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(2) [*Official texts*] Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

*Article 19*

DEPOSITARY

The Director General shall be the depositary of this Treaty.

*Article 20*

SIGNATURE

This Treaty shall be open for signature between 26 May 1989 and 25 August 1989, with the Government of the United States of America, and between 26 August 1989 and 25 May 1990 at the headquarters of WIPO.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

DONE at Washington, 26 May 1989.

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NOTES

<sup>1</sup>*International Legal Materials*, vol. 28, p. 649. The Convention entered into force on 5 May 1992.

<sup>2</sup>*Ibid.*, p. 1382.

<sup>3</sup>United States Senate Treaty document 102-12.

<sup>4</sup>*International legal materials*, vol. 28, p. 1477.

## CHAPTER V<sup>1</sup>

### DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Decisions of the United Nations Administrative Tribunal<sup>2</sup>

1. JUDGEMENT No. 440 (17 MAY 1989): SHANKAR V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>3</sup>

*Rescission of the decision compensating, rather than reinstating, the staff member for his separation vitiated by lack of good faith and of due process — Commitment to renew appointment must be based on conclusive proof — Article 9 of Administrative Tribunal statute — Question of compensation — Confidential, adverse documents not shown to staff member must be removed from his official status file*

The Applicant had been employed as a File Clerk with the Asian and Pacific Centre for Transfer of Technology (APCTT) at Bangalore, India, an organ of the Economic and Social Commission for Asia and the Pacific (ESCAP), under a series of fixed-term contracts since 1 January 1983, receiving periodic within-grade salary increments until his separation on 31 December 1985.

The Applicant appealed the non-renewal of his fixed-term contract and the Joint Appeals Board (JAB) found that the Applicant's separation was vitiated by lack of good faith and lack of due process and recommended that he be reinstated in his post or in a position commensurate with his qualifications and experience, or in the event this could not be done he be granted compensation equivalent to one year net salary at the time of his separation. When the decision was taken to compensate the Applicant instead of reinstating him, he appealed to the Administrative Tribunal.

As to the Applicant's argument that all staff members had been told that the renewal of their fixed-term appointments depended on their performance and the financial situation of the Centre and that his performance had been good, the Tribunal noted that the Applicant had signed his fixed-term letter of appointment, wherein it was clearly spelled out that such an appointment carried no expectancy of renewal, and that the Tribunal had previously held that a legal expectancy of renewal would not be created by efficient or even by outstanding performance. Therefore, a valid claim to renewal must be based not on mere verbal assertions unsubstantiated by conclusive proof, but by a firm commitment to renewal.

The Applicant had also argued that the decision not to renew his appointment was attributable to the faults of ESCAP and the Director of APCTT who had made false and malicious allegations about the Applicant's performance. In this regard, the Tribunal agreed with the JAB finding that the non-renewal of the Applicant's fixed-term appointment was vitiated by lack of due process,

lack of good faith and procedural irregularities. As to the issue of reinstatement in such circumstances, the Tribunal, recalling paragraph 1 of article 9 of its statute, wherein the Secretary-General had expressly recognized the right of the Secretary-General to compensate the Applicant without further action being taken, concluded that the Secretary-General had exercised his valid discretionary power in this case.

The Applicant had further contended that, if the Secretary-General wished to exercise the option given to him under article 9 of the Tribunal's statute to order payment of compensation instead of reinstatement, he be compensated equivalent to his salary with all benefits from 1 January 1986 until the date on which he would retire, and to order payment of damages of \$10,000 from ESCAP or APCTT to him.

The Administrative Tribunal considered that the Applicant in his last three years of employment was offered a fixed-term appointment for three months which was successively extended for nine months and twice for one year. On that basis, if his contract had been renewed, it would in all likelihood have been renewed by a further one year. To presume, in the view of the Tribunal, an extension beyond that point would be a matter of mere speculation. Therefore, the Tribunal found that the amount of compensation paid by the Respondent was adequate, and, accordingly, the Tribunal made no additional award in that respect.

The Applicant also had requested the removal of all those documents which were "fabricated and confidential" from his personal file. In this regard, the Tribunal concurred with the JAB finding that adverse material had been included in the Applicant's official status file which had not been shown to him for comment or rebuttal in disregard of the decision of the Secretary-General and administrative instruction ST/AI/292 of 15 July 1982, and therefore should be removed from the official status files of the Applicant. All other pleas were rejected.

2. JUDGEMENT No. 441 (18 MAY 1989): SHAABAN V. THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION<sup>4</sup>

*Denial by ICAO of reimbursement of income tax imposed by United States authorities — Entitlement governed by letter of appointment, ICAO Service Code and established administrative practice — Special circumstances do not establish an administrative practice or reflect unlawful discrimination — Effect of incorrect informal advice — Human rights complaints versus conditions of service governing contracts of employment*

The Applicant, a Lebanese national, worked at the International Civil Aviation Organization at its headquarters as a Projects Implementation Officer when, in order to obtain United States citizenship, he relocated his residence from Montreal, Canada, his duty station, where he was subject to Canadian taxation on his ICAO income, to Plattsburgh, New York, just below the Canadian border, where he became subject to United States and New York State income taxes on his ICAO income. On 2 January 1987, the Applicant requested reimbursement of income taxes imposed by United States authorities upon his relocation to the United States and subsequently was turned down. He challenged the decision of 4 November 1987 of the Secretary-General of ICAO to accept the unanimous recommendation of the Advisory Joint Appeals Board (AJAB) that the Applicant's appeal be rejected.

In consideration of the question, the Tribunal noted that prior to 1983, ICAO staff members who were subject to United States income taxes were eligible for reimbursement under the employment conditions then in effect at ICAO. However, because of changes in United States tax laws, the United States had discontinued its reimbursement arrangement with ICAO and, on 26 September 1983, ICAO by a circular memorandum announced a policy with respect to reimbursement of United States income taxes paid by United States citizens employed by ICAO as technical assistance field staff. The Tribunal further noted that the Applicant had made inquiries about his eligibility for reimbursement of United States income taxes, and was told unofficially that the circular memorandum was applicable to him and that there was an established administrative practice at ICAO to reimburse the payment of United States income taxes regardless of whether the staff member was part of the technical assistance field staff or of the regular programme staff. Indeed, his initial request was approved and he received \$3,000; however, shortly thereafter he was informed that the payment was made in error and that he would have to return the money.

The Tribunal was of the view that the question of whether the Applicant was entitled to the tax reimbursement he sought from ICAO depended entirely on whether his employment contract or the ICAO Service Code provided for such reimbursement, or whether ICAO's refusal represented an unjustified discriminatory departure from an established administrative practice. In agreement with the findings reached by the AJAB, the Tribunal concluded that the Applicant was not entitled to reimbursement of United States income taxes from ICAO.

In this regard, the Administrative Tribunal observed that the Applicant's entitlements were governed by his letter of appointment dated 11 April 1984, which made no reference to any reimbursement of national income taxes. Furthermore, although his appointment was subject to the provisions of the ICAO Service Code, the ICAO Staff Regulations and Rules, as amended, did not provide for reimbursement of the Applicant's United States income taxes.

The Applicant had argued that there was an established administrative practice of ICAO reimbursing staff United States income taxes, pointing to the 26 September circular memorandum and ICAO Field Service staff rule 3.14. However, the Tribunal considered that neither the circular memorandum nor the staff rule supported the Applicant's position. The circular memorandum had applied to United States citizens who were members of the technical assistance field staff, whereas the Applicant was a Lebanese national who was a member of the ICAO regular programme staff. Similarly, staff rule 3.14 did not apply to the Applicant's situation.

The Administrative Tribunal observed that the only evidence of reimbursement of United States income taxes paid by regular programme staff members subsequent to 1982 failed to establish an administrative practice which would have supported a finding of unlawful discrimination in the Secretary-General's refusal to reimburse the Applicant and had no application to the Applicant's situation. Those instances involved three United States citizens who were employed on short-term appointments outside the United States, but not long enough to entitle them to a tax exemption under United States law, and the Secretary-General had determined that it was in the interest of the Organization to employ them on those terms. In the conclusion of the Tribunal, that the Secretary-General offered those individuals, because of special circumstances, conditions which

would not normally have been available to permanent regular programme staff members did not show either an established administrative practice or unlawful discrimination against the Applicant. Moreover, the Tribunal further observed that when one of the three became eligible for the tax exemption because of extension of his contract he repaid to ICAO the amount he previously had received from it as tax reimbursement.

The Tribunal also considered the fact that the Applicant had doubtless relied in good faith on the erroneous informal advice he had received regarding tax reimbursement, which in the view of the Tribunal was unfortunate, but nevertheless imposed no obligation on ICAO. As the Tribunal had pointed out in the 1988 *Noll-Wagenfeld* case (Judgement No. 410), it was incumbent on a staff member to seek and obtain a written authorization from an appropriate official of the Organization before embarking on a course of conduct based on a questionable interpretation of an official pronouncement. Otherwise, the staff member acted at his or her own risk.

The Applicant also had argued that he was exercising a basic human right in accordance with the Universal Declaration of Human Rights when he decided to move to the United States in order to become a citizen. Again, recalling a previous judgement (Judgement No. 326, *Fischman* (1984)), the Tribunal concluded that the Applicant was confusing general human rights with particular conditions of service which governed his employment contract.

The application was rejected in its entirety.

3. JUDGEMENT NO. 443 (22 MAY 1989): SARABIA AND DE CASTRO V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>5</sup>

*Discriminatory treatment with regard to the payment of daily subsistence allowance on mission — Competency of Tribunal — Question of an injury — Infringement of the principle of equality*

The Applicants, typists in the Spanish Typing Unit at the United Nations Office at Geneva, were assigned on mission to the sixth session of the Commission on Human Settlements, which was held at Helsinki from 26 April to 6 May 1983. Their complaint concerned a discrepancy in the amount of daily subsistence allowance (DSA) they were paid while on the mission. They were paid 366 markkaa pursuant to a circular dated 18 March 1983; however, pursuant to another circular dated 12 April 1983, they were informed of an increased DSA rate of 500 markkaa, but that rate would not apply in cases where staff members shared a hotel room during the mission. The Applicants had already reserved a double room for themselves in Helsinki before the arrival of the later circular.

The Applicants requested the Tribunal to decide that the Secretary-General should “take steps to ensure that in future no personal discrimination against staff members on mission will be possible, especially as regards the DSA, and that the dignity of staff members will be scrupulously respected in all circumstances”. As the Tribunal explained, it was not empowered to address injunctions to the Secretary-General and order him to take general measures, and that its competency was set out in article 2.1 of its statute, which permitted it to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members or of the terms of appointment of staff members. On the other hand, the Tribunal was competent to rule on whether the Applicants should be paid the portion of DSA which, allegedly, was not paid to them.

The Applicants contended that because they shared a room they were paid less DSA than those who stayed in a single room, and that they would not have shared had the later circular reached them before they had reserved the double room. The Tribunal noted that the Applicants had indeed tried to change their reservation, but it was too late. The Tribunal further noted that the Deputy Controller, who had refused to grant the Applicants the higher rate, did offer them the concession that, if they were able to provide documented evidence in the form of paid hotel bills and other receipts showing that they had incurred “out-of-pocket” expenses under the standard DSA rate of 366 markkaa, the Administration was prepared to review each case.

While the Tribunal observed that the Applicants had not submitted any such evidence, it did find that they had sustained an injury. If they had occupied single rooms they would have been left with 306 markkaa after paying the hotel, but in sharing a room they were left with only 231 markkaa. Furthermore, the Applicants certainly suffered the discomfort and inconvenience of being obliged to share a room under the stressful conditions of a fairly long conference.

In this connection, the Tribunal noted that requesting the Applicants to provide documented evidence of their actual expenditures in the form of paid hotel bills and other receipts, while other staff members, who were receiving the special 500 markkaa subsistence allowance, did not have to substantiate their expenditures, infringed upon the principle of the equality of staff members in the same category. The Tribunal, while not questioning the powers of the Secretary-General to define the conditions for the granting of a special subsistence allowance, and finding no procedural irregularity in the establishment of that allowance, considered that the Applicants were not in a position to make a timely choice between a shared room and a single room. The Applicants therefore sustained an injury requiring compensation, and the compensation offered by the Administration in the form of reimbursement if they could prove that they had spent more than the normal subsistence allowance was not acceptable.

The Tribunal concluded that the injury sustained by each Applicant was equal to the difference between the amount of DSA they received and of the special allowance they should have received, like their colleagues assigned to the same mission. All other pleas were rejected.

#### 4. JUDGEMENT NO. 444 (23 MAY 1989): TORTEL V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>6</sup>

*Non-promotion to D-2 — Special commitment to a staff member might imply discriminatory treatment as to other staff members — Question of a commitment to promote staff member to Director — Commitment versus promise of priority — Effect of omission of delegation of authority in administrative instruction — Question of reasonableness of reliance on verbal commitments of the Under-Secretary-General — Organization should honour commitments on which staff members had relied in good faith — Responsibility of Organization when a decision is made not to promote a staff member to whom commitments had been made — Issue of “penalty box” jobs*

The Applicant, who had been in the service of the Organization since 17 August 1966, was reassigned on 1 September 1984, at the D-1 level, as Deputy Director of the Division of Recruitment and Chief of the Professional Recruitment Service, upon the understanding from the Under-Secretary-General for Administration and Management that he would be given priority for appointment to the post of Director of that Division upon the departure of the current Director. However, on 9 February 1987, the Secretary-General decided to appoint two new Directors from outside the Office of Personnel Services to head the Division of Recruitment and the Division of Personnel Administration. The Applicant appealed, contending that he should have been promoted in accordance with the commitment made by the Under-Secretary-General.

The Tribunal, while recalling Judgement No. 342, *Gomez* (1985), in which the Tribunal stated that to enter into special, legally binding contractual arrangements for the career development of staff might imply discriminatory treatment as to those staff members who were not made the subject of special arrangements, observed that the evidence was compelling in the present case that a commitment, however undesirable it might prove to be in terms of personnel policy, was entered into with the Applicant. In that regard, the Tribunal noted that the Respondent did not seriously dispute the Applicant's factual claims of having been induced in 1984 by the Under-Secretary-General for Administration and Management along with the Assistant-Secretary-General for Personnel Services to become the Deputy Director of the Division of Recruitment. The statements of the Applicant, corroborated by the Director of the Division of Recruitment, who was present at the relevant conversation between the Applicant and the senior officers, the Under-Secretary-General and the Assistant Secretary-General, clearly indicated that a commitment had been made that the Applicant would succeed the current Director when he left.

The Respondent, using the Applicant's own words, argued that instead of a commitment there was only a promise of priority in replacing the Director with the Applicant. However, in the circumstances of the present case, the Tribunal considered that the difference in a commitment and priority was not material inasmuch as "priority" must mean that the Applicant would have preference over other candidates for the Directorship, unless it was clearly established that he did not meet as well as his competitors the criteria established and applied by the Respondent in making the selection. In any event, the Tribunal found no indication whatever that the Applicant was given "priority" consideration.

The Respondent also contended that it was unreasonable for the Applicant to have relied on verbal commitments and that in any event the Under-Secretary-General had no authority to speak for the Secretary-General on the matter. In that connection, the Respondent relied upon administrative instruction ST/AI/234, which was issued by the Under-Secretary-General for Administration and Management, and described various delegations of authority by the Secretary-General to persons below the level of under-secretary-general but made no delegation at all to the Under-Secretary-General. The Tribunal, however, viewed the omission of delegation of authority to the Under-Secretary-General not as a denial of any delegation to him but as an indication that, except as understood between him and the Secretary-General, the Under-Secretary-General had ex-

tremely broad authority with regard to personnel matters. If, as between the Secretary-General and the Under-Secretary-General, the understanding was that the latter had no authority whatever to make commitments regarding promotion to the D-2 level, it was the responsibility of the Under-Secretary-General to act in accordance with that understanding, and it must be presumed that there was no such understanding when the Under-Secretary-General acted as he did in the present case.

More important, in the opinion of the Tribunal, was that the Under-Secretary-General for Administration and Management held so senior a position in the Organization as to give the sort of commitment he made in the present case a measure of finality. It was entirely reasonable for the Applicant to have thought that the Under-Secretary-General spoke with authority in the matter and therefore the Tribunal could not conclude that the Applicant had to bear the consequences of any lack of actual authority on the part of the Under-Secretary-General. Furthermore, the Tribunal noted in that context that the Applicant relied on the strength of the undertaking he received by accepting the position offered in 1984, and subsequently refrained from pursuing other opportunities for advancement which might have been available to him for the next three years. As the Tribunal stated in *Gomez* (Judgement No. 342 (1985)), the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions it has no expectation of fulfilling ...” That there was a change of senior officials in the Administration between 1984 and 1987 had hardly any application or consequence; the commitment to the Applicant continued to subsist. A staff member was normally entitled to expect the Organization to honour commitments on which the staff member had relied in good faith.

As the Tribunal stated in Judgement No. 418, *Warner* (1988), “the decision to appoint or promote a staff member to whom commitments have been made is the sole prerogative of the Administration. If this decision is not taken, however, the attendant circumstances may well entail the responsibility of the Administration”. The Tribunal found that the circumstances in the present case entailed the responsibility of the Administration; promotion and disposition of members of the staff were within the Respondent’s discretion taking into account all the appropriate factors. Here, no serious attempts had been made to observe the obligation of priority consideration towards the Applicant, and he was, therefore, entitled to compensation.

The Tribunal did not consider further allegations that staff who presented legitimate grievances for redress tended to be removed from current posts or reassigned to newly created inconsequential, if not redundant, positions, since in the present case that allegation was not taken up before the Joint Appeals Board. However, the Tribunal stated that it would nonetheless be concerned about seemingly coincidental reassignments of staff members who availed themselves of the appeals process to “penalty box” types of jobs.

The Tribunal awarded the Applicant compensation equivalent to three months of his net base salary for the injury he had suffered as a result of the Administration’s failure to fulfil its obligations. All other pleas were rejected.

5. JUDGEMENT NO. 447 (25 MAY 1989): ABBAS V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>7</sup>

*Non-selection to D-2 post — Vacancy announcements should be advertised — Question of adequate consideration for appointment to post — Requirement of a suitable examination of and report on allegations of prejudice and discrimination before Tribunal can make a decision*

The Applicant had entered the service of United Nations Conference on Trade and Development on 16 September 1965, at the P-4 level, and was eventually promoted to the D-1 level, on 1 April 1980, as a Principal Economic Affairs Officer. On 12 September 1980, he became Chief of the Technical Co-operation Service, one of the three services comprising the Division for Programme Support Services.

On 24 January 1985, UNCTAD issued vacancy announcements for four D-2 posts, for which the Applicant did not apply. The posts were subsequently filled by external candidates; however, when one of the candidates declined the post it was filled by the transfer of a staff member. In the meantime, a fifth D-2 post, the post of Director of the Division for Programme Support Services, where the Applicant was serving, had become vacant on 30 April 1985, but was not advertised. That post was filled on 1 May 1986 by the transfer and subsequent promotion of another D-1 Principal Officer, from the Department of International Economic and Social Affairs. The Tribunal noted that within seven weeks of the new Secretary-General taking over UNCTAD he had requested of the United Nations Headquarters, on the basis apparently of some agreement already arrived at, the appointment of the individual selected for the D-2 post, with the understanding that for the first six months he would, under instructions from the Secretary-General of the United Nations, receive the emoluments of a D-1 post (which he was already holding in New York) before he was formally promoted as D-2. That arrangement was made because of the financial stringency the Organization was facing. The individual joined UNCTAD in May 1986 at the level D-1 as Head of the Programme Support Services and became D-2 in November 1986.

The Applicant appealed contending that the post should have been advertised and that he should have been given proper consideration for occupying it. He further claimed that he was senior to the individual chosen and had an excellent record of performance and was experienced in the work of the Division.

The Tribunal was of the opinion that all vacancies were to be advertised, but the Secretary-General would have authority to indicate in each advertisement how he would wish to fill the vacancy: by outside recruitment, by internal promotion or transfer or on a replacement basis of a staff member's working on secondment. In the present case, in the view of the Tribunal, the lack of advertisement would be irrelevant if it could be established that the Applicant had in fact been given adequate consideration. In that regard, recalling Judgement No. 362, *Williamson* (1986), the Tribunal stated that the burden of proof of having given consideration was on the Respondent whenever a staff member questioned that such consideration was given. Secondly, such consideration should to some

measurable degree meet the criterion of “fullest regard” in a reasonable manner. And finally, there must be good faith and consciousness of all circumstances surrounding any claim. In the present case, the Tribunal noted that except for the assertion that the Applicant had been considered for the post, there was no convincing evidence of any merit that the above criterion had been met. The Tribunal also considered it self-evident that even if the Applicant had been given full consideration, he automatically would not have been selected for the post.

As regards the allegation of prejudice and discrimination made by the Applicant, the Tribunal found that the Joint Appeals Board (JAB) did no more than conclude that inasmuch as no one in the Division for Programme Support Services had been selected for the post of Director, there had been no discrimination. In the absence of any knowledge of who the other eligible candidates outside of UNCTAD might have been, it was clearly not feasible for the JAB to examine the Applicant’s claim in relation to all other candidates and decide if there was in fact any discrimination.

As to other allegations regarding discrimination and prejudice made by the Applicant, the Tribunal considered that in the absence of suitable examination of and a Joint Appeals Board report on those allegations, the Tribunal could not come to any firm decision on those matters, nor did it consider it necessary to reopen those issues at the current stage.

The Tribunal concluded that even if the Applicant’s claims for the post of D-2 in the Division for Programme Support Services were examined, such examination was at the most cursory and could not have met the requirements of staff regulation 4.4 or the standard of consideration the Tribunal had laid down in *Williamson*. The Tribunal also held that while it had not made any determination as to prejudice or discrimination against the Applicant, the procedure followed in insufficiently investigating his various complaints and the handling of his candidature were inappropriate. On these grounds, the Tribunal awarded the Applicant U.S.\$5,000 for the injury he had suffered and rejected all other pleas.

6. JUDGEMENT No. 455 (31 OCTOBER 1989): DENIG V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>8</sup>

*Question of a binding contract for one-year appointment — No entitlement to salary for performing no work — Question of fulfilment of condition before formation of valid employment contract — Significance of invalid contractual requirement — Staff member placed at financial disadvantage by the Administration*

The Applicant, a national of the United States, who had been working as a consultant with the Office of the United Nations High Commissioner for Refugees at its sub-office in Hargeisa, Somalia, was offered, on 17 September 1995, a one-year appointment at the L-3, step VIII, level as Field Officer in that office. The offer stated that the appointment was “subject to medical and United States clearances and satisfactory reference checks”. The United States clearances requirement was based on Executive Order 10422, issued in 1953 by the President of the United States of America, which required that United States nationals seeking United Nations employment obtain a United States security clearance. Through an informal understanding, that requirement had been concurred in by the Secretary-General. Furthermore, it was suggested by the Chief of the Recruitment Unit that he could later apply for the post of Head of the Hargeisa sub-office, a P-4

level post, when it became vacant. UNHCR was anxious to regularize the administrative situation of the sub-office and was concerned that if the Applicant's contractual status was not settled expeditiously, the Applicant would eventually leave, and then the north-west region of Somalia, where refugee problems were extremely serious, would be left unattended by UNHCR Professional staff.

In the meantime, pending receipt of the United States security clearance, the Applicant's consultancy contract was extended until 23 January 1986, when he then notified UNHCR that he was terminating his consultancy contract, stating, *inter alia*, that after many months as Acting Head of the Hargeisa sub-office and repeated requests to the Branch Office for assistance in securing the "L" post offered by UNHCR headquarters, he was leaving for the United States in order to obtain his security clearance. He departed Mogadishu on 29 January 1986, not signing his consultant's contract for January and February since the documents had not yet arrived. He travelled to Geneva where he informed the Head of Personnel Services that he would only return to Hargeisa if he were paid at the L-4, step VIII, level. The Head of Personnel informed him that UNHCR could not compensate him at the L-4 level and that under the circumstances his employment with UNHCR was terminated.

The Applicant then travelled to the United States and in a letter dated 1 March 1986 to the Deputy High Commissioner he stated that he had obtained the security clearance and taken all medical examinations and that he was willing to return to Somalia at the P-4 or P-5 level. On 4 May 1986, the Applicant wrote to the Chief of the Recruitment Unit stating that since the UNHCR conditions concerning medical examinations, United States clearances and reference checks had been fulfilled, a valid contract at the L-3, step VIII, level had been concluded between him and UNHCR as of 15 March 1986, the date of receipt of his United States security clearance. However, UNHCR informed him, referring to the Applicant's abrupt departure from Hargeisa, that the offer made to him was de facto cancelled.

The Applicant appealed, contending that, as of 15 March 1986, he had a binding contract for one year until 15 March 1987, at the L-3, step VIII, level, which he was wrongfully not permitted to perform by the Administration, and that he was entitled to \$6,733 in additional compensation with respect to the period from 17 September 1985 to 31 January 1986, because he had performed the duties of Head of the Hargeisa sub-office during that period and not the consultant duties for which he was being paid.

The Tribunal, on the other hand, found no valid basis for the Applicant's contention that he had a one-year contract for which he was entitled to be paid for performing no work for the Organization for the period in question. Although the Applicant might have felt he had justification for leaving Somalia in January 1986 because of expiration of the consultancy contract extension and the delay by the Administration in implementing the 17 September 1985 offer for lack of United States security clearance, that did not entitle him to a paid vacation until 15 March 1987. Nor did it entitle him to a new contract for appointment at a higher level than that provided in the 17 September 1985 offer as the price for his return to the United Nations service in Somalia. The Tribunal considered that the negative responses by the Administration to the Applicant's requests, among other things, had led the Applicant to leave the Organization on 5 February 1986.

Having come to the conclusion that the Applicant's claim for compensation with respect to the period from 15 March 1986 to 15 March 1987 should be rejected, the Tribunal considered that his position was not wholly without merit. Contrary to the Respondent's position, the Tribunal was of the opinion that the requirement for a United States security clearance should not have been regarded as a condition that had to be met before the contract contemplated by the 17 September 1985 proposal could come into effect. In that regard, the Tribunal observed from the record that by or before 17 September 1985 the Applicant, though serving under a consultancy contract, had been discharging the duties and responsibilities of the Head of the Hargeisa sub-office (who had left and had not been replaced) and that the Applicant had continued to do so until the end of January 1986. The post actually being encumbered by the Applicant during that period was acknowledged by the Administration to have been at a higher level than the L-3, step VIII, position provided for in the 17 September 1985 offer. In view of that situation, which the Administration permitted to continue, the Tribunal noted that the Respondent could hardly assert that it would be reasonable now to construe the requirement for a United States security clearance as so vital to the formation of the contract contemplated that it must be regarded as a condition that had to be met before any valid contract could be entered into. The Tribunal concluded that in the present case the requirement of a security clearance must have been deemed a condition which could be satisfied by the Applicant after he began performing the contract, and that the offer of 17 September 1985 was accepted by the Applicant's performance of duties either identical to, or at a higher level than, those he was to perform in the L-3, step VIII, post.

When the Applicant's security clearance was received in March 1986, it should have been considered effective as of 17 September 1985. The Applicant's signed acceptance on 1 November 1985 should be regarded as confirming the fact that the offer was already accepted by performance. Accordingly, the contract was in effect before the offer was revoked or withdrawn.

On an alternative ground, the Tribunal likewise found the contract to have been in existence on 17 September 1985. The Tribunal noted that on 21 September 1984, the United States Court of Appeals for the First Circuit rendered a decision in *Ozonoff v. Berzah*,<sup>9</sup> on the basis of earlier decisions of the United States Supreme Court, that Executive Order 10422 prescribing security clearance for United States citizens seeking appointments in the United Nations system was unconstitutional, because of its vagueness and its infringement on freedom of speech. Furthermore, the United States District Court for the Eastern District of Pennsylvania in April 1986, in *Hinton v. Devine*,<sup>10</sup> followed the rationale of the *Ozonoff* decision and also declared Executive Order 10422 to be unconstitutional. The United States Government had decided at that point not to pursue the matter further and on 2 June 1986 informed the United Nations that observance of the Executive Order was suspended. United Nations officials at Headquarters also had been informed of the *Ozonoff* decision, and in the view of the Tribunal the inclusion of the United States security clearance requirement in the 17 September 1985 offer to the Applicant represented a mistake of law.

However, under the circumstances of the present case, that defect was not a ground for total rescission of the contract. Given the course of events, the Tribunal concluded that the date of the *Ozonoff* decision established the invalidity of the security clearance programme under Executive Order 10422, thus

eliminating any reason for including the security clearance requirement in the 17 September 1985 offer. In the opinion of the Tribunal, because of the extraneous nature of the security clearance provision as regards the subject matter of the contract, the parties would have simply omitted that provision from the contract if failure to take account of the *Ozonoff* decision had not occurred, and, therefore, in consequence the requirement was to be regarded as irrelevant.

Had the Applicant elected to remain in Somalia until the expiration of the one-year term of the 17 September 1985 contract, i.e., 16 September 1986, he would have been entitled to all of the contract's emoluments regardless of whether he eventually obtained a United States security clearance. However, the Applicant had left Somalia at the end of January 1986, because he was then under the impression that his only entitlement was under the consultancy contract he had received to that date, which he regarded as inadequate. As acknowledged by Administration officials, the Applicant had been placed at a financial disadvantage by the continued delay and uncertainty with regard to implementation of the terms of his 17 September 1985 contract provisions due to absence of the United States security clearance. Yet the Applicant had throughout been performing at the L-3 or higher level.

In those circumstances, the Tribunal was of the opinion that the Applicant's decision to leave Somalia at the end of January 1986 was an effort to correct the unfortunate situation into which he had been placed and should not deprive him of relief.

For the reasons set forth above, the Tribunal determined that the 17 September 1985 offer became a binding contract on that date and that the Applicant should receive the difference between the salary and all allowances he would have received as an L-3, step VIII, level staff member with respect to the period from 17 September 1985 until his separation from service on 5 February 1986 as a result of his discussions in Geneva, and the amounts he received as a consultant with respect to that period. Moreover, the circumstances of his separation should be without prejudice to the possibility of his being re-employed by the Organization in the future. In addition, as compensation for the injury sustained by the Applicant due to the mishandling of his situation by the Administration, leading among other things, to the Applicant's departure from Somalia, the Applicant was awarded the sum of \$3,000.

7. JUDGEMENT NO. 456 (2 NOVEMBER 1989): KIOKO V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>11</sup>

*Termination of permanent appointment for unsatisfactory performance — Importance of notification and opportunity to respond to recommendation for termination — Clarification of delegation of authority in five-year reviews of permanent appointments — Question of strict adherence to administrative instruction regarding preparation of performance reports — Generous treatment by the staff member's department negates claim of prejudice — Issue of delays by Joint Appeals Board*

The Applicant entered the service of United Nations Environment Program on 11 February 1974 at the G-3, step I, level, as a Machine Operator/Clerk, and was promoted to G-4 on 1 April 1977. On 1 May 1978, he was granted a permanent appointment. Subsequently, as a result of his five-year review by the ap-

pointment and promotion bodies, he was separated from service, in accordance with the provisions of staff regulation 9.1(a), effective 18 May 1984. The Applicant appealed the decision, challenging the decision to terminate his appointment because of his alleged failure to maintain the standards of efficiency and competence required by the Organization. The Applicant claimed that the decision was not made on the basis of poor performance but because of the physical impairment suffered by him when he lost the sight of one eye in June 1983, as the result of an assault by an individual who was later convicted in a local court.

Upon consideration of the case, the Administrative Tribunal noted that the Applicant's termination because of unsatisfactory service had not occurred in the normal fashion, i.e., pursuant to administrative instruction ST/AI/222, but rather as a consequence of the five-year review of the Applicant's permanent appointment, under staff rule 104.13(b)(ii), and even those circumstances were extraordinary. In the course of the five-year review, the Applicant's department was asked for the assessment of the Applicant, which replied in favorable terms. Ordinarily the department's reply would, under staff rule 104.13(c)(ii), simply have been reported to the Appointment and Promotion Board (APB) and then routinely submitted to the Secretary-General with no further action being taken to alter the status of the permanent appointment.

In the present case, however, despite the department's recommendation of no change in status based on its affirmation that the Applicant had maintained the requisite standards of suitability, which was submitted to the Appointment and Promotion Panel (APP) on 21 September 1983, the latter panel on 2 February 1984 received a Performance Evaluation Report (PER) on the Applicant covering the period from 16 March 1982 to 15 January 1984. That report, similar to his previous two two-year period reports, was critical of him but rated his performance as adequate. The APP, following its review of the relevant documents, recommended that the Applicant's case should be reviewed by the APB under staff rule 104.13(c)(iii). Contrary to the department's 21 September 1983 evaluation and recommendation that no change be made in the Applicant's status, the APP thought that the Applicant did not meet the requisite standards of efficiency and competence and should therefore be separated from United Nations service. The APP's recommendation to terminate the Applicant's appointment for unsatisfactory service was subsequently accepted and the Applicant was terminated on 15 May 1984. The Applicant appealed.

However, as noted by the Tribunal, the difficulty with the foregoing was that the Applicant had received no notification from the APP, the APB or anyone else of his possible termination for unsatisfactory performance. None of the last three performance reports he received had indicated either partial or total unsatisfactory performance ratings. Because the Applicant had not been given the opportunity to make any presentation on his own behalf before the APP or the APB before the termination recommendation was submitted to and carried out by the Executive Director of UNEP, it was the view of the Tribunal that that was a clear failure on the part of the Administration to observe a fundamental procedural protection accorded to staff members under the applicable staff rules and administrative instructions, the importance of which had been repeatedly stressed by the Tribunal in its previous judgements, e.g., Nos. 98, *Gillman* (1966); 131, *Restrepo* (1969); 157, *Nelson* (1972); and 184, *Mila* (1974).

The Applicant had argued that the Executive Director did not have the delegation of authority to terminate him for unsatisfactory performance. Although annex V to administrative instruction ST/AI/234 reserved that authority to the Secretary-General, the Respondent alleged that the situation was different when a termination occurred in the course of the five-year review, on the theory that it was an incident of the appointment process under staff rule 104.13 and therefore part of the appointment delegation to the Executive Director. The Tribunal noted that although the Secretary-General eventually ratified the Executive Director's action on 30 October 1987, it did not deem it essential to resolve either the issue or the Applicant's contention regarding the scope of the APB's authority under staff rule 104.13(c)(ii) and 104.14(f)(ii)(B) following a departmental recommendation for no change in status. The Tribunal did, however, suggest that the Respondent might wish to clarify the authority delegated to the Executive Director, as well as the authority of APPs and APBs, in similar situations involving five-year review of permanent appointments.

The Applicant also had contended that the Administration had acted improperly in preparing and submitting to the APP the last performance evaluation report covering the period from 16 March 1982 to 15 January 1984, a period of less than two years, contrary to administrative instruction ST/AI/240/Rev.1 which, except for special reports, provided for the preparation of reports at three-year intervals. The Tribunal accepted the Respondent's response that under the version of ST/AI/240 in effect immediately prior to ST/AI/240 Rev.1, the intervals were two years and the last performance evaluation report was probably prepared with that in mind. Furthermore, the Tribunal did not consider that the three-year interval provided for by ST/AI/240/Rev.1 necessarily prohibited the preparation of a PER covering a shorter period, if there was a good reason to do so. Here, the Administration's action was entirely proper since a five-year review was under way and apparently had been somewhat delayed by the eye injury sustained by the Applicant in early June 1983.

With respect to the Applicant's assertion that the decision to terminate him had been motivated by prejudicial and extraneous factors, no evidence submitted by the Applicant to the Tribunal supported that contention. On the contrary, as noted by the Tribunal, the Applicant's treatment by his department within UNEP, if anything, appeared to have been generous and understanding, as reflected by the ratings he received in his PER. Generous treatment also was reflected in the initial assessment and recommendation made by the department in connection with the five-year review. Similarly, the evidence showed that the Applicant's department had given due consideration to the Applicant's handicap after he suffered the loss of an eye, and there was no evidence that he was terminated because of that event.

The Tribunal, recalling its previous expressions of disapproval of delays, also registered its dismay that although the termination occurred in mid-May 1984 and had been challenged by the Applicant in a timely fashion, the Joint Appeals Board (JAB) report was not issued until 23 June 1987. Moreover, there appeared to have been an unexplained delay on the part of the JAB in making documents to which the Applicant was entitled available to him. Those delays, in the opinion of the Tribunal, were especially deplorable in cases involving termination of employment.

In view of the lapse of three years before the JAB report and the egregious failure by the APP and APB to conduct a “thorough, searching and balanced” review, the Tribunal did not consider it appropriate in the present case to proceed under article 18 of its rules, for that would further delay the resolution of the case.

Because of the complete failure of notice and opportunity for the Applicant to respond to the proposal to terminate his permanent appointment prior to action taken by the Executive Director on 15 May 1984, the Tribunal found that the application was well founded and ordered the rescission of the Respondent’s decision to uphold the Applicant’s termination. In accordance with article 9, paragraph 1, of the Tribunal’s statute, the Tribunal fixed the amount of compensation to be paid to the Applicant for the injury sustained, should the Respondent decide that the Applicant shall be compensated without further action being taken in the case, as an amount equivalent to 18 months’ net base salary at the rate in effect at the time of his separation from service. All other pleas were rejected.

8. JUDGEMENT NO. 457 (7 NOVEMBER 1989): ANDERSON V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>12</sup>

*Rejection of recommendation of the rebuttal panel to upgrade performance evaluation report — Question of an administrative decision — Question of Tribunal’s competency in matter — Issue of truthful performance reports — Importance of warning of poor performance to staff member — Charge of prejudice negated by careful appraisal of rebuttal panel report and positive statements about staff member*

The Applicant entered the service of the United Nations on 18 May 1964 as a Clerk Stenographer at the G-3 level in the Purchase and Transportation Service of the Office of General Service. Subsequently, on 1 April 1974, she was promoted to the P-1 level as an Associate Procurement Officer, to the P-2 level on 1 April 1977 and to the P-3 level on 1 April 1980.

The Applicant’s performance during the period running from 31 March 1981 to 1 March 1983 was evaluated in a performance evaluation report (PER) dated 22 March 1983 (hereinafter referred to as “the first report”). The Chief of the Field Missions Procurement Section, who signed the report as first reporting officer, gave the Applicant six “outstanding” ratings and seven “very good” ratings, and her overall performance was rated “a very good performance”.

Regarding the Applicant’s performance during the subsequent period running from 1 March 1983 to 1 March 1986 (hereinafter “the second report”), the Chief of the Field Missions Procurement Section, who again acted as first reporting officer and was the Applicant’s immediate supervisor, had indicated that the Applicant’s performance had been evaluated pursuant to the new PER format, which provided for a more accurate assessment of performance. He rated the Applicant’s competence as “good” (C); her initiative as “somewhat below standard” (E); her skill in producing a solution as “fair”(D); and her effectiveness in maintaining harmonious working relations as “unsatisfactory”(F). The

Chief of the Purchase and Transportation Service, who acted as second reporting officer, rated her overall performance as “a performance that does not fully meet standards” and noted that “in particular, the lack of harmonious communication with supervisors precludes an effective performance”.

As a result of the Applicant’s rebutting her second report, the ratings were dramatically upgraded by the Panel. The Panel’s report included, *inter alia*, an explanation from the first and second reporting officers, who had prepared and signed the Applicant’s first and second PERs, to the effect that the Applicant’s performance had remained the same over the two reporting periods, but that they had prepared the second report to truly reflect their opinions of the staff member’s performance, at the suggestion of the Assistant Secretary-General, who had indicated that she wanted honest evaluations. Also included in the Panel’s report were general observations of the members of the Panel stating that while they fully supported the Assistant Secretary-General’s suggestion that honest evaluations be provided, under the current system any staff member would be at a serious advantage if “truth” were to be told with respect to him or her unless that were done for all staff members.

The Assistant Secretary-General of the Office of General Service rejected the Panel’s recommendation to upgrade certain ratings in the second report, and the Applicant appealed.

Upon consideration of the issues raised, the Tribunal did not accept the Respondent’s contention that the appraisal of the report of the Rebuttal Panel was not an administrative decision reviewable under staff regulation 11.1. Appraisal was ordinarily a process which led to and included an administrative decision whether or not to accept the Panel’s report, and it was that decision on which the Tribunal was competent to pass judgement.

The Tribunal stated that it should not substitute its own opinion for that of the officer making the appraisal. It would only interfere with that opinion if it was the consequence of prejudice, discrimination or some other extraneous consideration. The Applicant had contended that the contested decision was influenced by the Applicant’s union activities and to the vigilance which she demonstrated in processing purchase orders. However, in the view of the Tribunal no evidence was submitted that supported her contention, other than the fact that she was indeed vigilant in connection with the processing of purchase orders.

The fact that previous performance evaluation reports were substantially more favourable to the Applicant than the report currently under consideration could in some circumstances be evidence of prejudice or other irregularity. In the present case, as observed by the Tribunal, it was not contested that the series of favourable reports had come to an end and was followed by the report in question, not because of any change in the Applicant’s performance but because the Assistant Secretary-General had drawn attention to reporting officers to the need for reports to be truthful, and that in itself could not be considered an irregularity. Although the Tribunal attached great importance to the integrity of the performance evaluation reporting system and the need for candor and honesty, it nevertheless pointed out that it was regrettable that the Applicant had

been confronted with this tightening of reporting criteria without any specific warning so as to alert her to the need to improve her performance, in particular, by improving her relations with her colleagues. Furthermore, no evidence had been produced to show that the tightening of criteria was discriminatory, in the sense that it only applied to the Applicant and not to all members of the staff for whom the Assistant Secretary-General was responsible.

The Tribunal further noted that the Assistant Secretary-General had made a very thorough and careful appraisal of the Rebuttal Panel's report and demonstrated her lack of prejudice against the Applicant by expressing the hope that her future usefulness to the Organization would not be impeded.

For the foregoing reasons, the Applicant's pleas were rejected.

9. JUDGEMENT NO. 461 (10 NOVEMBER 1989): ZAFARI V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST.<sup>13</sup>

*Termination — Competency of Tribunal in matter — Importance of opportunity of judicial recourse against administrative decision — Question of renunciation of right to seek compensation for improper dismissal — Termination under regulation 9.1 must be justified*

The case concerned the termination of a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and before considering the merits of the termination case, the Tribunal addressed the Respondent's contention that the Tribunal was not competent to hear the appeal. At the same time, the Tribunal noted that the Respondent, by simply pleading that the Tribunal was not competent and not presenting, as a subsidiary matter, his contentions on the substance, delayed settlement of the dispute. Recalling its Judgement No. 57, *Hilpern* (1955), the Tribunal observed that the jurisdiction of the Tribunal might be extended to any specialized agency upon the terms established by a special agreement to the effect between such agency and the Secretary-General, and such an agreement was all the more possible between the Commissioner-General of UNRWA, which, moreover, was not a specialized agency but a subsidiary organ established by the General Assembly under Article 22 of the Charter of the United Nations and the Secretary-General of the United Nations. The Tribunal noted that such an agreement existed between the Secretary-General and the Commissioner-General of UNRWA. Furthermore, in the *Radicopoulos* case (Judgement No. 70 (1957)), the Tribunal had confirmed its jurisdiction in reviewing cases emanating from UNRWA.

In the present case, the Respondent had invoked the UNRWA Staff Regulations and Rules to support his contention that the Tribunal was no longer competent. The Respondent, referring to chapter XI of those Regulations, stated that the Applicant's appeal had been considered by a "special board" of the Joint Appeals Board (JAB). The JAB had considered that it was "purely an administrative matter which should be handled by the Administrator and the Legal Adviser" and therefore unanimously declared itself not competent to handle the matter. Subsequently, the Applicant had been informed that the unanimous recommendation of the JAB had been accepted by the Commissioner-General of UNRWA and that therefore any further appeal to the Panel of Adjudicators was barred, as stipulated in area staff regulation 11.1(c). The Tribunal noted that, in

that instance, the Applicant had thus been deprived of any recourse against the decision of the Commissioner-General of UNRWA and therefore had truly been denied justice because of a legal vacuum which the existing area staff regulations and rules had not filled.

In this connection, the Tribunal recalled the International Court of Justice opinion of 13 July 1954 concerning awards of compensation made by the United Nations Administrative Tribunal, wherein it was stated that it would be inconsistent with the aim of the Charter of the United Nations if the Organization afforded no judicial or arbitral remedy to its own staff for settlement of any disputes which arose between it and them. The Tribunal considered that, in the absence of any judicial procedure established by the area Staff Regulations and Rules for settlement of disputes submitted to the JAB under regulation 11.1, the competence of the Tribunal as stated in its earlier judgements remained and therefore the Tribunal considered that it was competent to deal with the application.

The Applicant had joined UNRWA in 1952 as a Registration Clerk, and on 1 January 1979 had been appointed Area Officer for the Damascus area. In a letter dated 5 May 1985, the Director of UNRWA Affairs for the Syrian Arab Republic confirmed that, as stated at their meeting on 2 May, he was terminating the Applicant's services, and the only reason he gave for the termination was that he had lost confidence in the Applicant. He added that the decision was "in the interest of the Agency under staff regulation 9.1". The Tribunal noted that the Respondent had not disputed the Applicant's allegation that the manner of the termination was abrupt and arbitrary. The Respondent merely maintained that the Applicant had opted for an "early voluntary retirement benefit" and that accordingly the mode of his separation was not a termination. The Tribunal noted that it was true that, on 7 May 1985, just two days after his services were terminated, the Applicant had sent the Administration a handwritten note asking for such a benefit. However, the Tribunal considered that that informal note appeared to have been written when the Applicant was understandably upset following his abrupt termination. Under those circumstances, the Tribunal considered that the note did not constitute a renunciation of the Applicant's right to seek compensation at a later date for improper dismissal.

Moreover, it was not until the Applicant had requested the regional Director of UNRWA, on 3 June 1985, to review the decision to terminate his appointment, that a new personnel action form, changing termination to separation, was issued on 4 June 1985. At the same time, the Respondent had alleged that the decision to terminate the Applicant's contract had been automatically withdrawn under area staff rule 109.2, paragraph 11. Contrary to what the Respondent maintained, as noted by the Tribunal, rule 109.2, paragraph 11, did not state that a request for voluntary early retirement led to the "automatic withdrawal" of an administrative decision on termination.

The Tribunal noted that, in effect, the Director had not invoked any facts in support of his opinion that termination of the Applicant's contract would be "in the interest of the Agency". He had merely stated that he had lost confidence in the Applicant. The Tribunal considered that that simple statement was insufficient to justify application of regulation 9.1, as it did not allow the Tribunal to exercise its power to verify the facts and whether there was any misuse of power or arbitrary action. The Tribunal further noted that at the time the events took

place, the Applicant had served the Organization for over 30 years and that he was generally well regarded and appreciated. Under the circumstances, the Tribunal considered that the decision to terminate the Applicant was in fact a disciplinary measure.

The Tribunal therefore concluded that the decision of 2 May 1985 had been taken in violation of the Applicant's rights and must be rescinded. Should the Respondent decide not to reinstate the Applicant, he would be awarded compensation in the amount of \$15,000. All other pleas were dismissed.

10. JUDGEMENT NO. 465 (15 NOVEMBER 1989): SAFAVI V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>14</sup>

*Non-renewal of fixed-term appointment — Question of legal expectancy of renewal — Proof of prejudice or improper motivation — Importance of staff member being given opportunity to respond to charges of unsatisfactory performance — Post facto presentations of documents are not normally an adequate substitute for contemporaneous performance records*

The Applicant originally had been recruited by the United Nations on 16 July 1978 as an Urban Planner at the L-4 level at the Office of Technical Cooperation in Riyadh and served on a succession of fixed-term project personnel appointments until completion of the project on 31 July 1983, receiving a performance rating of "very good". On 5 February 1984, the Applicant re-entered the service of the United Nations to work on a UNCHS/UNDP National Physical Planning Project of assistance to the Government of Bangladesh, at the L-5, step II, level as a Physical Planner at Dhaka. On 3 September 1984, the Resident Representative wrote a letter to the Coordinator of the Asia, Pacific and Americas Unit (UNCHS), expressing concern with the progress of the project and expressing doubt about the National Director, the Project Manager and the Applicant's ability to work at the expected level. Thereafter, on 4 January 1985, the Coordinator informed the Applicant that after reviewing his input to the Project, UNCHS had found his performance below expectations and that his appointment would be extended only six months, and the Applicant was separated from the Organization at the expiration of his appointment on 4 August 1985. The Applicant appealed.

The Applicant claimed that he had a legal expectancy for a one-year renewal of his fixed-term appointment, pointing to a communication from his immediate superior several months before his fixed-term appointment was to expire regarding the Applicant's interest in an extension; indications early in the course of the Project that he might expect to be in Bangladesh for three years; and a written request dated 8 January 1985 from the Government of Bangladesh to UNDP requesting that his contract be extended for one year from 5 February 1985. However, the Tribunal did not consider that the foregoing points, considered singly or together, or any other evidence in the case, were sufficient to establish the claimed legal expectancy. The Applicant's immediate superior neither had the authority to commit the Administration to an extension, nor purported to do so. The written communication from him to the Applicant, which was in question, was viewed by the Tribunal as merely an inquiry. The written request by the Government of Bangladesh was also insufficient to establish a

legal expectancy. It was not for the Government unilaterally to make any commitment regarding an extension; that was a matter that required UNCHS and UNDP concurrence. Furthermore, indications that the Applicant might be in Bangladesh for three years did not have the effect of creating a legal expectancy beyond the fixed-term specified in his contract. Nor did the fact that aspects of the project on which the Applicant had been working were unfinished at the time of his separation.

However, although the Tribunal was unable to conclude that the Administration violated the Applicant's terms of employment, or the relevant Staff Rules, when it separated the Applicant on the expiration of his fixed-term appointment, the Tribunal had found troubling inconsistencies in the manner in which the Administration proceeded. These were not satisfactorily resolved by the post facto documentation produced by the Administration following the Applicant's appeal. For example, the Tribunal had difficulty understanding why, if the Applicant's performance was as unsatisfactory as later asserted by the Administration, he had been given a within-grade salary increment with respect to his first year.

Despite the foregoing and other concerns arising from the record of the case, in the Tribunal's view, if there had been no action by the Administration beyond permitting the Applicant's fixed-term contract to expire, a matter within its discretion, the Tribunal would be hesitant to sustain the application based on allegations of prejudice or extraneous factors. Under the Tribunal's consistent jurisprudence, the burden of proving prejudice or other improper motivation rested with the Applicant and he had not demonstrated to the satisfaction of the Tribunal that the non-renewal of his contract was tainted by prejudice or improper motivation. The Applicant's claim that his treatment reflected retaliation against him by the UNDP Resident Representative for having successfully appealed with respect to a subsistence allowance matter, while raising suspicions, was not considered by the Tribunal sufficient to sustain the Applicant's burden of proof because other staff members who also were involved in the subsistence allowance appeal did not appear to have suffered any adverse consequences. Nor did the personality eccentricities of the Resident Representative alleged by the Applicant establish prejudice or improper motivation.

However, as observed by the Tribunal, the Administration had done more than decline to renew the Applicant's contract. It had intervened in efforts by the Applicant to secure other United Nations employment. Since the Respondent cited unsatisfactory performance by the Applicant in an attempt to influence negatively potential employment opportunities for him, the Tribunal considered whether the Respondent had followed a fair procedure in arriving at its conclusion. In other words, basic notions of due process suggested the Respondent should have given the Applicant: (a) a reasonably detailed specification of his alleged performance shortcomings in January 1985, or earlier, instead of the simple conclusory statement that he received; (b) an opportunity to respond; and (c) then given fair consideration to his response. Because that had not been done in the present case, the Tribunal was faced with the Respondent trying to justify his position on the basis of post-appeal factual assertions and arguments, which also included a favorable assessment by the Project Manager, and a request that the Applicant continue in his post for an additional 30 days in lieu of taking accrued leave.

The Tribunal pointed out that procedural due process protections were designed to assure, insofar as possible, that the Administration would fairly consider a staff member's point of view and, having done so, would presumably arrive at a fair and reasoned decision. Based on the foregoing, the Tribunal concluded that the Applicant had not been treated fairly and that if he sought future employment with the Organization he should be considered for it without reference to his alleged unsatisfactory performance on the Bangladesh Project.

With respect to the Applicant's requests for the production of documents, those deemed relevant were sought from the Respondent by the Tribunal and some were furnished. However, other documentation requested which might have thrown light on evaluations of the Applicant's performance were not made available by the Respondent. In the opinion of the Tribunal, post facto presentations in the context of an appeal were not normally an adequate substitute for contemporaneous performance records or evaluation procedures.

Notwithstanding the lack of proof of prejudice or improper motivation in the present case, the Tribunal found that no serious attempts had been made by the Administration to observe the obligation of due and fair process vis-à-vis the Applicant. Even more damaging, the entry into his personnel files of an unsatisfactory performance rating for which no justification had been established could not but injure his professional reputation.

In view of the foregoing, the Tribunal set compensation for the injury to the Applicant at five months of his net base salary at the time of his separation of service, plus \$2,000 in costs, and a copy of the judgement was placed in the Applicant's file.

## **B. Decisions of the Administrative Tribunal of the International Labour Organization<sup>15</sup>**

1. JUDGEMENT NO. 958 (27 JUNE 1989): IN RE EL BOUSTANI (NO. 3) V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION<sup>16</sup>

*Non-promotion to head of section — Competency of Tribunal in matter — Proof of personal prejudice — Question of indicating reasons for ranking of candidates — Weight of factors in selection process — Question of providing an explanation for an administrative decision — Ability of staff member to defend his or her rights — Corroboration of plea by citing other cases*

The complainant joined the staff of UNESCO on 14 August 1975 as a translator and minute-writer at grade P-3 in the section for translation into Arabic, and on 1 June 1980 he was promoted to reviser at grade P-4. On 4 November 1986, he applied for a post, COL-274, as principal reviser and head of the section. A shortlist was created, with the complainant placed second on the list. The third candidate, however, was appointed to the post and the complainant appealed, contending that the Director-General disliked him as a militant member of one of the two staff associations, the STA, and a ringleader in many staff disputes.

In consideration of the case, the Tribunal noted that according to UNESCO staff regulations and the general principles governing the international civil service the Director-General had wide discretion to appoint, transfer and promote

staff in the interests of the Organization he headed. The Tribunal would review his decisions, short of interfering in his actual management, considering whether a decision showed any formal or procedural flaw or a mistake of law or of fact, whether any essential fact had been overlooked or any mistaken conclusion drawn from the evidence, or whether there was abuse of authority.

As to the allegation of personal prejudice, the Tribunal had often said that it was usually concealed and its existence therefore usually had to be established by inference. In consideration of the matter, the Tribunal observed that the foremost and surest safeguard against personal prejudice was due process, which above all was designed to prevent improper influence on administrative decisions. In this regard, the complainant contended that the procedure that had culminated in the decision was faulty on two counts: (a) the Senior Personnel Advisory Board (SPAB), which according to staff rule 104.1 advised the Director-General on promotions, had been improperly constituted, and (b) it had failed to give reasons for its recommendations. The complainant had objected to the Chairman of SPAB and to two of the three other members, on the ground that they were not impartial. However, the Tribunal noted that the Board members were unanimous in approving the Board's report and moreover that there was an observer representing STA, in which the complainant was active, who had not included in his comments any mention of impartiality in the proceedings. There was no other evidence put forward of bias on the part of the Board.

The complainant further objected to the Board's actual report — the Board merely recommended an order of preference — Mr. Hanna, himself and Mr. El Keiy — without stating any reasons for it, contending that a statement was needed in difficult cases and cases affecting staff militants. The Tribunal observed that in a case in which the activism of one of the applicants for a post had attracted notice or even aroused resentment in the upper reaches it was only reasonable that the Board should prefer to state the reasons for its choice. But in the present case, the Board may have held that in unanimously approving the recommendation of the competent Sector that had reviewed the candidates it had endorsed the Sector's reasoning and therefore did not need to repeat the reasoning in its own report. The Board might, for that matter, have felt that a staff association was immaterial to its recommendation. Upon considering all the evidence, the Tribunal concluded that there was no formal flaw in the advisory proceedings.

The complainant further argued that the decision showed a mistake of law, evident misappraisal of the facts and abuse of authority. In that regard, the Tribunal noted that the Director-General was bound to take a whole set of factors into account in making a selection and to give whatever weight he thought fit to other factors provided for in the rules, and only if he were shown to have wilfully overlooked one of those factors might the complainant's plea succeed. Not only were technical skill and talent for administration considered, but also age, seniority and ability to ease tension in the unit. The Tribunal further noted that the senior officers, as they were bound to do, had given priority, in their Advisory Board's report to the Director-General, to the last criterion and they had felt that the other two candidates were more promising on that score. The Tribunal also noted that in selecting Mr. El Keiy for the post the Director-General had accordingly resolved without questioning the professional and technical merits of the other two applicants to give pre-eminence to the ability to reduce tension in the unit. The Tribunal concluded that in rejecting the complainant's candida-

ture after what was described as a “careful study of all the material factors” the Director-General had made no mistake of law and drawn no clearly wrong conclusion from the facts.

As to the complainant’s contention that the decision had only a veneer of lawfulness and that the rejection of him could not have been in the Organization’s interests since there was personal prejudice that made the decision an abuse of authority, he cited evidence of such prejudice in the absence of an explanation of the actual decision, and argued that an explanation was required by him based on general principle and because such an explanation would enable him to plead his appeal properly.

As had been observed by the Tribunal in its other judgements, many decisions by international organizations that prompted complaints — discretionary ones, for example — were unsubstantiated, yet the staff member was still able to defend his rights. Though not stated in the actual text, the reasons for the decision might be discerned from earlier correspondence between the parties or in the last resort from the organization’s brief in reply to the complaint, which the staff member might comment on in his rejoinder. The Tribunal further observed that unless there was express derogation the rule was that the organization need not, if that was not the practice, state the reasons for all its decisions: what mattered was that the absence of a statement should not be to the staff member’s detriment.

In that regard, the Tribunal noted that the complainant had had at his disposal minutes which his supervisor had written on 8 and 19 January 1987, making a technical assessment of the various applicants, the Advisory Board’s concurring recommendation of 10 February 1987, the comments of 12 February 1987 by the STA’s observer, and he had filed a rejoinder to UNESCO’s reply to his complaint. In the Tribunal’s view, therefore, the absence of a formal statement of reasons had caused him no injury.

The complainant also had cited other cases of STA members being harassed, in order to corroborate his plea that rejecting him amounted to an abuse of authority. However, the Tribunal observed that the STA members he mentioned had not filed a complaint, so the complainant was driven to find evidence about those cases from various scattered sources. The Tribunal objected to that way of gathering evidence, and the Tribunal had already had occasion to declare it inadmissible.

For the above reasons, the complaint was dismissed.

## 2. JUDGEMENT NO. 972 (27 JUNE 1989): IN RE UNNINAYAR V. WORLD METEOROLOGICAL ORGANIZATION<sup>17</sup>

*Non-renewal of contract — Standard for review of decision — Exhaustion of internal means of redress — Question of reviewing all facts before making a decision — Standard for retention in the Organization — Importance of opportunity to answer charges — Question of a remedy*

The complainant joined the World Meteorological Organization in Geneva on 10 February 1981 under a two-year appointment, as a grade P-5 Scientific Officer. Remaining at grade P-5, effective 26 January 1984, he was appointed Chief of the World Climate Data Programme Division of the World Climate

Programme Department. The following year, the structure of the Department was changed and the Division ceased to exist, and the complainant was reassigned as “senior scientific officer” to a new unit, the World Climate Data Office.

On 10 November 1987, the complainant was summoned to a meeting with the Secretary-General, the Assistant Secretary-General and the new Director of the World Climate Programme Department in order to consider the renewal of the complainant’s fixed-term contract. It appeared that at the meeting there had been discussion about the complainant’s signing letters as Chief of the World Climate Data Programme Division after he had been reassigned and asking the permanent representative of one member State to write directly in her capacity as head of a national meteorological service to prevent the delay that would occur if her letter were routed through official channels. The meeting ended abruptly when the complainant used a “coarse expression” and left the Secretary-General’s office. On 11 November, the Secretary-General informed the complainant that his contract would not be renewed and the complainant appealed.

In consideration of the case, the Tribunal noted that the decision whether or not to renew or convert an appointment was at the Secretary-General’s discretion, and the Tribunal’s case law was that it would interfere only if such a decision had been taken without authority or in breach of a rule of form or procedure, or based on an error of fact or law, or if an essential fact was not taken into consideration, or if there had been abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts.

The complainant also had argued that according to the terms of his contract he was entitled to a permanent appointment at grade P-5. However, in the view of the Tribunal, the complainant’s argument failed because he had never challenged any administrative decision on his entitlement to a permanent appointment. Any complaint regarding refusal by the Organization to grant him such an appointment was irreceivable under article VII (paragraph 1) of the statute of the Tribunal because he had failed to exhaust the internal means of redress.

The complainant also contended that the Secretary-General’s decision not to renew his appointment was flawed by procedural error, error of law and failure to take essential facts into consideration. The Tribunal noted that regulation 4.2 of the WMO Staff Regulations stated that “the paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity”. Rule 145.2(d) made the evaluation of performance as reflected in periodic reports the basis for “decisions concerning the staff member’s status and retention in the Organization” and rule 145.2(c) required the communication of any adverse report to the staff member in writing. In that context, the Tribunal noted that the complainant’s performance reports all showed that he was a highly competent and dedicated officer who had done valuable work for the Organization and letters in the dossier supported the view that administrations in several countries appreciated the effectiveness of the programme he supervised.

The Tribunal observed that the Secretary-General had not only omitted to give weight to the complainant’s excellent record of service over a period of seven years, but also the reasons put forth by the Secretary-General for not

renewing the complainant's appointment, including the signing of correspondence as chief even though his title was senior scientific officer and not routing correspondence according to standing instructions, could have been put right if the complainant had been given the opportunity to answer the charges.

Because of those flaws, his decision not to renew the complainant's appointment must be set aside. The Tribunal was satisfied that in the circumstances of the case the complainant's reinstatement would not have been advisable, and noting that the complainant had already found employment elsewhere the Tribunal ordered the Organization to pay him two years' salary and allowances at the rates obtained at the date of separation as damages for material injury; 25,000 Swiss francs as damages for moral injury; and 10,000 Swiss francs as costs.

3. JUDGEMENT NO. 975 (27 JUNE 1989): IN RE NOWAK V.  
EUROPEAN PATENT ORGANISATION<sup>18</sup>

*Request to substitute certified sick leave for maternity leave so as to preserve full period of maternity leave entitlement — Expressio unius exclusio alterius — Significance of recommendation from the Appeals Committee — Effect of a previous misinterpretation of the rules in a subsequent similar situation — Question of equality of treatment*

The complainant had been a permanent staff member of the European Patent Organisation (EPO) since 1984. During her second pregnancy, on 2 December 1986, her doctor certified that the likely date of birth of her child was 14 June 1987. Because of prenatal complications he later gave her three successive medical certificates stating that she required sick leave from 13 April to 16 June 1987. She gave birth to a daughter on 11 June.

In the complaint, she challenged the refusal of EPO to allow her to begin her maternity leave at the date of birth of her daughter, and from that date take the 16 weeks' leave provided for in article 5(a)(i) of circular 22 as amended. In accordance with the above circular, if a woman, having begun maternity leave six weeks before the expected date of her confinement, gave birth after that date, she would ordinarily be entitled to 10 weeks' leave after the actual, as against the expected, date of confinement in addition to whatever period had elapsed since she began her leave. She would thus be entitled to a total period of over 16 weeks. If the child was born before the expected date, the mother would not have her leave curtailed: she would still be entitled to not less than 16 weeks.

The complainant requested that the certified sick leave the complainant took before the date of birth be substituted for maternity leave so as to preserve her entitlement to a full period of 16 weeks' maternity leave after that date. EPO had refused such substitution on the ground that sick leave might be substituted only for home leave or annual leave in accordance with article 62(4) of the EPO Service Regulations. On appeal, the Appeals Committee had held, citing article 5(a)(i) as authority, that the total period of maternity leave was not reduced when the confinement had taken place earlier than had been expected or when the mother had continued to work up to the date of confinement. But the President had confirmed the refusal of the complainant's claim.

In consideration of the case, the Tribunal noted that it appeared that there was a practice in EPO of allowing staff who worked during the six weeks before the expected date of confinement to add any days not taken to the period of

maternity leave granted after the date of birth. The complainant was seeking to extend the privilege by claiming sick leave during the six-week period and adding it to the period of leave due after the date of birth.

In the opinion of the Tribunal, the President was correct in rejecting the unanimous recommendation of the Appeals Committee. Involved was a principle of interpretation, *expressio unius exclusio alterius*, that express mention in a text of one or more things belonging to a category excluded by implication all other things in the category. In that regard, the Tribunal noted that article 62(4) provided that if an employee was certified sick while on home leave or on annual leave the period was not deducted from such leave but was deemed to be sick leave; that precluded applying 62(4) also to maternity leave, which was another form of leave.

The Tribunal also noted that the President was not bound to endorse the Appeals Committee opinion in the matter: article 109(i) of the Service Regulations stated merely that “the authority concerned shall take a decision having regard to this opinion”. The President’s duty was to consider the opinion before reaching his decision, not to follow it.

The complainant had argued that since she had received a deferment of maternity leave because of illness for her first pregnancy, she should be granted it for her second. In the view of the Tribunal, however, the fact that she formerly benefited from misinterpretation of the rules did not entitle her to have the rules wrongly applied a second time.

The Tribunal observed that the purpose of maternity leave was to allow the pregnant woman a period of rest before birth if she wanted it and a rather longer period after birth to recover and spend time with her child. The rules applied to all women whatever the state of their health. Though women in good health would enjoy their maternity leave more than those who suffered from complications or were not so robust, there was still equality of treatment in that all women were entitled to the same period of maternity leave.

For the above reasons, the complaint was dismissed.

4. JUDGEMENT NO. 977 (27 JUNE 1989): IN RE RATTEREE V.  
INTERNATIONAL LABOUR ORGANIZATION<sup>19</sup>

*Non-selection to posts — Question of receivability — Authority of Director-General to assign staff — Question of arbitrary and unfair treatment of staff member*

The complainant, a United States citizen, had held short-term appointments with the International Labour Organization from 1980 and a series of fixed-term appointments from July 1981 at the P-3 level, in the Equality of Rights Branch (EGALITE). His duties related to the ILO’s campaign against apartheid in southern Africa. In April 1987, the ILO advertised an internal competition to fill a vacant P-4 post in EGALITE which covered the duties the complainant was performing. The Selection Board recommended him as the only candidate to meet the stated requirements in full. The second choice was a female candidate from Ghana, who was eventually selected by the Director-General. Having learned of that decision in September at a meeting with the Chief of the Personnel Development Branch and the Deputy Director-General, the complainant made

a “request” for review on 7 October 1987 and explained orally to the Personnel Department that he was worried about his future because his duties formed part of the post granted to the selected candidate. A Personnel Officer wrote a letter to the complainant, dated 26 October, stating that he seemed not to be objecting to the appointment of the selected candidate and reassured him about his future in the Organization.

In a minute of 26 November 1987, the Director of the Promotion of Equality Department informed the complainant that he was to be placed on a post which included duties relating to the Arab territories occupied by Israel, only on a temporary basis, because the position was thought to be delicate and the complainant’s nationality to be unsuitable. The complainant agreed to the assignment provided that he did not have to go on mission to the territories. However, when the Director-General learned of the complainant’s new assignment, he instead granted a one-year appointment at the P-4 level to another staff member, a French national, who was holding a short-term appointment at the P-3 level, to a new post in EGALITE that would cover work related to the territories, including going on mission there. The complainant continued work on projects relating to southern Africa, and on 8 April, he filed a “complaint” challenging those decisions.

Regarding the decision of 20 August 1987, whereby the Director-General appointed the Ghanaian staff member to the P-4 post instead of the complainant, attention was drawn to the time limits for submission of an appeal. The Tribunal observed that the complainant, having made his article 13.1 request for review on 7 October 1987, had submitted a “complaint” under 13.2 on 8 April 1988. The lodging of the 13.1 request and the substance of it showed that the complainant had become aware of “the treatment complained of” over six months before he had lodged his “complaint”, and it was therefore out of time under 13.2. The complainant had argued that the time should run from the date of receipt of official written notice of the impugned decision, but as the Tribunal pointed out, that was not what the Staff Regulations provided: if he was aware of the treatment complained of more than six months before acting under 13.2 his internal “complaint” was out of time. The complainant had further contended that he could not have known whether what he had been told was true, but the Tribunal observed that his sources of information were at a high level, and he must have known the information to be authoritative. The Tribunal therefore concluded that since the complainant had failed to act within the relevant time limit his complaint was irreceivable.

Regarding the decision of 11 February 1988, concerning the appointment of another staff member to carry out duties in relation to the Arab territories, the Tribunal observed that under article 1.9 of the ILO Staff Regulations, it was for the Director-General to assign the complainant to his duties, and he was acting *intra vires* in cancelling the within-branch transfer. Furthermore, there was never any question of appointing the complainant permanently to the post and his temporary appointment to it had duly ceased in January 1988. Indeed, the minute of 11 February 1988 which contained the decision of appointment requested that all administrative and other steps be taken to give effect to it as soon as possible, including submitting the new appointment to the Selection Board pursuant to article 4.2, the appointment of which was approved by the Board.

The Tribunal was satisfied that the treatment the complainant had received was neither arbitrary nor unfair. The complainant had argued that ILO had given no explanation when it ended his temporary appointment. The Tribunal observed that when he received the oral notice of termination he was told that the reason, though “vaguely stated”, was his unsuitability, and while more than a vague statement might have been expected, so might a request for a more detailed explanation from the complainant. In the view of the Tribunal, since he did not ask for one, there was nothing arbitrary or unfair about the way in which the matter was dealt with.

As the Tribunal further noted, the reason why the complainant was offered the temporary appointment in November 1987 was that there could be such direct transfer within the Branch without seeking the approval of the Selection Board. He had accepted the post at grade P-3 and his contract was renewed at that grade. Although the French national was appointed at P-4, the grade held by the previous incumbent, there was nothing arbitrary or unfair about offering the complainant the post temporarily and provisionally at P-3.

As the Tribunal further noted, the Director-General had terminated the temporary appointment because he did not consider the complainant suitable for the post, for the job called for someone who would carry out all the duties, including missions to the occupied Arab territories, permanently and not just temporarily. Nationality was an important criterion because the holder of the post must be able to travel to the territories without interference or difficulty, as indeed the complainant himself recognized in asking to be relieved from going on mission to the territories. In the opinion of the Tribunal, the decision to remove the complainant from his temporary posting was at the Director-General’s discretion and the exercise of his discretion was proper.

For the above reasons, the complaint was dismissed.

5. JUDGEMENT NO. 978 (27 JUNE 1989): IN RE MEYLER V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION<sup>20</sup>

*Withdrawal of recurrent benefits upon marriage — Question of receivability — Effect of discriminatory staff rule — Applications to intervene in case*

The complainant, a British citizen, joined UNESCO in 1979 in Paris. Her “recognized home” being in England, she was accustomed to receiving the non-resident’s allowance, besides other benefits and allowances due to expatriate staff. On 3 October 1986, she married a French citizen and so informed the Organization, adding that she did not wish to acquire French nationality. As a result of her marriage she lost her entitlement to certain recurrent benefits, such as home leave, “family visit”, education grant and travel expenses in respect of dependants, as well as to the non-resident’s allowance, and she appealed.

The Tribunal pointed out that at the material time UNESCO staff rule 103.14(b)(iii) provided that “the non-resident’s allowance shall not be paid, or shall cease to be paid, to a staff member ... whose husband is a national of the country of the duty station ...” Thus, before 29 April 1988, when the text was amended to replace the word “husband” with “spouse”, a woman staff member who had been entitled to payment of the allowance ceased to be entitled if she

married a national of the country of the duty station. Furthermore, rule 103.14(h) provided, on loss of the non-resident's allowance under (b)(iii), for review of the staff member's eligibility for home leave, "family visit", education grant and travel expenses in respect of dependants, which were recurrent benefits during the period of service, and for "separation travel, repatriation grant and removal of household goods", which were benefits paid on retirement; a decision on subsequent entitlement was to be taken by the Director-General.

The Organization contested the receivability of the complainant's claim as regards the loss of her non-resident's allowance, claiming that she had not protested against the original decision not to pay it, and that it was now time-barred. The Appeals Board had held that it might properly entertain an appeal against the loss not only of the recurrent benefits but also of the allowance because appeal against a decision which had recurring effects could not be time-barred: each month in which the non-resident's allowance was withheld there was a new cause of action. The Tribunal agreed with that view, citing previous case law to that effect. The delay would, however, result in her not being able to claim any payment of the allowance falling due more than one month before the lodging of her claim in accordance with the rules.

The Organization was correct in its submission that the complainant had never protested to the Director-General against the decision not to pay her the non-resident's allowance, and since she had not exhausted the means of internal redress and in order to claim payment she would have to initiate the correct preliminary procedure. Payment was not, however, the same thing as entitlement, and the Organization had not established that the complainant had surrendered her entitlement to the allowance. It could not be held that when she appealed against the decision to withdraw her recurrent benefits on the grounds of discrimination she was at the same time surrendering her right to the allowance.

The Organization further submitted that the claim to the recurrent benefits was irreceivable because it was subsidiary to the time-barred claim to the allowance. However, the Tribunal observed that since the rule was unlawful it could never have become lawful by lapse of time or by acquiescence and a claim could therefore never be barred. Even though a claim to actual payment to the allowance could not succeed in those proceedings because of the complainant's failure to follow the proper internal procedure, the question of her entitlement to the allowance must be considered because of its bearing on the matter of the recurrent benefits.

In considering the merits of the case, i.e., withdrawal of payments of the recurrent benefits under 103.14(h), the Tribunal observed that the Organization had not denied that 103.14(b)(iii) discriminated against women on its staff. Indeed, it had amended the offending text with effect from 29 April 1988, the word "husband" having seemingly been allowed to survive in the text only by oversight. That did not, however, in the view of the Tribunal, relieve the Organization of liability. The old text of 103.14(b)(iii) was not enforceable because it was discriminatory, and, therefore, the Director-General should have confirmed the complainant's entitlement to the recurrent benefits. Since he failed to acknowledge the discriminatory and, therefore, unenforceable character of the provision, his decision was based on a mistake of law and must be quashed.

The Organization had submitted that because of its failure to amend 103.14(b)(iii) the payment of the allowance to men was a mistake and the com-

plainant might not claim the benefit of equality in breach of the law. However, as the Tribunal pointed out, there was no breach of the law in paying the allowance to a man regardless of the nationality of his wife. On the contrary, it was paid in accordance with the rule and not by mistake.

As to her claim to reinstatement of the recurrent benefits, rule 103.14(h), under which the Director-General took his decision to withhold them, came into play only if the right to the allowance was lost under 103.14(b)(iii), (iv) or (v). Since, as was stated above, (b)(iii) was unenforceable insofar as it was discriminatory, it could have no effect. Since it had no effect, 103.14(h) did not come into play and there was no authority to withhold the benefits.

Lastly, the Organization had argued that the Director-General had exercised his discretion in accordance with objective criteria; however, the Tribunal noted that the applicability of the criteria in the exercise of his discretion depended on whether the non-resident's allowance had been validly withdrawn. In the present case, the allowance had been wrongly withdrawn and the Director-General did not have authority to exercise his discretion under 103.14(h) at all.

Fourteen women officials had lodged applications to intervene on 21 February 1989. All of them had formerly been paid the non-resident's allowance but lost it on marriage. Some of them also had lost some or all of the recurrent and the retirement benefits. The Tribunal observed that none of the interveners was barred by any lapse of time from claiming entitlement to the non-resident's allowance and to the other benefits. Being unlawful, the discriminatory provision in 103.14(b)(iii) was unenforceable. Acquiescence was not a valid plea open to the Organization and a woman staff member might at any time object to discriminatory treatment. The interveners, however, must be in the same legal and factual situation as the complainant, and in the present case they were not, and for that reason the Tribunal did not allow their applications. Of course, they could make individual claims and the Board would presumably apply the principles set out in the present judgement.

For the above reasons, the Tribunal ordered the Organization to pay the complainant all sums due from the date of her marriage in respect of home leave, family visit, education grant and travel in respect of dependants which it would have paid to a man receiving the non-resident's allowance and married to a Frenchwoman, and 15,000 French francs in costs. The applications to intervene were dismissed.

### **C. Decisions of the World Bank Administrative Tribunal<sup>21</sup>**

#### **1. DECISION NO. 78 (5 MAY 1989): CHARLOTTE ROBINSON V. THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>22</sup>**

*Complaint against advice received from Bank regarding United States tax liability on commuted pension payments — Question of jurisdiction of the Tribunal — Advice to staff members given by Bank must be reasonable*

The Applicant, a United States citizen, retired from the Bank on 31 October 1986 and exercised the option to withdraw a "commuted" portion of her pension in the belief that the lump sum would be free from taxation under United States law. That belief derived in part from a seminar she had attended in April

1986 which had been sponsored by the Bank's Personnel Management Department. On 8 August 1986, she consulted a Pension Information Assistant of the Bank and was accurately informed that the Applicant could withdraw a commuted sum from her pension shortly after retirement without fear that it would be subject to United States income tax. On 16 August, a Conference Committee of the United States Congress tentatively agreed on a tax reform bill that would resolve differences between the House and Senate versions passed in the previous months, and, on 25 August, an unofficial summary of a tax reform bill was forwarded by United States authorities to the Respondent. On 23 September 1986, the full text of the bill and supporting report reached the Respondent. On 22 October 1986, the bill became law and the final text of the statute, which contained a retroactive provision effective 2 July 1986, was received by the Respondent on 3 November. The Applicant retired on 31 October 1986, and the Respondent informed her at the turn of the year that the commuted pension payments she received in November and December 1986 would be subject in large part to United States income tax.

In February 1987, she once again contacted the Pension Information Assistant, who informed her that there was nothing the Bank could do for her. She ultimately contacted the Ombudsman in June 1987, who accurately informed her that a result favourable to the staff member in an appeal pending before the Appeals Committee would be extended by the Bank to her case as well. She filed an appeal with the Appeals Committee on 19 August 1987.

The Respondent challenged the Tribunal's jurisdiction, in that when the Applicant consulted the Pension Information Assistant in February 1987, she had neither sought nor received an "administrative decision" from which an appeal could ultimately be taken to the Tribunal; she had merely claimed that the Pension Information Assistant had failed to give accurate advice. On the other hand, the Respondent claimed that the Applicant had failed to invoke in a timely manner her internal administrative review, but such review applied only to "review of an administrative decision" pursuant to staff rule 9.01, paragraph 3.01.

However, the Tribunal observed that it was understandable that there could be uncertainty on the part of the Applicant as to whether the Bank's internal administrative review provisions in staff rule 9.01 were applicable and as to whom the Applicant should turn to for recourse. She was therefore not unreasonable when she moved promptly to seek the advice of the Staff Association and then of the Ombudsman. The Applicant might well have moved equally promptly to file an appeal with the Appeals Committee had she not been accurately advised by the Ombudsman that she need not do so because of a pending appeal the Bank had agreed to apply to her should the outcome favour the staff member. The Tribunal was of the view that staff rule 9.01 and its provisions for administrative review should not be construed in an overly technical manner. Those provisions were designed to rectify misunderstandings and to resolve a wide range of claims by staff members in an expeditious but essentially informal manner. Between the Bank and its staff members, there were often ongoing communications and letters and memoranda exchanged that sometimes rendered it unclear whether firm decisions had been made and time periods crystallized. As the present case showed, there might have been ambiguities about whether the administrative review procedures were intended to apply at all. Given the

fact that those provisions were designed to be utilized by all categories of staff members, most of them lacking legal expertise and most of them presumably acting without the aid of counsel at this relatively early dispute stage, the Tribunal concluded that they should be applied flexibly, in accordance with their terms and spirit.

The Respondent also had argued that the case was “moot” because there had been no “administrative decision” that the Tribunal had jurisdiction to review. The statute of the Tribunal, however, did not limit its jurisdiction to the review of only affirmative decisions by the Bank. It was clear that claims of nonfeasance were as much within the Tribunal’s jurisdiction as claims of improper affirmative decisions. If the contract of employment or terms of appointment of a staff member imposed an obligation upon the Bank to act and an improper failure to act resulted in injury to a staff member, the Tribunal was given the power to redress that injury.

The Tribunal concluded that the Applicant had adequately framed her claim as one for the “non-observance of [her] contract of employment or terms of appointment”, i.e., that the Respondent had undertaken to provide accurate tax advice to its retiring staff members, that she reasonably had relied on that understanding and that the Respondent had neglected to inform her in a timely manner of the retroactive change in the United States tax law so that she might accordingly conform her decisions regarding the commutation of pension payments.

The Tribunal observed that the Bank had undertaken, through general information seminars and through individualized counselling of staff members by Pension Information Assistants, to keep its staff members abreast of pertinent legal developments that bore upon their compensation and other terms of employment. By doing so, the Bank could properly be expected to act reasonably in the circumstances, keeping in mind that reasonably offered advice would sometimes prove ultimately to be wrong. The Bank therefore might not intentionally or recklessly or carelessly give inaccurate information to its staff members, knowing that the information would be utilized by staff members in making important decisions regarding their employment.

In this regard, the Tribunal noted that the advice provided at the April 1986 seminar and the advice given by the Pension Information Assistant on 8 August were sound. However, the record before the Tribunal demonstrated that the retroactivity feature that was incorporated in the tax bill and report could reasonably have come to the attention of the Bank on 23 September 1986 and that its passage by the United States Congress had taken place by 27 September. The Respondent had more than one month in which to become apprised of the retroactivity provision in the bill, to identify that the change was of pertinence to Bank staff members, and to contact the 10 to 15 staff members whose pension payment would fall within the statutory retroactivity period.

It also was noted by the Tribunal that all staff members could have had recourse to their own individual tax attorneys or advisers during the period of uncertainty in the legislative revision process and that that was particularly true given the expressions of doubt and unpredictability on the part of the lecturers at the April 1986 seminar. But the Bank had held out the Pension Information Assistants as providers of pertinent information in the period after the seminar and it appeared that at the meeting between the Applicant and the Pension Infor-

mation Assistant on 8 August 1986 the advice given the Applicant contained no suggestion that she needed any further advice to keep abreast of legislative developments. For those reasons the Tribunal concluded that the failure to inform the Applicant of the adverse tax consequences of her pension payments until December 1986 was a violation of the Respondent's duty to act reasonably in all the circumstances.

The Tribunal decided that the Respondent pay the Applicant a sum equal to the difference between the Applicant's federal and state tax liability on her pension receipts as calculated according to the cost-recovery and exclusion-rate methods, with interest, and \$1,000 in attorney's fees and costs.

2. DECISION NO. 81 (22 SEPTEMBER 1989): TRENT JOHN BERTRAND V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>23</sup>

*Non-selection to a post during 1987 Bank reorganization — Question of time limits regarding Applicant's reply — Tribunal's competency in the matter — Appropriateness of considering policy views of staff members in selection process — Importance of factual support for factor given negative weight in selection process — Detailed allegations and factual support of Applicant's case shifted burden to the Respondent to disprove — Assessment of damages*

The Applicant began his association with the Respondent as a consultant while he held a tenured professorship at a university in the United States. Subsequently, effective 7 February 1983, he was given a regular appointment at the Bank, as a Senior Economist, and in January 1985 the Applicant resigned his tenured position at his university. In October 1985 he was promoted to the position of Senior Economist (level 25), and in April 1986 he was promoted to level 26 as Chief, Economics and Policy Division, Agriculture and Rural Development Department, Operations Policy Staff. During the course of his work, the Applicant had several disagreements on important policy and analytical issues with his director, and in the Applicant's Performance Review for 1986/87, his director noted the adverse effect of their disagreement upon their working relationship.

During the 1987 reorganization of the Bank, the Applicant was not offered a position at level 26 during the management-selection process set forth in staff rule 5.09. On 12 June 1987, prior to the start of the selection process for staff generally, the Applicant elected separation from the Bank with the Enhanced Separation Package, and he filed a timely appeal on 28 March 1988 with the Appeals Committee, challenging the fairness of the Bank's decision not to offer him a position at level 26.

The Applicant filed his reply more than a month beyond the date provided in rule 9 of the Rules of the Tribunal. He had requested that the Tribunal exercise its authority under rule 25 to modify the time limit, in view of the fact that he was on an extended trip abroad when the Respondent's answer to his appeal was transmitted to his home in the United States and he did not receive the answer until his return. The Tribunal concluded that that fact did not constitute "exceptional" circumstances as required in rule 25 to justify extending the time limit for filing the Applicant's reply. When the Applicant filed his application, he should have been able to anticipate when the Respondent would file its answer, and he therefore could have made some arrangements before leaving the

country so as to assure his prompt receipt of the answer. Alternatively, he might in advance have filed a request with the Tribunal invoking grounds justifying a suspension of the running of time for filing his reply. Adherence to the time limits set forth in the Rules of the Tribunal was to be expected, and the Tribunal therefore confirmed the decision of the President to deny acceptance of the Applicant's reply.

The Tribunal observed that the decision not to select the Applicant had been taken in the exercise of a discretionary power and the Tribunal had previously held that it was not for the Tribunal to substitute its own judgement for that of the competent organs of the Bank. Furthermore, the Tribunal would only interfere with the exercise of such discretion in the event the decision constituted an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

The Respondent had stated that it was legitimate for the director to take into account policy differences and the Applicant's effectiveness, or lack thereof, in arguing his views and that the managerial selection process was a very competitive one and that the skills and talent of others were deemed superior to the Applicant's. The Tribunal considered, as a matter of law, that it was not inappropriate for the Bank to take policy differences into account in the selection process. However, in any particular case, there must at the least be some plausible indication that there was factual support for the factor given negative weight, that such factor had not been weighed in a manner that was discriminatory when compared with its application to other staff members and that the weight given to such factor was not otherwise arbitrary or manifestly unreasonable. Similarly, the weight given by senior managers to policy differences should properly turn upon such considerations as the level and responsibilities of the staff member, the position-relationship with his or her superior, and the traditions of the discipline or of the work unit and the manner in which such differences are articulated.

In that regard, the Tribunal noted that the Applicant was a division chief at the time of the management-selection round of the 1987 reorganization, and although that imposed upon him the duty to conform his decisions and actions to Bank policy it was also true that staff members at that level could reasonably be expected frankly to air their differences with their superiors when preparing policy statements. Moreover, the record supported the conclusion that robust mutual criticism was quite characteristic of the working relationships within the Applicant's department and that the Applicant appeared not to have been previously admonished therefor. The Tribunal also observed that it was clear that by the time of the management-selection round a personal element had crept into the relationship between the Applicant and his director and indeed the director was candid enough to concede that he might have been partly to blame therefor.

The Tribunal concluded that in the light of all those factors, including the detailed allegations and factual support presented by the Applicant in his pleas, that his case should properly be treated as one in which the burden of proof moved to the Respondent to show that Bank management acted fairly to the Applicant, rather than resting upon the Applicant to show that the Bank acted unfairly. In the typical case in which the Applicant pointed to specific reasons for casting serious doubt upon the fairness of the Bank's selection process, it was for the Bank to dissipate that doubt by providing the facts that were readily available to it in order

to show no more than its discretion had been fairly exercised. The Bank had not attempted to discharge that burden, other than with conclusory statements relating to the content and manner of assertion of the Applicant's policy views, and the perceived superiority of other candidates for managerial positions. It was the opinion of the Tribunal that those statements were insufficiently detailed to discharge the Respondent's burden of demonstrating that its decision-making process had been based upon giving no more than their due weight to legitimate factors.

The Applicant had requested compensation in the amount of three years salary or more for violation of his rights and for loss of his tenured professorship given up in order to join the Bank. He also had requested reasonable legal fees. Upon his non-selection to a level-26 position in the reorganization, the Applicant chose, as Bank regulations expressly permitted him to do, to leave the Bank with the Enhanced Separation Package and the Respondent estimated that by doing so he received between \$30,000 and \$63,000 more than he would have received had he separated from the Bank under the usual terms provided in staff rule 7.01. The Respondent further correctly pointed out that, under the Tribunal's decision in *Harrison*, Decision No. 53 (1987), that increment must be taken into account in any calculation of damages, such that an Applicant demonstrated that the injury suffered was in excess of that increment.

The Tribunal concluded that such a demonstration had been made. The Tribunal considered that, in the calculation of damages, weight should have been given to the Applicant's extended service as a consultant to the Bank before he joined the staff full-time, a factor that accounted for the Bank's waiver of the Applicant's initial probationary period and his quick rise to a position as division chief. Taking that factor into account and taking into account the Tribunal's conclusion that the Bank had not demonstrated that the Applicant's non-selection was consistent with his conditions of employment, and also considering the rule set down in *Harrison*, it was the conclusion of the Tribunal that the Respondent should pay the Applicant damages in the amount of \$80,000 net of tax. As regards the request for attorney's fees, the Tribunal noted that the Applicant had prepared his application without the assistance of counsel and counsel had not entered the case until the preparation and attempted filing of the reply, which the Tribunal had not accepted because of its untimeliness. All other pleas were dismissed.

3. DECISION NO. 84 (22 SEPTEMBER 1989): MAYSOON ABBASS SUKKAR V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>24</sup>

*Question of an obligation to retain staff member after external training authorized by the Bank — Question of an implied obligation*

The Applicant joined the Bank on 10 November 1969 as a Clerk Typist and until 30 September 1987, the date of termination of her employment, she served the Respondent in several departments successively as Secretary, Administrative Secretary, Administrative Assistant and ultimately as Operations Assistant in the East Asia and Pacific Country Programs Department. The Applicant had expressed an interest in formal training which was endorsed by her supervisors and her department director. The Bank authorized the Applicant to complete a Bachelor of Science degree in Economics at American University, on the basis that her studies

would be beneficial both to the Bank and her, and the Bank committed itself to reimburse the Applicant three fourths of her tuition and to authorize an interest-free salary advance of up to three months' net pay. The Applicant's appointment also was converted to part-time status from 1 September 1982 to 31 December 1983. Subsequently, in September 1983 the Applicant expressed a wish to pursue her studies at the graduate level. Her supervisors again endorsed her request and on 12 November 1984 she sent a detailed proposal to her division chief for an external training programme to pursue a Master's degree full-time with financial support from the Bank, stating that her ultimate goal was to qualify for a position of Project Economist or Operations Officer. It was ultimately agreed that the Applicant's study would be pursued from 1 September 1985 to 31 May 1986, and during that period the Applicant would continue to work for the Bank 12 hours a week while the Bank would pay her 80 per cent. of her salary, as well as pay for all tuition, fees and books. She would also serve the Bank for at least three years upon completion of her studies, and should she leave before that period she would be required to repay the Respondent a prorated portion of the cost incurred by the Respondent in support of her study programme. During the processing of the Applicant's request for study, it was made clear that the proposed study was aimed at qualifying the Applicant to perform better the work of an Operations Assistant which she currently was and that there was no implicit commitment to or encouragement of the Applicant's promotion on the Bank's part. In May 1986, the Applicant obtained her Master's degree in International Public Policy and in August 1986 enrolled at her own expense for a Master of Arts degree in Economics at American University; however, the Bank paid the tuition expenses for specific courses that were relevant to the Applicant's work. In the fall of 1986, she returned to full-time status with the Bank.

Subsequently, during the 1987 Bank reorganization, no suitable post could be identified for her, in spite of great efforts on the part of the Bank, and on 28 October 1987 she agreed to separation from the Bank with an Enhanced Separation Package. In March 1988, the Applicant filed an appeal with the Appeals Committee, not for non-selection in the course of the 1987 reorganization, but for compensation for an alleged breach of the contract of employment, because the Bank had failed to meet its obligations flowing from its training policy. In other words, the Respondent had assumed an obligation under its training policy to provide her with the opportunity to demonstrate and employ the newly acquired skills which she had obtained through the studies undertaken, which were selected by her supervisors, monitored by them and partly financed by the Respondent. Furthermore, the Applicant asserted that an implied obligation on the part of the Respondent resulted from the fact that she had assumed, on her part, the obligation to stay with the Bank for a specified period of time. This, in the Applicant's contention, created a bilateral contract establishing mutual obligations regarding service to the Bank.

In the Tribunal's opinion, however, that agreement did not signify the existence of a corresponding, mutual obligation on the part of the Bank to retain for a period of time the services of the beneficiary of a full-time external training programme. There was no indication that the Bank had given up its power of declaring a position redundant. This was confirmed by the letter of 23 September 1985 approving the Applicant's study programme, where reference was made to the possibility of a termination grant and of resettlement upon termina-

tion. In any event, as noted by the Tribunal, the “mutuality” sought by the Applicant in her bilateral contract was already provided when the Bank paid a substantial portion of her educational expenses.

The Applicant further contended that by inducing her to enter on a prolonged training programme, partially paid for by the Respondent and supervised by its Training Division, the Bank assumed an implied obligation, resulting from the reasonable expectations of the parties, to the effect that she would be entitled to return to full-time work to use and demonstrate her newly acquired skills. However, the record indicates that while the Applicant intended to pursue a Master’s degree, so as to qualify for a post as Project Economist/Operations Officer, her supervisors insisted that the acceptance of her educational programme had not implied any commitment or encouragement for promotion or reassignment, and made clear that she would be returning to work at her previous level as Operations Assistant, which she did.

In the light of the foregoing considerations, the Tribunal concluded that there was no legal or contractual basis which supported the claims advanced in the present application, and consequently the appeal was dismissed.

4. DECISION NO. 85 (22 SEPTEMBER 1989): PIERRE DE RAET V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>25</sup>

*Non-selection during 1987 reorganization — Functions of the Tribunal — Necessity of establishing a prima facie case — Error of terminating staff member on redundancy ground for poor performance instead of for lack of skills — Principle 2.1 of the Staff Employment — Competency of Tribunal in review of staff member performance report*

The Applicant, a Belgium national, had joined the Bank in 1974 at the age of 40, on a regular appointment, Level L, as a Loan Officer for Senegal in the West Africa Region, where he worked for ten years, and effective 1 January 1985 was transferred to the Indian Ocean Division of the Eastern and Southern African Region as Senior Loan Officer. In the Applicant’s Annual Performance Review (APR) for 1985/86, it was concluded that while there were solid achievements, the Applicant had not fully met the demanding, yet still emerging, standards being projected for future program officers. In June 1987, the Applicant received a “less than fully satisfactory” salary increase, and was declared “redundant” under the 1987 Reorganization. In the Applicant’s APR for 1986/87, his division chief noted several of the Applicant’s strengths and achievements in traditional loan officer functions as well as his weaknesses, such as delays in processing of final products. He concluded that the applicant’s skills and experience should not be redundant to the Bank. Ultimately, he was not selected for another post and accepted the Enhanced Separation Package (Package B) and appealed.

Before going into the merits of the case, the Tribunal pointed out that the relationship of the Appeals Committee to the Tribunal was not that of an inferior to a superior court. The proceedings before the Tribunal were entirely separate and independent despite the fact that recourse to the Appeals Committee was a condition precedent to the commencement of proceedings before the Tribunal. The function of the Appeals Committee was to assist the management of the Bank to determine for itself whether there had been a failure on the part of the Bank. The function of the Appeals Committee ended with its recommenda-

tion, which the Bank might or might not accept. Contrary to what the Applicant had claimed, the report of the Committee was never regarded as “the basis” upon which the Tribunal dealt with cases and was in no way binding upon it. The Tribunal was the only body within the Bank that dealt with complaints judicially and it did so only on the basis of the evidence before it.

Furthermore, the duty of the Tribunal was to assess the Bank’s decision in the matter, as to both its content and the manner in which it had been made, to determine whether it constituted an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

Moreover, it was not the obligation of the Bank to demonstrate that there had been no discrimination or abuse of power, not, that is, until an Applicant had made out a prima facie case or had pointed to facts that suggested that the Bank was in some relevant way at fault. Then the burden would shift to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner. (See also *Bertrand*, Decision no. 81 (1989).)

As for the merits of the case, the Tribunal observed that there was room for uncertainty as to the current manner in which to interpret staff rule 7.01, section 8.02(c), under which the Applicant’s redundancy notice was issued:

“Employment may become redundant when the Bank or IFC determine in the interests of efficient administration that ... (c) a position has been redesigned to the extent that the incumbent is no longer qualified to perform the duties.”

The Tribunal concluded that the probability, in an organization such as the Bank, where every position had its job description, was that the correct understanding of subsection (c) was that formal “redesign” was called for and that a written product of that design in the shape of a new job description was required. Otherwise, there was a risk that the staff member might be deprived of the benefits of the predictability of their activities and the standards implicit in an expressly formulated job description. There was also a risk that, in the absence of such explicit redefinition of job content, Bank management might too readily fall into the error of terminating on redundancy grounds the services of a staff member whose superiors were in reality moved by the poor quality of his performance rather than by his lack of the skills newly incorporated in a “redesigned” position. In that regard, the Tribunal considered that there was some evidence that precisely that error may have occurred in the critical decision to terminate the Applicant on the basis of redundancy.

Another aspect of the redundancy process that occasioned concern of the Tribunal, namely, that it appeared that it could take place without the staff member, whose position was being redesigned and whose qualifications for the new position were being examined, being informed of what was happening. That had occurred in the present case. As noted by the Tribunal, during much of the period when the Applicant was discussing with his managers his APR for 1985/86, in the apparent belief that that was the only process going on at the time that might affect his position in the Bank, the redundancy process was concurrently taking place, unknown to the Applicant. His post was being redesigned and determinations were being made by the Bank that the Applicant was not qualified to perform the duties of his position. In that regard, the Tribunal pointed out

that the undated manuscript prepared by the Bank, which had not been shown to the Applicant, appeared to be the link connecting the Applicant to the operation of the redundancy rules, and was defective. It contained no suggestion that the Applicant's position had been "redesigned", but did contain adverse comments on the Applicant expressed in term of his performance and not at all in terms of his possession of the requisite skills. The Tribunal observed that principle 2.1 of the Staff Employment stated: "The Managers shall at all times act with fairness and impartiality and shall follow proper procedure in their relations with staff members."

The Applicant also complained of his 1985/86 APR, wherein his performance had been rated "less than satisfactory". The Tribunal noted that it was not for it to substitute its own determination of the Applicant's performance for the Bank's. At most, the Tribunal could find that the rating had been reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case or other departures from established procedures, bias, prejudice the taking into consideration of irrelevant factors or manifest unreasonableness. The Tribunal concluded that the proper procedures had been followed, pursuant to staff rule 5.03, section 2.02, and that the conclusions expressed in the 1985/86 APR were not manifestly unreasonable and therefore unacceptable.

In conclusion, the Tribunal was of the opinion that the injury done to the Applicant by the wrongful determination of redundancy had in all the circumstances been sufficiently compensated by the increment in separation benefits that the Applicant had received under Package B.

For the above reasons, the Tribunal decided that the undated manuscript memorandum and the redundancy notice be removed from the Applicant's personnel file and the pleas in the application were dismissed.

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#### NOTES

<sup>1</sup>In view of the large number of judgements which were rendered in 1989 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three Tribunals, namely, Judgements Nos. 439 to 470 of the United Nations Administrative Tribunal, Judgements Nos. 952 to 985 of the Administrative Tribunal of the International Labour Organization and Decisions Nos. 75 to 86 of the World Bank Administrative Tribunal, see, respectively: *Judgements of the United Nations Administrative Tribunal, Numbers 439 to 501, 1989-1990*; *Judgements of the Administrative Tribunal of the International Labour Organization: 66th Ordinary Session*; and *World Bank Administrative Tribunal Reports*, November 1989.

<sup>2</sup>Under article 2 of its statute, the United Nations Administrative Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (a) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (b) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accor-

dance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: International Civil Aviation Organization and International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

<sup>3</sup>Roger Pinto, Vice-President, presiding; Ahmed Osman and Ioan Voicu, Members.

<sup>4</sup>Arnold Kean, President; Jerome Ackerman, Vice-President, and Ioan Voicu, Member.

<sup>5</sup>Roger Pinto, Vice-President; Samar Sen and Ioan Voicu, Members.

<sup>6</sup>Roger Pinto, First Vice-President, presiding; Jerome Ackerman, Second Vice-President; and Samar Sen, Member.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>744 F.2d 244 (*Federal Reporter*, Second Series).

<sup>10</sup>633 F. Supp. 1023 E.D. Pa. 1986 (*United States Federal Supplement*).

<sup>11</sup>Roger Pinto, First Vice-President, presiding; Jerome Ackerman, Second Vice-President; and Ahmed Osman, Member.

<sup>12</sup>Arnold Kean, President; Jerome Ackerman, Vice-President; and Samar Sen, Member.

<sup>13</sup>Roger Pinto, Vice-President, presiding; and Ahmed Osman and Ioan Voicu, Members.

<sup>14</sup>Arnold Kean, President; Jerome Ackerman, Vice-President; and Ioan Voicu, Member.

<sup>15</sup>The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1989, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organisation, the European Southern Observatory, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization (Interpol) and the International Fund for Agricultural Development. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

<sup>16</sup>Jacques Ducoux, President; Mella Carroll, Judge; Edilbert Razafindralambo, Deputy Judge.

<sup>17</sup>Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; the Right Honorable Sir William Douglas, Deputy Judge.

<sup>18</sup>Jacques Ducoux, President; Mella Carroll, Judge; and the Right Honorable Sir William Douglas, Deputy Judge.

<sup>19</sup>Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Mella Carroll, Judge.

<sup>20</sup>Ibid.

<sup>21</sup>The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as “the Bank Group”).

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member’s death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

<sup>22</sup>Eduardo Jiménez de Aréchaga, President; Prosper Weil and A. Kamal Abul-Magd, Vice-Presidents; and Robert A. Gorman, Elihu Lauterpacht, Charles D. Onyeama and Tun Mohamed Suffian, Judges.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

<sup>25</sup>Ibid.

## CHAPTER VI

### SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERN- MENTAL ORGANIZATIONS

#### A. Legal opinions of the Secretariat of the United Nations (Issued or prepared by the Office of Legal Affairs)

##### CLAIMS AND LIABILITY ISSUES

1. LEGAL BASIS FOR INSTITUTING CLAIMS AGAINST TROOP-CONTRIBUTING GOVERNMENTS TO COMPENSATE THE UNITED NATIONS FOR LOSS OF, OR DAMAGE TO, UNITED NATIONS PROPERTY — LEGAL PRINCIPLES CONCERNING NEGLIGENT ACTS AS APPLIED TO MEMBERS OF THE STAFF AND MEMBERS OF MILITARY CONTINGENTS OF UNITED NATIONS PEACEKEEPING OPERATIONS — LIABILITY OF TROOP-CONTRIBUTING GOVERNMENTS FOR GROSS NEGLIGENCE OF MEMBERS OF THEIR MILITARY CONTINGENTS — DEFINITION OF GROSS NEGLIGENCE

*Memorandum to the Assistant Director for Peacekeeping Matters and Special Assignments, Office for Programme Planning, Budget and Finance*

1. You have asked for our opinion as to the legal basis for instituting claims against troop-contributing Governments to compensate the United Nations for loss of, or damage to, United Nations property caused by members of their military contingents who are found at fault.

2. From a review of our files, it would appear that this Office supported the Organization in its endeavour to seek compensation, by way of set-off of accounts, from Governments contributing troops to the United Nations Emergency Force (UNEF) and the United Nations Operation in the Congo (ONUC). However, most of our legal opinions were answers to specific individual questions posed from time to time. To formulate, now, a general opinion it is necessary to examine the applicable legal principles in the context of the status of the military component of peacekeeping forces together with the staff surcharging rules and the claims settlement procedures evolved over the years. We will first (in section I) examine the legal principles concerning negligent acts as applied to: (a) members of the staff of the Organization; and (b) members of military contingents of United Nations peacekeeping operations in cases where such individuals cause damage to United Nations property while performing official duties. We will then (in section II) examine the liability of troop-contributing Governments for gross negligence of members of their military contingents.

I. PRINCIPLES OF LIABILITY FOR TORTIOUS ACTS AS APPLIED BY  
THE ORGANIZATION WITH RESPECT TO:

(A) *Staff members*

3. Legally, the United Nations can ask any person who it believes has caused damage to United Nations property to compensate the United Nations for the damage. If the person does not comply, then the United Nations may sue him or her, and the determination as to the financial responsibility of that person would involve a judicial process under domestic law. If, however, the person causing damage is a staff member, then staff rule 112.3 of the United Nations Staff Regulations and Rules applies, which operates in conjunction with financial rule 110.15(b). Staff rule 112.3 provides as follows:

“Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member’s negligence or of his or her having violated any regulation, rule or administrative instruction.”

Financial rule 110.15 provides as follows:

“(a) The Controller may, after full investigation in each case, authorize the writing-off of losses of United Nations property or such other adjustment of the records as will bring the balance shown by the records into conformity with the actual quantities.

“(b) Final determination as to all surcharges to be made against staff members or others as the result of losses will be made by the Controller.”

The Controller, in exercising responsibility for surcharges against staff members, acts upon the advice and recommendations of the Headquarters Property Survey Board or the Local Survey Boards as appropriate (financial rules 110.32(e) and (f) and 110.33(b)).

The standard of conduct to be applied in such cases, namely, negligence (not gross negligence), has been a cause of controversy and much discussion within the Organization. According to our files, the majority of cases in which United Nations property was damaged arose out of motor vehicle accidents caused either by full-time United Nations drivers or by staff members who had to drive themselves on official business. Hence, most of our legal opinions addressing the question of the financial responsibility to the Organization of staff members for damage caused to United Nations property concerned damage to motor vehicles. While additional aspects, such as driving on official duty or for recreational purposes, played an important role in those cases, there is no doubt that the United Nations policy which evolved from those cases embraces loss of or damage to all types of United Nations material property, and that, since 1969, the policy has been to require proof of gross negligence to justify a staff member being held accountable for the damage he or she caused to United Nations property. The view of the Legal Office was expressed in a memorandum from the Legal Counsel of 17 October 1969, and published in the *United Nations Juridical Yearbook, 1975*, page 186, entitled: “Question of the financial respon-

sibility to the Organization of members of the staff for accidental damage caused to United Nations vehicles while driving such vehicle — policy of the Organization in this respect”. It remains valid. The pertinent excerpts of this opinion, which commented on a draft text that attempted to establish assessment policy guidelines, but which never materialized, read as follows:

“5. It does not seem reasonable to us, however, that a United Nations driver should be made financially accountable [for damage caused to a United Nations vehicle being used on official business, as a result of negligence as distinct from gross negligence] ... it seems to us to be only equitable, if a United Nations vehicle is damaged while driven on official business in circumstances involving negligence *but not gross negligence* on its driver’s part, that the Organization [which chooses to be self-insured for damage to its vehicles] should meet resulting costs and not require the driver to bear such costs totally or in part.” (emphasis added)

(B) *Members of military contingents*

4. The aforementioned rules and the assessment procedure do not apply to military members for reasons inherent in the setup of peacekeeping operations. Although the military members of peacekeeping operations are international personnel under the authority of the United Nations and subject to the orders of the Force Commander through his chain of command, they nonetheless remain part of their respective national armed forces, especially for disciplinary purposes. It must be stressed, however, that the remaining link with their armed forces does not make them agents or servants of their respective Governments while performing United Nations duties in a United Nations peacekeeping force; this is because they operate under United Nations command and are performing United Nations, not national, duties. In this connection, this Office offered the following advice in a memorandum of 20 August 1975, which was later published in the *United Nations Juridical Yearbook, 1975*, page 161:

“2. While in general, Contingent Commanders have broad disciplinary authority, they have little or no authority to impose financial assessments upon members of contingents. The financial element which may attach to the disciplinary powers of military commanders is limited and is more in the nature of a fine than of a compensation for damage.

“3. Normally, a determination as to the financial assessment of military personnel lies with national jurisdictional organs and involves a judicial or quasi-judicial administrative process under domestic law. We believe that because of constitutional and structural requirements, it is unlikely that the exercise of such judicial or jurisdictional power would be or may be extended to Contingent Commanders.”

5. Thus, while civilian staff of United Nations peacekeeping operations may be surcharged in accordance with the aforementioned staff rule and financial rules authorizing the Controller to act upon the advice and recommendation of the Property Survey Board, military personnel are not. Hence, although the Local Survey Board can express an opinion on the degree of negligence of mili-

tary personnel, it can only recommend, rather than require, that a United Nations claim be made against the Government contributing the military contingent in question. The situation is clearly reflected in a memorandum of 22 December 1971 from this Office ..., which stated in part:

“... while United Nations staff members assigned to the United Nations Peacekeeping Force in Cyprus are required to reimburse the United Nations in accordance with Local Survey Boards’ assessments in cases where United Nations property is lost or damaged as a result of their fault, the Local Survey Board makes no assessment and accordingly no reimbursement is made to the United Nations when those involved are members of national contingents ...”

6. The lack of a common assessment procedure for civilian and military staff was a matter of great concern to the Organization, leading to extensive discussions in the early 1970s between the Office of General Services and this Office on how to solve this problem. The situation was further complicated by the fact that, although the United Nations might have had legal claims against the individual military drivers, it was reasoned that it would be inequitable and unfair to claim compensation directly from them as they did not (and perhaps could not) obtain insurance protection, and since they are continuously exposed to traffic and to err is human, it is to be expected that they will eventually become involved in accidents resulting in damage to United Nations property.

7. Also, in the early 1970s, the Administration considered requesting participating Governments to delegate to the commander of their national contingents the authority to impose and recover appropriate assessments in cases involving members of their contingents. Those proposals were rejected and the United Nations practice has since been neither to assess nor to sue the individual military members of its peacekeeping forces for tortious acts causing loss or damage to United Nations property.

## II. LIABILITY OF TROOP-CONTRIBUTING GOVERNMENTS FOR GROSS NEGLIGENCE OF MEMBERS OF THEIR NATIONAL CONTINGENTS

8. In the legal opinion of 20 August 1975 mentioned above, entitled “Advice on the procedure to be followed to collect compensation for damage caused to UNEF property by members of military contingents”, it was further stated that:

“... we consider that in the light of legal and practical considerations it is advisable that damage to the United Nations property resulting from acts or omissions of military members of contingents should be settled internationally, namely, through a direct relationship between the United Nations and the Government concerned. This conclusion is supported by the practice followed in previous and existing peacekeeping forces; the situation is different in the case of United Nations military observers who are seconded to the United Nations in their individual capacity and can be assessed on emoluments paid to them by the United Nations.”

“... A possible procedure to collect compensation for damage caused to United Nations property by members of contingents may be that the assessments of the Property Survey Board, together with the proceedings of the Board and the opinion of the Contingent Commander, should be transmitted to the competent service at Headquarters, which in turn would either set up a debit against the Government concerned (applied to offset United Nations obligations to the said Government) or would submit a claim to the Government for reimbursement of the amount of damage involved ...”

9. The viewpoint expressed in the 20 August 1975 legal opinion is, in brief, that claims against troop-contributing Governments are to be based on general principles of law and on such particular agreements and understandings as may have been concluded between the United Nations and the contributing government. Although not expressly stated in the opinion, it is implicit in it that the troop-contributing Government is not legally liable for damage caused to United Nations property by one of the members of its contingent; (as explained below) that result stems from:

(a) The absence of vicarious liability of the Government as master or principal vis-à-vis a servant or agent respectively; and

(b) Absence of an agreement or consent of, or by, the government to have Government claims against the United Nations being offset by costs incurred by the United Nations as a result of damage caused to United Nations property by members of the Government's contingent.

#### *Vicarious liability*

10. Since, as mentioned above, the military members of United Nations peacekeeping operations are under the United Nations command and since they are agents of the United Nations, they are not servants or agents of their Government while performing United Nations duties. Therefore, as a principle of law, their Governments are not vicariously liable for their tortious acts.

#### *The “off-setting” procedure*

11. The 20 August 1975 legal opinion reintroduced the “off-setting” procedure as a possible means to collect compensation for damage caused to United Nations property. While the opinion is silent as to the legal basis for such procedure, there is no doubt that paragraph 5 of General Assembly resolution 1575 (XV) of 20 December 1960 (by which the General Assembly approved the recommendations of the Secretary-General relating to UNEF I contained in report A/4486 (paras. 70) of 13 September 1960) confers upon the United Nations Administration the authority to seek compensation for United Nations property lost or damaged in the field, at least for UNEF I. The pertinent part of paragraph 70 reads as follows:

“The General Assembly might also consider it appropriate for the claims of Governments [against the United Nations] in respect of equipment to be offset by the cost of loss or damage to equipment arising from the gross or wilful negligence of members of their contingents.”

12. The only other provisions reflecting a purported authority of the United Nations to seek payment, by way of set-off of accounts, from troop-contributing Governments are the “Regulations for the United Nations Force in the Congo”, published by the Secretary-General (ST/SGB/ONUC/1), dated 15 July 1963. Paragraph 42 of the Regulations, entitled “extra and extraordinary costs”, reads as follows:

“... *Extra and extraordinary costs.* Participating States may be compensated for all or part of the extra and extraordinary costs directly incurred with respect to the service of their contingents with the Force, in accordance with decisions of the General Assembly. The Secretary-General, through the Officer-in-Charge and the Commander, shall make necessary arrangements for records and verifications with respect to such costs and for offset against participating Governments of losses occasioned to the United Nations by recklessness or gross negligence of members of the Force contributed by them.”

This provision has been interpreted by this Office (memorandum of 20 July 1978) as meaning that the offsetting procedure could only apply with respect to damage to United Nations equipment and, more importantly, that the United Nations could not claim from any Government until such time as that Government made a claim against the United Nations for costs it had incurred which would fall under the category of extraordinary expenses for its contingent in UNEF or ONUC. Moreover, the Office of Legal Affairs qualified its interpretation by underlining the fact that the United Nations Controller, in reply to the United Nations Auditors on 14 April 1965, expressly stated that the amounts that the United Nations tried to offset were not amounts “due” or owed by the Government to the United Nations; the full statement quoted reads:

“The records of the Property Survey Board have proved to be useful in the negotiating proceedings which have taken place in the settlement of government claims for reimbursement of extra and extraordinary costs involved in furnishing supplies and equipment to their contingents. *However, the amounts included in the records of the Property Survey Board could not be construed to represent payments due from Governments* but could only be utilized for the purpose of indicating to Government-negotiating representatives that, when comparing usage of property, certain excessive losses had accrued to the United Nations for reasons other than ‘fair wear and tear’.” (emphasis added)

In other words, the United Nations Controller felt that the United Nations had no legal right to be compensated by the Government for damage to United Nations property caused by a member of the Government contingent; and that the only use that the United Nations could make of the report of the Survey Board concerning damage caused to United Nations property by the gross negligence of a member of a military contingent was that the United Nations too had incurred “excessive losses”, and that this should be considered by the Government in calculating its claim against the United Nations because the United Nations loss or expense was attributable to one of the Government’s soldiers.

### III. ANALYSIS

13. A close examination of the terms of the proposal of the Secretary-General in paragraph 70 of the UNEF I progress report as adopted by the General Assembly, and the subsequent provision enunciated in the ONUC regulations, raises questions as to whether the words used were intended:

(a) To impose a legal obligation on the Government to reimburse the United Nations for its losses caused by gross negligence of its military members, or whether the words only confer upon the United Nations Administration the power to negotiate an ad hoc arrangement according to which the troop-contributing Government would agree to the “offset” by the United Nations; and

(b) To apply only to UNEF and ONUC respectively, or whether the words used were declaratory of a general principle applicable to Governments contributing to any United Nations peacekeeping force.

14. With regard to (a) above, in the absence of any pronouncement by the General Assembly on the proposal of the Secretary-General, it is difficult to say that this proposal was intended to be binding on Governments. Indeed, it seems unlikely that the suggestion of the Secretary-General was intended by him and by the General Assembly to be more than what the Controller expressed (as quoted above), namely, a bargaining procedure.

15. With regard to (b) above, while the Secretary-General’s proposal to the General Assembly made for UNEF I in 1960 was incorporated into the 1963 internal ONUC regulations, the proposal did not find its way into the 1964 Regulations of the United Nations Peacekeeping Force in Cyprus (UNFICYP).<sup>1</sup> Since the UNFICYP Regulations are otherwise identical with the earlier ONUC regulations, it would be reasonable to infer that the provision on “Extra and extraordinary costs” was deliberately omitted. It would seem to be clear, therefore, that even though it would have been to the benefit of the United Nations to construe the approval of the terms of the UNEF I report by the Member States in the General Assembly proceedings as a general principle or obligation applicable to all future United Nations peacekeeping forces, the facts and circumstances do not support that construction.

16. The foregoing analysis appears to be consistent with practice. The cases in our files tend to indicate that the Organization, when faced with a Government’s refusal to acknowledge the “offset” of accounts, does not pursue the matter further.

### IV. CONCLUSION

17. In our opinion:

(a) The Administration does have a legal right to recover from a State contributing a military contingent to a United Nations peacekeeping force the cost of repairing or replacing damage to, or loss of, United Nations property caused by a member of that State’s military contingent in that force, unless that State has agreed to pay such cost.

(b) Although the offsetting procedure adopted for UNEF I and ONUC is not binding on States, in respect of current or future United Nations peacekeeping forces, the United Nations Administration could, with agreement of any

troop contributing State, apply the procedure in respect of that State's military contingent in existing or future United Nations peacekeeping forces.

18. In view of the foregoing, including the fact that mostly United Nations vehicle damage is involved, the Administration may wish to consider that a reasonable and equitable policy for the United Nations to follow would be to insure all its vehicles against collision damage in addition to third-party liability.

19. Finally, we wish to add a word with respect to the recurring requests for guidance from this Office on the application of the criterion of gross negligence as a basis for assessments against staff members. We should like to reiterate that an all-embracing definition of negligence or gross negligence is practically impossible to formulate. All we can say is that gross negligence amounts to an utter disregard for the lives and safety of people, i.e., wanton recklessness. Hence, for example, driving an automobile beyond the legal speed limit, or breaching any other rule of the road, while it may constitute negligence, and a traffic offence, would not constitute gross negligence unless the circumstances were such as to clearly show the driver's utter disregard for the lives and safety of people. Gross negligence is very rare.

31 August 1989

2. LIABILITY OF UNITED NATIONS UNDER ROAD PROJECTS EXECUTED BY THE OFFICE FOR PROJECT SERVICES — EMPLOYER AND EMPLOYMENT OF PERSONNEL ENGAGED TO WORK ON A UNITED NATIONS DEVELOPMENT PROGRAMME PROJECT

*Memorandum to the Deputy Director, Division for Administrative Management Services*

1. This responds to your memorandum of 20 June 1989, by which you requested our advice on whether the Office for Project Services (OPS) is protected against eventual claims from personnel employed on road projects or their families, under the arrangements you describe in your memorandum, and whether it might be necessary for OPS to procure liability insurance for such personnel.

I. THE CURRENT ARRANGEMENTS

2. In your memorandum, you state that the construction of roads under projects executed by OPS is not carried out by a contractor or a governmental organization, under the usual contractual arrangements, but by an "autonomous mechanized brigade" composed of engineers, supervisors and workers, employed under the following arrangements:

(a) Engineers are "either recruited directly by OPS or under a service contract from an international consulting firm".

(b) National supervisors are detached to the project for on-the-job training purposes.

(c) Workers are hired “by the project” in accordance with local labour laws and practices and “are neither employees of the Government nor directly hired by or attached to the United Nations Development Programme”.

(d) Monthly deductions made by OPS from the work-site personnel salaries, plus an employer contribution, are paid on a quarterly basis to the National Social Security Fund for pension contributions and workmen’s compensation insurance, in conformity with local labour laws.

## II. LEGAL ANALYSIS

3. Before commenting on these arrangements, we wish to make the following observations regarding the determination of who is the employer of personnel engaged to work on a UNDP project.

### A. *Employer of project personnel*

4. It is stated in your memorandum that “Workers *hired by the project ...* are neither employees of the Government *nor directly hired or attached to UNDP*” (emphasis added). However, a project, which is an activity and not a legal person, cannot be an employer, since it does not have the legal capacity to enter into a contract or to perform any other juridical act. Therefore, notwithstanding any provision in a contract of employment that the employer is a UNDP project or, as seems to have been sometimes the case, a UNDP Project Manager or Coordinator, UNDP will be, in law, considered the real employer.

### B. *Employment of project personnel*

5. Our view is that: (a) the arrangements described in your memorandum are defective from a legal viewpoint and expose UNDP to potential liability; and (b) they do not accord with the UNDP applicable rules and procedures, notably those set out in section 30400 of the UNDP Programme and Projects Manual. In these respects, we note the following:

(a) Under the current arrangements, the contracts with the workers engaged on the projects are subject to local labour laws and practices. However, the United Nations, including UNDP, is immune from local jurisdiction and consequently the workers may not be able to enforce in local courts their rights, if any, under the relevant contract and no provision is made for arbitration. At worst, the provisions making local labour laws applicable to the contract might be wrongly interpreted, in the case of a dispute, as a waiver of UNDP’s immunity from local jurisdiction (which only the Secretary-General can do) and therefore as an acceptance by UNDP to submit any disputes to the competence of local labour courts. Moreover, we are concerned that in the absence of a legal regime for the employment of such personnel, the United Nations Administrative Tribunal could conceivably determine that such “personnel” are United Nations staff entitled to all the benefits and allowances, including the Appendix D benefits, under the United Nations Staff Regulations and Rules.

(b) The UNDP Programme and Projects Manual specifies, in its section 30400, the categories of project personnel which alone may be directly contracted by UNDP, as well as the type of contracts under which such personnel are to be employed (i.e., fixed-term contracts under the United Nations Staff Regulations and Rules, special service agreements, service contracts and reimbursable loan agreements). The standard forms utilized for such contracts specify, notably, for each category of personnel, its status vis-à-vis UNDP, its entitlements and benefits, the procedure for the settlement of disputes arising out of the contract (United Nations Administrative Tribunal for personnel subject to the United Nations Staff Regulations and Rules; arbitration for other personnel). With regard to insurance, for the personnel which are not intended to be subject to the United Nations Staff Regulations and Rules, the respective obligations of the parties in case of illness, injury or death are precisely set out in the relevant standard contract forms. When appropriate, the benefits provided under Appendix D of the United Nations Staff Rules are extended to such personnel (personnel employed under a special service agreement or a service contract) or, in the case of personnel employed under a reimbursable loan agreement, the releasing organization is made responsible for assuming all legal and financial obligations resulting from their employment. The workers referred to in your memorandum do not correspond to any of the categories of project personnel enumerated in the Programme and Projects Manual, and the arrangements under which they are employed, as described in paragraphs 2 and 3 of the memorandum, do not accord with any of the conditions of employment of project personnel described therein, and more generally with those adopted in the practice of the United Nations.

### III. OPINION

6. In the circumstances, our opinion is that: (a) the workers to which you referred may not be hired directly by UNDP/OPS, and (b) the arrangements which you described may not be utilized by UNDP/OPS for any sort of employment contract.

7. It is suggested that, instead, UNDP/OPS should obtain the services of the type of personnel referred to in your memorandum through the usual contractual arrangements, whereby such personnel are provided by a contractor, with whom a contract is signed. The contract should incorporate, *inter alia*:

(a) A provision defining the status of the contractor as that of an “independent contractor” vis-à-vis the United Nations, meaning, notably, that only the contractor is responsible for acts performed by his personnel, as well as for dealing with questions relating to the status and conditions of employment of such personnel (it should be noted in this context that the United Nations Administrative Tribunal considers that personnel contracted by the United Nations are entitled to appeal to the Tribunal and claim similar benefits as United Nations staff members unless explicitly excluded);<sup>2</sup> and

(b) Provisions for service-incurred death, injury or illness which oblige the contractor to provide workmen's compensation insurance, liability insurance for death, bodily injury or damage, covering the contractor's employees as well as claims by third parties, and medical and other health benefits for the contractor's employees, etc.

8. In the situations you describe, we consider that the only way UNDP/OPS can carry out the projects is to adopt the arrangements described in the paragraph above. Apart from permitting the recruitment of personnel which could not otherwise be directly employed under the applicable rules and procedures, such arrangements offer the advantage that UNDP would have to deal with only one contractor, which in turn is responsible for dealing with all questions relating to status, entitlements and benefits, etc., of its personnel assigned to the project. The supervisory personnel also would be provided by the contractor, so that the contractor assumes fully the direction and control over, and the responsibility for, the work performed by its personnel under the relevant contract.

9. Our records show that model contracts were prepared by this Office for use in, respectively, "small contracts" and "large/complicated contracts" and are contained in the UNDP/OPS Operations Manual. We suggest that these be used and, in cases of doubt, that this Office be contacted for assistance.

5 September 1989

3. LIABILITY OF THE UNITED NATIONS FOR PARKING FACILITIES — ARTICLE III, SECTION 7(B), OF THE HEADQUARTERS AGREEMENT — "GARAGES AND PARKING PLACES" SECTION OF THE NEW YORK GENERAL OBLIGATIONS LAW

*Memorandum to the Secretary, Torts Claims Board*

1. This responds to your memorandum of 26 September 1989 requesting us to submit our views on the tort claim of Mr. X. on the tort claim of the Counsellor of a United Nations Permanent Mission (hereinafter indicated as "Mr. X").

(a) *Facts relating to claim*

2. By letter of 12 January 1989, the Counsellor of the Permanent Mission of [State] to the United Nations, Mr. X requested partial reimbursement by the United Nations for the previously reported loss of the four wheels from his BMW automobile parked on the first parking level of the United Nations garage. The loss occurred during 5/6 September 1988. Following the initial report of the loss to the United Nations Security and Safety Service, a careful in-house investigation was carried out which did not throw any light on the circumstances under which the wheels disappeared. It is clear, however, that Mr. X had locked the car and had not left the keys with anyone during the more than three weeks

the automobile was parked in the garage. Mr. X is claiming compensation in the amount of \$500 for losses and outlays incurred by him which were not covered by his automobile insurance.

(b) *Parking arrangements*

3. The arrangements entered into between the Organization and members of permanent missions such as Mr. X (delegates) in regard to parking in the United Nations garage are well settled. Upon presentation of a valid vehicle registration, the delegate is given a decal enabling him to drive into and park in the garage. He can drive in and drive out at any time and can park in any part of that portion of the garage which is reserved for delegates. He retains the keys to the car after parking. A fee of \$2.50 is charged per night for vehicles parked overnight.

4. These parking arrangements are set out in a booklet entitled "Information for delegations", which is sent to each permanent mission and each diplomat at a permanent mission. The booklet covering the period in which the theft occurred (document ST/CS/37 — September 1987) contains the following disclaimer:

*"Liability for loss and damages*

"In arranging for parking facilities to be available, the United Nations seeks to accommodate delegations, but does not assume any responsibility for the cars or their contents. The United Nations, therefore, is not responsible for fire, theft, damage to or loss of a vehicle or any property or article left inside such vehicle."

5. In addition, the 48th Street entrance to the garage has a sign reading as follows:

"The United Nations is not responsible for fire, theft, damage to, or loss of any vehicle or any articles therein, while the vehicle is in the garage."

(c) *Legal effect of the parking arrangements*

6. By reason of article III, section 7(b), of the Headquarters Agreement,<sup>3</sup> New York State law would govern the relationship between the Organization and Mr. X arising from the aforementioned parking arrangements.

7. Under that law, those arrangements would result in the creation of the relationship of licensor (the Organization) and licensee (Mr. X) between the parties, Mr. X obtaining a licence from the Organization to park in the garage. The arrangements would not result in the creation of the relationship of bailor (Mr. X) and bailee (the Organization) between the parties, since the Organization does not retain the dominion and control over the delegate's property required to constitute the Organization as bailee. We note, therefore, that Mr. X would have no claim based on a bailment.

8. The legal duty owed by the Organization (as licensor) to Mr. X (as licensee) is solely to warn of dangerous defects which the licensee would not discover after a reasonable inspection of the garage premises. It is clear that there has been no breach of this duty by the Organization.

9. Mr. X might possibly advance a claim based on tort (negligence), independent of the relationship of licensor and licensee. Even if such a claim is sustainable, in our view the circumstances attending the loss do not disclose negligence on the part of the Organization causing or contributing to the loss. We have been informed that all open points of entry into the garage are guarded by the United Nations Security Service at all times. In addition, the garage is patrolled by the Security Service once each night. Furthermore, surveillance cameras have been installed directed to detecting movement of vehicles. These are precautions which, in our view, amount to the taking of reasonable care of vehicles parked in the garage, having regard to the arrangements for parking in the garage.

10. We have considered S.5-325(1), "Garages and parking places", of the New York General Obligations Law, which prevents any person who conducts or maintains a garage from exempting himself from liability for damages resulting from his negligence or the negligence of his employees. Having regard to our view that the Organization has not been negligent, we do not find the provision to be relevant.

(d) *Conclusion*

11. Our conclusion, therefore, is that the Organization is under no liability to compensate Mr. X.

20 October 1989

COMMERCIAL ISSUES

4. ISSUE WHETHER IT IS LEGALLY PROPER FOR THE UNITED NATIONS TO DISTRIBUTE ADVERTISING MATERIAL WITH THE UNITED NATIONS PUBLICATIONS — GUIDELINES AND SAFEGUARDS TO BE FOLLOWED IN ACCEPTING ADVERTISING IN A UNITED NATIONS PUBLICATION

*Memorandum to the Executive Officer, Department  
of Public Information*

1. This responds to your memorandum of 19 December 1988 to this Office, attaching for our view a draft contract between the United Nations and an advertising company (hereinafter indicated as "the Company"), under which the Company would be engaged to prepare and print books containing advertisements to be published as supplements to *Development Business*. We were also asked to comment on a question raised in relation to this proposed contract by the Committee on Contracts: "whether it was legally proper for the United Nations to distribute advertising material with a United Nations publication."

### *Factual background*

2. We have been informed that the issues referred to us arise in the following context:

3. The United Nations and the United Nations University are the co-publishers of *Development Forum*, a journal devoted to examining world social and economic development issues from the perspective of the United Nations organizations. The publication is funded by the United Nations (a grant included in the regular budget) and contributions from the specialized agencies and the International Atomic Energy Agency (all members of the Joint United Nations Information Committee (JUNIC)). Since the direct funding proved to be insufficient, *Development Business* was started about 11 years ago to bring in supplementary funds to support *Development Forum*. Advertisements appear in *Development Forum*, but only occasionally.

4. *Development Business*, which is subtitled “The Business Edition of *Development Forum*” and also a “Fortnightly Guide to Consulting, Contracting and Supply Opportunities around the World”, contains for the most part listings of international projects and procurements, as well as the monthly operational summaries of the World Bank and other development banks. The remaining space is largely devoted to articles on the developmental activities of development banks and other international organizations, written from a business or commercial standpoint. Each issue also contains several advertisements of goods and services by commercial firms.

5. *Development Business* from time to time also publishes advertising supplements, which focus on a particular country, highlight the developmental activities of the country, and contain numerous advertisements for goods and services supplied by firms from that country. We understand that so far eight such supplements have been published.

6. In addition, somewhat different advertising supplements to *Development Business* have also been published. These consist of booklets entitled: *Product Information: A [Complete] Buyer's Guide to Leading Suppliers Worldwide*. These booklets consist solely of full-page advertisements for goods and services from suppliers throughout the world. We understand that so far six such supplements have been published.

7. JUNIC has laid down the following provisional guidelines to be followed in accepting advertising in *Development Forum* and *Development Business* (JUNIC/1984/R.20, para. 28):

“— The objectives of carrying advertising are to increase revenue and to enhance the interest and usefulness of the publication.

“— No advertising should be accepted which is in any way contrary to the letter or spirit of General Assembly resolutions.

“— The content of all advertising should be consistent with the objectives of *Development Forum* and its editorial policy.

“— Advertisers should not express opinions or promote policies.

“— The amount of advertising in any one issue should not exceed 15 per cent. of the total space.

“— Advertising rates should be calculated to show a profit after the costs of promotion and management have been taken into account.”

*Policy/legal issues*

8. Against this background, the following policy and legal issues arise:

(a) Whether it is appropriate for the United Nations to generate funds through the publication and distribution of advertisements from commercial firms, in conjunction with a United Nations publication;

(b) Assuming that such activity is appropriate, what safeguards should be adopted to protect the United Nations?

*Propriety of the United Nations publishing/distributing advertisements*

9. In determining this issue, a relevant consideration is that, depending on the content and format of the publication, the United Nations may be regarded by readers as endorsing the services or products in question, which at the very least is highly undesirable and possibly may even lead to liability if the advertisements are false or misleading. This danger is minimal in regard to *Development Business*, which, apart from containing a disclaimer<sup>4</sup> (although in very small print), resembles an ordinary newspaper, the advertisements in which are not normally understood by readers as being endorsed by the publisher. The danger may be marginally higher in the country advertising supplements (in which we did not find a disclaimer), because although they are also in a newspaper format a reader may carry over United Nations approval of the particular country's developmental activities perceived in the supplement to that country's advertised services and products. The danger exists in a very real form, however, in relation to the booklets. Despite a disclaimer on the second page,<sup>5</sup> the cover page (in particular, the words "A [Complete] Buyer's Guide" and the identification of the publication as "*United Nations Development Business*" on that page) may be taken to suggest United Nations approval of the products and services advertised in the supplement. Furthermore, while the advertisements in *Development Business*, and perhaps even in the country supplements, might be regarded as commercial activities incidental to the publication of *Development Business* itself, the booklets (except in name) are physically self-contained and their publication appears to be an independent business venture.

10. Another possible danger is that some of the firms whose advertisements are contained in the supplements may be collaborating with South Africa and thus violating the General Assembly resolutions prohibiting the United Nations Secretariat from dealing with such firms. As strict compliance with the second JUNG guideline would prevent the acceptance of advertisements from such firms, we would like to be assured that advertisers are adequately screened.

11. In our view, the publication of *Development Forum* and *Development Business*, the main function of which is to publicize developmental activities, but which also incidentally accept advertisements, is unobjectionable. On the other hand, the publication of the booklets seems to be an independent commercial venture directed to producing revenue through the dissemination of advertisements, a venture not directly connected with, or incidental to, any programme

of the Organization. While we recognize that the revenue derived will be devoted to *Development Forum*, itself an authorized activity, we nevertheless feel that the propriety, and even legitimacy, of disseminating advertisements as a commercial venture is open to question. As regards the country supplements, if the balance between editorial content and advertisements is weighted in favour of the former, each supplement might reasonably be regarded as publicizing developmental activities.

12. In the final analysis, the considerations involved in deciding whether particular publications are to continue are of a policy rather than a legal character. We, therefore, believe that a decision should be taken by the Administration (we suggest the Department of Public Information and the Office of General Service in consultation), in the best overall interests of the Organization, subject to the remarks set forth below on safeguards to be observed.

#### *Safeguards*

13. Whenever advertisements are published, a clear disclaimer<sup>6</sup> (that the United Nations does not endorse in any way the products or services advertised) should be prominently displayed. Further, the format of the publication should not give any impression of United Nations endorsement. In addition, the advertisers should be screened for collaboration with South Africa.

2 February 1989

#### CONTRACTS

##### 5. GOVERNMENT EXECUTION AS A POLICY FOR IMPLEMENTATION OF UNITED NATIONS DEVELOPMENT PROGRAMME PROJECTS — ROLE OF THE UNDP FIELD OFFICE

###### *Memorandum to the Deputy Assistant Administrator, Bureau for Finance and Administration, United Nations Development Programme*

1. This is in response to your memorandum of 21 June 1989, requesting our advice on the practice of some field offices, particularly in Latin American countries, whereby the UNDP resident representative enters into a contract directly with a contractor under a Government-executed project, purportedly on behalf of the Government but in fact identifying UNDP as the named party to the contract.

#### *Background*

2. Government execution, as a policy for implementation of UNDP projects, derives from the guidelines on the New Dimensions in Technical Cooperation, adopted by the UNDP Governing Council in 1975 at its XXth session and endorsed by the General Assembly in its resolution 3405 (XXX) of 28 November 1975. Paragraph (e)(vii) of the annex to the resolution states that Gov-

ernments and institutions in recipient countries should be increasingly entrusted with the responsibility for executing projects assisted by the United Nations Development Programme.

#### *Government's capability*

3. In implementation of the policy on government execution, the Administrator has established policies and procedures under which Governments may be selected to execute UNDP projects. These are contained in part III, chapter V, section 30503, of the UNDP Programme and Projects Manual, subsection 2.1.1. of which states:

“A prerequisite for government execution is the availability of the required technical and administrative capability within the Government to assume responsibility for the mobilization and effective application of UNDP-financed inputs towards the attainment of a project's objectives. If the extent of the Government's own capabilities, with or without UNDP assistance to strengthen those capabilities, does not allow it to discharge independently all the functions arising from its execution responsibility, arrangements may be adopted whereby:

(a) The Government executes a UNDP-supported project with the participation of one or more agencies; or

(b) Alternatively, and where appropriate, activities are organized into two or more self-contained but mutually reinforcing projects, with the Government assuming execution responsibility for one or several and the appropriate agency for the other(s).”

#### *Cooperating Agency Agreement*

4. The modalities for enabling participation of United Nations agencies in projects under government execution are set forth in section 30503 of the Programme and Projects Manual. The procedure is for the Government to designate the United Nations Agency as a cooperating agency (if UNDP is to be selected, then this would be the Office for Project Services (OPS), which is the executing arm of UNDP), and for a Cooperating Agency Agreement to be signed between the Government and the agency concerned. (A model of such an Agreement is also included in section 30503, subsection 5.3, of the Manual.) The Cooperating Agency Agreement contains the terms and conditions under which an Agency would participate with the Government in the execution of the project.

#### *Administrative assistance*

5. While the UNDP field office may in some cases render to the Government temporary administrative assistance, as provided in section 30503, subsection 1.3, of the Manual, in the course of project execution, including making direct payments on behalf of the Government to individuals or firms providing

UNDP-financed services under section 30503, subsection 6.3(a)(iv), field offices are expressly prohibited from undertaking direct executing responsibilities on behalf of the Government. In this respect, section 30500, subsection 4, provides:

“... field offices, in assisting Governments in executing projects, are *not* authorized to undertake *executing responsibilities* on a Government’s behalf” (emphasis added).

Section 30503, subsection 1.4(e), also provides that “in providing such temporary (administrative) assistance to Government, field offices are *not* authorized to undertake *executing responsibilities* for the Government” (emphasis added).

#### *Agreements with Contractors*

6. The contract which was enclosed with your memorandum indicates on the covering page that it was signed on behalf of the Government of [name of State] by UNDP, but it still remains to be between UNDP and [name of Institute]. Furthermore, the contents of the contract show that it is UNDP and not the Government which is bound to perform the obligations undertaken in the contract. Section 1.01 states that “the Contractor and UNDP *shall be bound* by the provisions of pages 1 to 6 as well as by the General Conditions ...” (emphasis added) In this context, the hold-harmless clause which was proposed to be added to the contract would most probably not be sufficient to transfer responsibility from UNDP to the Government, without a formal agreement to that effect between UNDP and the Government. Furthermore, it is doubtful that the resident representative, as a United Nations staff member, would have the authority to act “on behalf” of a Government in view of staff regulation 1.3, which states that staff members “shall neither seek nor accept instructions from any Government or from any other authority external to the Organization”.

#### *Conclusion*

7. While we appreciate the good intentions which prompted the Resident Representative to sign the contract in question, we find it difficult ourselves from a legal standpoint to support extension or continuation of the said practice. We can, of course, understand the possibility under Government-executed projects of confusing rendering administrative assistance to the Government, which is permitted, and assuming executing responsibilities on its behalf, which is proscribed. However, the distinction between the two is important and should be maintained because of the potential liability for UNDP in case of the latter, in absence of proper statutory authority, or a formal agreement with the Government, as required by UNDP financial rule 114.27(b)(i) and section 30503 of the Programme and Projects Manual.

2 August 1989

## COPYRIGHT

### 6. COPYRIGHT OF THE UNITED NATIONS TREATY SERIES AND RELATED PUBLICATION — ADMINISTRATIVE INSTRUCTION ST/AI/189/ADD.9/REV.2

#### *Memorandum to the Chief, Treaty Section, Office of Legal Affairs*

1. This responds to your memorandum of 14 August 1989 seeking our views on the proposed copyrighting of the publication *Multilateral Treaties Deposited with the Secretary-General*. Our views on such copyrighting also apply to the proposed copyrighting of the United Nations *Treaty Series*. We understand that at present outside publishers take advantage of the absence of United Nations copyright of these publications to copy and publish *Multilateral Treaties* and the *Treaty Series*.

2. Administrative instruction ST/AI/189/Add.9/Rev.2 sets out the general United Nations policy in relation to copyright of United Nations publications. It lists the categories of materials which, in general, are not to be copyrighted, when and how exceptions to this general policy are made and the procedures for obtaining copyright.

3. There are four broad categories of materials which are, in general, not copyrightable without prior approval of the Publications Board (ST/AI/189/Add.9/Rev.2, para. 3):

(a) Official records (of proceedings, conferences, etc.);

(b) United Nations documents (officially issued under a United Nations symbol);

(c) Public information material (brochures, pamphlets, etc., printed for distribution to the public);

(d) Where the legislative authority contemplates that the material remain in the public domain.

4. All other categories of publications are generally considered to be copyrightable: ST/AI/129/Add.9/Rev.2, para. 3.

5. The procedure for copyright of United Nations publications calls for, *inter alia*, the justification by the author department(s), in this case the Office of Legal Affairs, of the consistency of the decision to seek copyright with the legislative mandate of the publication for which copyright is sought.

6. The legislative mandate for the publication of *Multilateral Treaties* and the *Treaty Series* is contained in Article 102, paragraph 1, of the Charter of the United Nations, which states:

“Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.”

7. Although it could be argued that the objective of the Charter provision is to place the text of the treaties in the public domain, the directive to publish is also consistent with a desire that authoritative texts be made available to Governments and the public by the Secretary-General. Given that public funds are expended in translating some of the treaties included, in preparing certain explanatory footnoting, incorporating references to previous relevant agreements and in other editorial work needed to reproduce the *Treaty Series* in a convenient format, and that the entirety of *Multilateral Treaties* consists of original work by the United Nations Secretariat, it appears to be legitimate to prevent commercial firms from depriving the Organization, by publishing copies, of sales revenue from these publications. Furthermore, copies produced by those firms may be inaccurate or misleading. The copyrighting of *Multilateral Treaties* and the *Treaty Series* is therefore in our view appropriate. However, bearing in mind the fact that the texts of the treaties were supplied by Governments, it would be appropriate to provide in the copyright notice that Governments are permitted to copy the publications.

8. In regard to the *Treaty Series*, we wish to add that the copyrightable subject matter is not the text of the treaties, but the layout and format of publication. In this connection, we note that the United Nations has taken out a copyright in the publication *United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea*<sup>7</sup>, although it is clear that both the Convention and the Final Act are in the public domain.

3 October 1989

#### PERSONNEL ISSUES

#### 7. LEGAL STATUS OF INDIVIDUALS UNDER SPECIAL SERVICE AGREEMENTS — SECTION 26 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — EXPERTS ON MISSION

##### *Memorandum to the Senior Legal Officer, United Nations Office at Geneva*

1. This is in response to your 19 January 1989 note to this Office concerning the status of the [State's] military personnel participating in the multinational demining missions to be undertaken in connection with "Operation Salam", in which you ask for our advice on (a) the use of the proposed standard special service agreements (type SSA-P.106) and (b) the intended issuance of certificates in accordance with section 26 of article VII of the Convention on the Privileges and Immunities of the United Nations ("General Convention")<sup>8</sup>.

2. In this connection, we have reviewed the additional information received from the Office of the Coordinator for Afghanistan, forwarded under 21 February note to this Office, which addresses the queries presented in our 27 January memorandum to you. We note that (a) the Coordinator's Chief of Mission in Islamabad was informed, during a 2 February meeting with a [host State's] Foreign Ministry official, that the "Government of the host State had decided

that the 1946 Convention and the [State's] related Act of 1948 should apply to the Office of the Coordinator ... [and] ... that the demining personnel would be considered as 'experts' as defined in that legislation" and (b) his 17 January memorandum to the Coordinator "summariz[ing] the understanding reached through oral consultations between the Office of the Coordinator and [the State's] Ambassador to the United Nations".

3. It would therefore appear that the Organization could enter into a contractual relationship with the [State's] military participants by means of the proposed standard "special service agreement for an individual contractor" (United Nations form P.106). Insofar as it is stated, in a memorandum to the Coordinator, that the "[State's] authorities have in effect agreed to detach the military personnel and place them at the disposal of the Coordinator for a specific period of time", these personnel would then seem to be free agents who could contract directly with the Organization. In this respect, we would refer to the "Conditions of Service" enumerated on the back of the special service agreement form, which include the following provision concerning legal status:

"Individuals engaged under a special service agreement as individual contractors serve in their personal capacity and not as representatives of a Government or of any other authority external to the United Nations. Individual contractors are neither 'staff members' under the Staff Regulations of the United Nations nor 'officials' for the purpose of the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations. Individual contractors may, however, be given the status of 'experts on mission' in the sense of section 22 of article VI of the Convention. If individual contractors are required to travel on behalf of the United Nations, they may be given a United Nations certificate in accordance with section 26 of article VII of the Convention." (para. 1)

Insofar as this provision would require that the [State's] military personnel so contracted serve strictly in a personal (and not a governmental representative) capacity, we would suggest that before the United Nations enters into any such agreements the Coordinator should, as a matter of caution, confirm that these detached personnel will not remain under the direction of the [State's] Government during their period of service in the demining operation (even though they are under the day-to-day administrative supervision of the Coordinator's Office).

4. As for the possibility of issuing certificates to the [State's] military participants pursuant to section 26 of the General Convention, it should be noted that the contemplated special service agreement provides that the holder thereof may be accorded the status of an "expert on mission" within the meaning of section 22 of the Convention. Furthermore, independent of the status provided to the [State's] participants under the governing contractual arrangement, the Government of the host [State] has indicated that they will consider the demining personnel as "experts" as defined in the General Convention and in the related 1948 Act of the host [State]. Insofar as experts on mission are among the categories of personnel eligible to be issued United Nations certificates ..., it is our opinion that the [State's] military personnel may accordingly be granted certificates for traveling on official United Nations business.

1 March 1989

PRIVILEGES AND IMMUNITIES

8. EXEMPTION FROM EXCISE DUTIES AND TAXES — SECTION 8 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Director, United Nations Information Centres  
Division, Department of Public Information*

1. This is in reply to your memorandum dated 6 December 1988 concerning the sales tax exemption in [State].

2. As requested, we have reviewed the provisions of both the [State's] United Nations (Privileges and Immunities) Regulations (Statutory Rules 1986, No. 66) and a letter from the Assistant Commissioner, Taxation Office, dated 15 June 1988, addressed to the United Nations Children's Fund (UNICEF).

3. According to regulation 7 of the First Schedule, United Nations institutions in [State] are generally exempted "from the liability to pay or collect taxes other than duties on the importation or exportation of goods and of income, property, assets and transactions of the Organization from such taxes". Application of this regulation is clarified in the letter of 15 June 1988 which, in particular, stipulates that "this provision has the effect of exempting from sales tax purchases from manufacturers and wholesalers, those being the transactions on which sales tax is ordinarily imposed". However, it is further specified that exemption is not available in respect of purchases from retailers; nor will act-of-grace payments be available for the amount of tax included when goods are purchased at the retail level.

4. In our view, the procedure set forth by [State's] Government does not violate its relevant obligations under the Convention on the Privileges and Immunities of the United Nations, to which [State] is a party as from 1949. Namely, the non-availability of exemption for goods purchased from retailers should be considered in the light of section 8 of the Convention, which stipulates that "the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid ..." However, this clause should be read in conjunction with the following provision of the same section 8. "... nevertheless when the United Nations is making *important* purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, *whenever possible*, make appropriate administrative arrangements for the remission or return of the amount of duty or tax" (emphasis added).

5. Accordingly, United Nations institutions in [State] when making important purchases from retailers could claim, from the governmental authorities, tax exemption. However, if the authorities take a decision that tax exemption is not possible, which apparently is the case, there seems to be no legal remedy to avoid the taxation in question.

30 January 1989

9. PAYMENT OF EMPLOYMENT INJURY CONTRIBUTIONS AND CONTRIBUTIONS UNDER THE NATIONAL PENSION SCHEME — SECTION 7(A) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Note verbale to the Permanent Mission of a Member State to United Nations*

The Office of Legal Affairs of the United Nations presents its compliments to the Permanent Mission of [State] to the United Nations, and has the honour to refer to the note verbale dated 7 October 1988 addressed to the heads of diplomatic missions and international organizations by the Ministry of Foreign Affairs of [State]. This note has only recently been brought to the attention of the Office of Legal Affairs.

In the above-mentioned note verbale, the Ministry of Foreign Affairs informs us that, in accordance with the Social Security legislation of [State], which took effect on 1 July 1988, all employers (including United Nations bodies based in [State]) should (a) “pay employment injury contributions at the rate of 1.75 per cent. of (their) employees’ gross monthly earnings” and (b) “pay contributions under the National Pension Scheme at the rate of 6 per cent. of each employee’s gross monthly earnings ...”

The Ministry of Foreign Affairs stated further in the note verbale that the exemption clause in the legislation concerning “embassies, consulates and international organizations relates to and applies to persons who were engaged outside [State].” The obligation incumbent upon employers to make the payments referred to in paragraph 2 above exists, according to the note verbale, “in respect of any employee engaged in [State], whether [a national of the country or not]”.

The United Nations respectfully draws the attention of the Permanent Mission of [State] to the United Nations to the inapplicability of the provisions of the [State’s] Social Security legislation to the United Nations requiring it to make payment contributions to injury and pension schemes with respect to its staff members working in [State] for the following legal and practical reasons:

(a) Under section 7(a) of the Convention on the Privileges and Immunities of the United Nations, to which [State] became a party on 14 March 1947, the United Nations, its assets, income and other property are exempt from all direct taxes. Mandatory employment injury contributions and contributions under the National Pension scheme are considered by the United Nations to be a form of direct tax on the United Nations and therefore contrary to the Convention. United Nations practice in this regard has been constant and uniform for more than four decades.

(b) The United Nations provides its own accident compensation and staff pension schemes for all staff members, other than those locally recruited and paid hourly rates, in accordance with staff regulations approved by the General Assembly.

10 April 1989

10. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ARBITRATION RULES — SECTION 2 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Director, Division of Refugee Law and Doctrine,  
Office of the United Nations High Commissioner for Refugees*

1. Further to your memorandum dated 6 April 1989 with regard to the above-mentioned subject, we would like to advise you as follows:

2. In the light of our previous experience with [name of nationality] solicitors and their expressed unfamiliarity with the UNCITRAL Arbitration Rules and United Nations privileges and immunities, we decided to call “Mr X”, the [name of city] solicitor representing the landlord of the premises in which UNHCR is interested. In that conversation the following points were made:

(a) The UNCITRAL Arbitration Rules have been accepted by [State] and are used worldwide without difficulty. Nevertheless, in order to find a practicable resolution to the matter, we suggested that the rules of the Chartered Institute of Arbitrators be applied and that the sole arbitrator be appointed by the President of the [name of city] Chamber of Commerce. Experience has shown that this solution is satisfactory to [name of nationality] landlords and their solicitors. The solution is also acceptable to the United Nations as it does not refer to the [State] Arbitration Act, nor does it in any way imply a waiver of the immunity of the United Nations or submission to [the State’s] courts. In fact, [State’s] courts have held that agreement to arbitrate is not per se a voluntary or implied submission to the courts.

(b) The privileges and immunities of the United Nations, provided for in the Charter of the United Nations (Articles 104 and 105) and contained in the Convention on the Privileges and Immunities of the United Nations (“General Convention”) to which [State] became a party in 1949, were incorporated into the [State’s] law by the International Organizations Act 1968 and the United Nations and International Court of Justice (Immunities and Privileges) Order 1974/1261, as amended by Order 1975/1209. These immunities cannot be waived in advance by a lease agreement, for the following reasons:

(i) Section 2 of the General Convention provides: “The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except *insofar as in any particular case, it has expressly waived its immunity*. It is, however, understood that no waiver of immunity shall extend to any measure of execution” (emphasis added). (Section 6 of the [State] Order 1974/1261 is in similar terms.) The phrase in italics has been interpreted restrictively: (a) the power to waive is vested only in the Secretary-General and such power has not been delegated; and (b) the waiver may only be made at the time a court is considering a particular case and the Secretary-General determines that waiver of

immunity is desirable in the interest of justice. Such waiver is not possible in advance by agreement, because this would be tantamount to a waiver *in futuro*. This position has been upheld by [State's] courts, where the court held that "a sovereign cannot waive in future, but only in a particular instance when he is about to be brought before the Courts".

- (ii) In any case, even if such waiver were possible, it cannot extend to any measure of execution and therefore even if the United Nations waived its immunity from legal process [name of nationality] landlords could not enforce court judgements or orders obtained against the United Nations.
- (iii) [State] is a State Member of the United Nations and should the United Nations default, which is unlikely, a representation to the Secretary-General by the [State's] Foreign Secretary is always possible on behalf of an aggrieved [name of nationality] national. Such representation would most probably be more effective than recourse to [State's] courts.

3. We trust that further to our discussion with Mr. X the matter will be resolved soon. Should you, however, face any other difficulties, we would be ready to talk to him by phone again or send an officer from this Office to [name of city] to discuss the matter directly.

27 April 1989

11. EXEMPTION FROM CUSTOMS DUTY FOR A NATIONAL COMMITTEE FOR UNICEF — SECTION 7 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — RELATIONSHIP BETWEEN A NATIONAL COMMITTEE FOR UNICEF AND UNICEF

*Memorandum to the Director, Office of Administrative Management,  
United Nations Children's Fund*

1. This is in reply to your memorandum dated 18 May 1989 requesting our observations and comments on the exemption from the [State's] customs duties for the Greeting Card Operation (GCO) articles imported into [State] for sale by the [name of nationality] Committee for UNICEF.

2. From correspondence provided, we note that the [name of nationality] Committee for UNICEF in August 1988 requested the Customs Board of [State] to grant exemption from customs duties for UNICEF products. However, that request was rejected by the Customs Board on grounds of its inconsistency with the relevant provisions of article II, section 7, of the 1946 Convention on the Privileges and Immunities of the United Nations. The Customs Board came to the conclusion that articles "imported by the [name of nationality] Committee for UNICEF do not appear to be of such nature that they should be considered as imported by UNICEF" and therefore the Committee was not "entitled to exemption from customs duties and taxes" under the Convention.

3. The relationship between UNICEF and [name of nationality] Committee is governed by the Recognition Agreement of 1977 and the Supplementary Agreements. Pursuant to paragraph 8 of the Recognition Agreement, the Committee could, subject to a supplementary agreement, “act as sales agent or distributor for the marketing, distribution and sale of products such as greeting cards and calendars available through UNICEF Greeting Card Operation”. By virtue of paragraph 5 of the 1984 Supplementary Agreement II, the Committee became responsible for “the sales of GCO products” as well as for “development, organization of distribution and sales channels”. It should be taken into consideration that the later Agreement, in paragraph 6, unequivocally specified that “UNICEF owns all GCO products until sold and the Committee acts as an agent for UNICEF, the principal, which enjoys the protection of the privileges and immunities of the United Nations”.

4. Accordingly, the [name of nationality] Committee should be a considered sales agent acting for UNICEF, which is an organ of the United Nations. Therefore, the provisions of section 7 of the Convention on the Privileges and Immunities of the United Nations are applicable in the present case, i.e., products under GCO operations, until sold, are to be considered property of the Organization.

5. It should be recalled that section 7 of the Convention provides, in subparagraph (b), for exemption from customs duties on articles imported for United Nations official use, and, in subparagraph (c), for exemption from customs duties for all United Nations publications. To date, Governments in countries where cards are sold have generally recognized that it would be inappropriate for a Member State to impose customs duties on GCO projects, as a matter of principle as well as law, which are internationally determined and financed by contributions from Governments and from private sources. In most cases, where the issue has been raised at all, the term “official use” has been interpreted to include UNICEF fund-raising activities, so as to exempt the cards and calendars under section 7(b); or such materials have been treated as “publications” under section 7(c) of the Convention.

6. For these reasons and in the light of the foregoing, we would suggest that the Ministry of Foreign Affairs of [State] be approached in order to obtain exemption from customs duties on the sales of GCO products. If required, this Office could assist you in drafting the appropriate communication.

15 September 1989

12. COMMERCIAL RENT TAX IMPOSED BY THE CITY OF NEW YORK ON RENTS PAID — SECTION 7 OF THE HEADQUARTERS AGREEMENT

*Memorandum to the Officer-in-Charge, Commercial, Purchase and Transportation Service, Office of General Services*

1. This refers to your memorandum of 28 September 1989 concerning the question of commercial rent tax imposed by the City of New York on rents paid by the Travel Service to the United Nations for office space provided by the Organization.

2. From the documents transmitted for our comments, we note that the Travel Service has filed with the City of New York an appeal entitled “Grounds for Filing Petition” in which, on the basis of its interpretation of sections 8 and 9 of the Headquarters Agreement, the assessment in question is qualified as “invalid”. The Travel Service further asserts that in the absence of any specific agreement between the United Nations and the City of New York, as required in section 9 of the Headquarters Agreement, “New York city had exceeded their legal authority by imposing a tax upon rent” paid to the United Nations. Cancellation of the assessment of this tax is requested.

3. We are unable to share the interpretation by the Travel Service of the above referenced provisions of the Headquarters Agreement. According to paragraphs (b) and (c) of Section 7, “the federal, state and local law” of the host country is applicable within the Headquarters district and the United States courts at all levels do have jurisdiction over acts done and transactions taking place in the Headquarters district, subject, however, to the exception that it is not otherwise provided in the Headquarters Agreement or the Convention on the Privileges and Immunities of the United Nations (the General Convention).

4. In this connection, it may be recalled that pursuant to Section 7 of the General Convention of the United Nations, its assets, income and other property are exempt from all direct taxes. In the present case, the assessment of tax is imposed not on the United Nations property per se but on the rent paid by the Travel Service (which is qualified in the contract as “an independent contractor whose employees shall not be considered as employees of the United Nations”) to the United Nations for use of the latter’s premises.

5. Furthermore, we do not find the stipulations of the Commercial Rent or Occupancy Tax itself, as amended on 31 December 1988 (Chapter 7 of New York City Charter and Administrative Code), to be inconsistent with or contradictory to the provisions of the Headquarters Agreement or the General Convention. In fact, the law defines as “taxable premises” any premises in the city occupied or used for “the purpose of carrying on or exercising any ... business, profession, vocation or commercial activity” (para. 11-701.5). It should be emphasized that the law clearly stipulates that the United Nations shall be exempt from the payment of the tax. However, it does not provide the same exemption for an entity such as the Travel Service, a contractor with the United Nations.

6. In the light of the foregoing observations, please be advised that, absent any specific arrangement with the United States competent authorities within the meaning of sections 7(b) and (c) of the Headquarters Agreement, the commercial rent tax assessment in our view is valid and applicable to the Travel Service.

12 October 1989

13. ACCREDITATION OF DIPLOMATIC STATUS — ARTICLE 37(2) OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS — DISTINCTIONS BETWEEN CAREER AND NON-CAREER ADMINISTRATIVE AND TECHNICAL STAFF OF PERMANENT MISSIONS

*Memorandum to the Senior Legal Officer, United Nations Office at Geneva*

1. This is with reference to your facsimile of 17 October 1989.

2. According to the Vienna Convention on Diplomatic Relations,<sup>9</sup> the members of the diplomatic staff of a mission are “the members of the staff of the mission having diplomatic rank” (article 1(d)). In principle, the sending State had the right to assign its personnel to diplomatic posts (article 7). On the other hand, the receiving State has the right to “refuse to accept officials of a particular category” (article 11(2)). Therefore, the receiving State has the right to verify that the staff who are accredited as diplomats do in fact perform diplomatic functions. If the receiving State believes that the functions performed do not justify diplomatic status, it may deny the request for the diplomatic accreditation (or eventually declare the individual concerned *persona non grata* (article 9(1)). Among the States which verify accreditation of members of embassies or missions on a regular basis are the United States of America, the United Kingdom of Great Britain and Northern Ireland and Switzerland.

3. The legal status of the administrative and technical staff of permanent missions also is covered by the Vienna Convention (article 37(2)). However, the said Convention did not provide for the distinction between the career and the non-career administrative and technical staff, nor did it regulate all the practical consequences deriving from the legal status of mission personnel. The distinction made within the category of administrative and technical staff of permanent missions to the United Nations Office at Geneva seems to establish regulations regarding some practical matters concerning which the Convention leaves to the receiving States a wide discretion. Under such circumstances, the receiving State is also competent to grant privileges and immunities it deems appropriate.

4. In this connection, it should be recalled that by a decision of 31 March 1948 as amended by a decision of 20 May 1958, the Swiss Federal Council accorded to permanent missions to the United Nations Office and other international organizations in Geneva the same privileges, immunities and facilities as those accorded to diplomatic missions in Berne. Therefore, should the distinction between career and non-career administrative and technical staff of the permanent missions to the United Nations Office at Geneva and the restrictive privileges and immunities granted to the non-career staff as a result of this distinction apply also to the diplomatic missions in Berne, such a distinction and its effects should not be considered as a violation of the host country legal obligations.

30 October 1989

#### 14. INTERPRETATION OF THE TERM “PUBLIC UTILITY” — EXEMPTION FROM WHARFAGE CHARGES

*Memorandum to the Director of Field Operations,  
Office of General Services*

1. I wish to refer to the memorandum dated 14 June 1989 on wharfage charges. Our Office has also received another memorandum dated 12 October 1989.

2. We note with concern the difficulties the United Nations Peacekeeping operation has been experiencing in persuading the [name of State] authorities to grant it exemption from or reimbursement of the wharfage charges levied on the United Nations consignments arriving through [name of city] port. The re-imposition of wharfage charges levied on the United Nations in accordance with the [State's] Port Authority Council Resolution of 30 March 1989 at the maximum rate of 2 per cent. on the value of the goods imported compounds the difficulties already encountered in clearing United Nations shipments through [name of city] port.

3. The Office of Legal Affairs has previously expressed its views and concern about the [State's] port authority wharfage charges in its memoranda dated 29 October 1979 and 2 July 1980 respectively.

4. We maintain our position and confirm that, as far as the meaning of the expression “public utility service” is concerned, the legal position taken by the United Nations is set out in studies prepared by the Secretariat in 1967 on relations between States and intergovernmental organizations (*Yearbook of the International Law Commission, 1967*, vol. II, the *United Nations Juridical Yearbook, 1973*, and United Nations document A/CN.4/L.383/Add.1 of 24 May 1985. The interpretation of the term “public utility” is as follows:

“The term ‘public utility’ has a restricted connotation applying to particular supplies or services rendered by a Government or a corporation under government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered ... As a matter of principle and as a matter of obvious practical necessity charges for actual services rendered must relate to services which can be specifically identified, described and itemized.”

Therefore, the United Nations approach is to pay only those charges which relate to actual services rendered and which can be specifically identified, described and itemized. The arguments used [by the State's] authorities in describing the wharfage charges as specific port dues levied for the general running expenses of the port do not fall within the meaning of a charge for public utility services as described above and as provided for in the 1946 Convention on the Privileges and Immunities of the United Nations.

5. On the basis of the foregoing, the claim for exemption from wharfage charges should be maintained and a refund claim should be requested on the payments already made in accordance with the full wharfage charge levied on the United Nations.

6. However, if the exemption is not granted, the proposal “for a lesser charge” made by the Legal Adviser at the Ministry of Foreign Affairs of [the State] should not be disregarded. This proposal should be used on the basis of the precedent arrangements that have prevailed and whereby [the State’s] port authorities levied on the United Nations only a minimal wharfage charge. Since there is a precedent, [State’s] authorities may find it easier to accept a request for a minimal charge.

7. If a reduction of these charges to a minimum can be obtained again, a confirmation to that effect from [the State’s] authorities would be necessary in order to avoid any future misunderstanding. Such arrangement, if all else fails, would be acceptable to the Nations since the wharfage charges are, according to our files on the subject matter, levied in [State] on all users of the port, including [the State’s] Government and all other national bodies with the exception of the navy.

7 November 1989

15. EXEMPTION FROM TAXES RELATING TO THE PURCHASE OF AVIATION GAS —  
SECTIONS 7 AND 8 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Letter to the Permanent Representative of a Member  
State to the United Nations*

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [State] to the United Nations and has the honour to refer to the question of the exemption from or reimbursement of taxes relating to the purchase of aviation gas by the United Nations peacekeeping operation for the official use of the Cessna aircraft 421C. The Legal Counsel has been informed that this matter has been the subject of lengthy consultations between the peacekeeping operation and the Government of [State], but that the peacekeeping operation continues to encounter difficulties in obtaining the exemption from or reimbursement of the taxes on aviation gas. After careful review, the Legal Counsel wishes to provide the following information regarding the legal aspects of this matter in order to obtain the settlement of this long-standing request.

The United Nations exemption from or reimbursement of taxes derives from sections 7 and 8 of the Convention on the Privileges and Immunities of the United Nations of 1946, to which [State] is a party. Under that Convention, the parties agree to exempt the United Nations from all direct taxes (section 7); with respect to excise duties and indirect taxes, Member States agree whenever possible to make appropriate administrative arrangements for the remission or return of the duties or taxes when the United Nations is making important purchases for official use. The Convention on the Privileges and Immunities of the United Nations, including sections 7 and 8 cited above, is intended to give effect to Article 105, paragraph 1, of the Charter of the United Nations by which “the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”.

The taxes paid on aviation gas by the peacekeeping operation would normally be considered as indirect taxes and would fall within the meaning of section 8 of the Convention. There can be no doubt that the purchase of aviation gas constitutes an “important purchase” for the official use of the Organization. The use of aircraft, and, for that matter, of vehicles, is a normal operational necessity for the peacekeeping operation. Section 8 of the Convention, therefore, places an obligation on the Government of [State] “whenever possible” to make appropriate administrative arrangements for the remission or return of the duties or taxes in question. The United Nations has consistently enjoyed the cooperation of Member States in the implementation of this provision. In this context, I would refer you to paragraph 23 of the latest report of the Secretary-General concerning the administrative and budgetary aspects of the financing of United Nations peacekeeping operations (document A/44/605 of 11 October 1989), in which the Secretary-General states: “The United Nations normally buys petrol, oil and lubricant products for its peacekeeping operations ... free of all duties and taxes.”

Finally, the Legal Counsel has been informed that the argument has been raised that the exemption from or reimbursement of these taxes cannot be granted because of conflicting laws or regulations [of the State]. However, it must be pointed out that by virtue of section 34 of the Convention on the Privileges and Immunities of the United Nations, the Government of [State] has undertaken to be “in a position under its own law to give effect to the terms of this Convention.” Consequently, in the event of a conflict between domestic law and the Convention, the Convention must prevail.

The Legal Counsel would be grateful if renewed consideration could be given to this matter by the competent authorities with a view to making appropriate administrative arrangements for the remission or return of the taxes in question.

29 December 1989

#### PROCEDURAL AND INSTITUTIONAL ISSUES

#### 16. MEANING OF THE TERM “SUBSIDIARY BODY” — QUESTION WHETHER THE GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME IS A SUBSIDIARY BODY OF THE GENERAL ASSEMBLY OR THE ECONOMIC AND SOCIAL COUNCIL

##### *Letter to the Associate Administrator, United Nations Development Programme*

This is in response to the second question raised in your letter of 19 January 1989, and further to my letter to you of the same date.

The second question raised in your letter was whether the Governing Council of UNDP is a subsidiary body of the General Assembly or a subsidiary body of the Economic and Social Council.

As will be noted, the General Assembly in its resolution 2029 (XX) of 22 November 1965 decided, on the recommendation of the Economic and Social Council, to combine the United Nations Expanded Programme of Technical Assistance and the United Nations Special Fund into a single programme, the United Nations Development Programme, which the Assembly then created in resolution 2029 (XX). The Assembly, in the same resolution, established the Governing Council of UNDP and requested the Economic and Social Council to elect the members of the Governing Council.

The term “subsidiary body” is not defined either in the Charter of the United Nations or in General Assembly resolutions, or in the rules of procedure of the General Assembly. However, the Office of Legal Affairs has always advised that one body is a “subsidiary” of another if it has in fact been “established” by the other body: the regional commissions, for example, were established by the Economic and Social Council and are thus “subsidiary bodies” of the Council.

As we understand it, the above is also the sense in which the term “subsidiary body” is used in United Nations practice. You will note, for example, that the Governing Council of UNDP is listed as a subsidiary body of the General Assembly in the 1972 *Repertory of Practice of United Nations Organs* (Supplement No. 3, vol. I, p. 458) which covers the period from 1959 to 1966.

Thus, notwithstanding the fact that UNDP was established on the recommendation of the Economic and Social Council and the fact that elections to the Governing Council of UNDP are conducted in the Economic and Social Council, it is the view of the Office of Legal Affairs that, as UNDP and its Governing Council were “established” by the General Assembly, UNDP and its Governing Council are subsidiary bodies of the General Assembly and not subsidiary bodies of the Economic and Social Council.

This having been said, I would like to add the following: the General Assembly in resolution 2029 (XX), paragraph 4, when establishing the Governing Council of UNDP provided that the Governing Council “shall meet twice a year and shall submit reports and recommendations ... to the Economic and Social Council for consideration by the Council at its summer session”. Hence, notwithstanding the fact that the Governing Council is a subsidiary body of the General Assembly, there is ground for the view that the reports of the Governing Council should be placed before the Economic and Social Council, at its summer session, in such a manner as to enable the latter body to study and consider the Council’s report in a timely and meaningful way. However, since UNDP and its Governing Council are subsidiary bodies of the General Assembly and not of the Economic and Social Council, and since, therefore, General Assembly decision 43/432 of 20 December 1988 [endorsing Economic and Social Council resolution 1988/77] does not apply, the eight-weeks rule provided for in [Council resolution 1988/77] does not apply to UNDP.

25 January 1989

17. CONSTITUTION OF APPOINTMENT AND PROMOTION BODIES — ROLE OF THE STAFF UNIONS

*Memorandum to the Assistant Secretary-General  
for Human Resources Management*

1. You have asked for my comments on a letter dated 27 January 1989 from the President of the United Nations Staff Union complaining that the appointment and promotion bodies are improperly constituted. The issue arises because the Staff Union has failed to make one final nomination to the Appointment and Promotion Committee. The Union states that this means that the appointment and promotion bodies, and in particular the Committee, cannot commence work. You take a contrary view.

2. You also ask whether it is proper for the Staff Union to direct members and alternates appointed to the appointment and promotion bodies by the Secretary-General not to attend meetings of those bodies, a position with which you took issue in your memorandum of 27 January 1989 to those who failed to attend the first meeting of the appointment and promotion bodies.

*Constitution of appointment and promotion bodies*

3. Staff rule 104.14 deals with the constitution of the appointment and promotion bodies while subparagraph (c)(i) deals with the constitution of the Appointment and Promotion Committee. It provides that the Committee shall consist of seven members and 14 alternates appointed “after consultation with the appropriate staff representative body” and that “three members and seven alternates are appointed from nominees submitted by the appropriate staff representative body”. You informed us that such consultation took place and that in fact 31 out of 32 positions in the appointment and promotion bodies have been filled. All 16 positions appointed by the Secretary-General have been filled and 15 of the 16 positions to be appointed on Union nomination have been filled. The one missing nomination is for the position of a member of the Committee. You indicated to us that discussions relating to the issue of membership of the appointment and promotion bodies started in mid-November 1988.

4. It seems clear that the consultations envisaged by the rules have taken place in that 31 out of 32 positions have been filled. The question thus resolves into whether the functions of the appointment and promotion bodies have to be delayed until the remaining position is filled. It is clear that this would be an unreasonable result. The Staff Regulations envisage that the fullest regard be given to internal candidates for promotion and the Staff Rules require that in giving such consideration, the Secretary-General must consider the advice of the appointment and promotion bodies. It is simply unacceptable that the Staff Union can prevent this process by failing to provide adequate nominations on a timely basis.

5. This Office has previously advised that if a United Nations organ has not been fully constituted after considerable efforts to so do have taken place, then that body must be able to function, even if it does not have a totally constituted membership for its initial meetings.

*Role of the Staff Union*

6. The role of the Staff Union is to consult with the Secretary-General on the membership of the appointment and promotion bodies and to provide nominations for the consideration of the Secretary-General for appointment to those bodies. Once such persons are appointed to those bodies, their role is to advise the Secretary-General on promotions. The Staff Union has no mandate to interfere with the functioning of those bodies by giving advice to its members, let alone giving instructions which result in the non-functioning of those bodies. Equally, those appointed to the appointment and promotion bodies by the Secretary-General cannot act upon the instructions of the Staff Union, nor can they properly act upon the advice of the Union. This is a cardinal foundation of the advisory nature of the appointment and promotion bodies. Their role is to advise the Secretary-General. That is not the role of the Union. To argue that the Union is involved in the promotion process, other than to nominate members, would make the whole process pointless since if the Secretary-General were to deal with the Union it would be in the context of the Joint Advisory Committee or the Staff Management Consultative Committee and there would be no need for the appointment and promotion bodies.

7. We therefore think that your letter of 27 January 1989 to members and alternates of the appointment and promotion bodies who did not attend the first meetings of those bodies on the instructions of the Union was proper from a legal point of view.

2 February 1989

18. SUBCOMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF  
MINORITIES — CONDITIONS OF PARTICIPATION OF STATES — OBSERVERS

*Memorandum to the Senior Legal Officer, Legal Liaison Office*

1. With reference to your memorandum dated 26 May 1989 addressed to the Legal Counsel, we have examined the question of the right of States to participate in the deliberations of the Subcommission on Prevention of Discrimination and Protection of Minorities and have the following comments which may be transmitted to the Centre for Human Rights.

2. As you know, the Subcommission is a subsidiary organ of the Commission on Human Rights, a functional commission of the Economic and Social Council. According to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, "the rules of procedure of the commission shall apply to the proceedings of its subsidiary organs insofar as they are applicable". Thus, the rules of procedure of the functional commissions apply to the proceedings of the Subcommission.

3. Concerning the participation of States in the deliberations of the Subcommission, paragraphs 2 and 3 of rule 69 of the rules of procedure of the functional commissions provide:

“2. A subsidiary organ of the commission shall invite any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State.

“3. A State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the commission or of the subsidiary organ concerned.”

4. That rule 69(2) is applicable to bodies composed of experts, such as the Subcommittee, is readily evident by the footnote to that provision, which states: “The expression ‘that is not one of its own members’ does not apply to subsidiary organs composed of experts serving in their individual capacity.”

5. Thus, a State has a right to be invited by the Subcommittee to participate in its deliberations on any matter of particular concern to that State. That right may be exercised irrespective of any “objection” on the part of any member of the Subcommittee. It would appear that the rule is intended precisely to allow a State which is the subject of a draft resolution before the Subcommittee to participate, if it so desires, in the Subcommittee’s deliberations on that draft resolution.

6. It should be pointed out, however, that participation in the deliberations on a draft resolution does not imply participation in the explanation-of-vote period (either before or after the vote). Once the explanation-of-vote period begins, the debate on the particular proposal has, explicitly or implicitly, been closed. Thus, at that stage, only explanations of vote by members of the Subcommittee are allowed. Observer States may speak during the period of debate on the draft resolution, but not in the explanation-of-vote period.

7. The Secretariat should distinguish in its list of speakers between those wishing to speak in the debate (either general debate or debate on a particular proposal) and those wishing to speak in explanation of vote. As indicated in rule 44, when there are no more speakers in the debate (which may include State observers), the Chairman should, with the consent of the Subcommittee, declare the debate closed. The Chairman should then turn to the list of speakers indicating those members of the Subcommittee wishing to explain their vote before the vote (obviously only members of the Subcommittee may explain their vote).

8. Such a procedure is in accordance with the practice followed by ECOSOC itself:

“... observers wishing to make statements on the recommendations contained in the reports of the sessional Committees are requested to indicate their intention to do so before statements in explanation of vote are made by members of the Council.” (E/1989/L.16, para. 14)

9. There have been occasions in some United Nations bodies when observers have been allowed to make statements following the end of explanations of vote after the vote. The debate has, of course, been closed and a decision already taken. This practice is not mentioned in rules of procedure but the Chairman may permit it with the consent of the body concerned.

23 June 1989

19. INTERPRETATION OF RULES OF PROCEDURE BY THE SUBCOMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES — RULE 69 — RIGHT OF REPLY OF OBSERVER STATES

*Facsimile to the United Nations Legal Liaison Office at Geneva*

This is in response to your telephone call of today forwarding three questions raised in the Subcommission on Prevention of Discrimination and Protection of Minorities upon which legal advice is sought. Absent a written text of those questions, our replies are based upon questions transmitted orally.

The first question is whether the Subcommission is authorized to interpret rules of procedure governing its proceedings (the rules of procedure of the functional commissions of the Economic and Social Council), in particular rule 69 (Participation of non-member States). The standard practice of United Nations bodies is that each body may interpret the rules of procedure applicable to it, to the extent such an interpretation does not constitute an amendment or suspension of the rules, which may only be done pursuant to relevant rules governing method of amendment and method of suspension.

The second question is whether the phrase in rule 69 “the Commission shall invite ... any other State, to participate in its deliberations on any matter of particular concern to that State” can be considered to mean that such a State should refer in the context of item 6 to issues related to its domestic situation and not to situations in other countries. We understand item 6 to be entitled “Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Subcommission under Commission on Human Rights resolution 823”. From the title of item 6, it is clear that the item relates to the question of the violation of human rights and fundamental freedoms in all countries. Rule 69 makes it equally clear that observer States have the right to participate in the deliberations of the Subcommission on any matter of particular concern to that State. The observer State determines itself what is a matter of particular concern to it and under item 6 could decide to speak on human rights violations in countries other than its own. By its resolution 1982-12, the Subcommission decided to “express the view” that observers for States “should in future, when invited to participate on the agenda item ... not implicate other States in a deliberately abusive manner”. Obviously it is for the Subcommission itself to decide if an observer for a State has so implicated other States in the manner described.

The third question is whether, assuming that the answer to the second question is negative, the observer of a State may reply to remarks made by the observer of another State. According to standard and accepted United Nations practice, presiding officers routinely afford observers the opportunity to make statements in reply to remarks made previously by other speakers (whether members or observers). Of course, whatever rules and practices apply to members’ rights of reply (number of interventions, time limit, etc.) apply equally as well to observers’ statements in reply.

18 August 1989

20. STATUS OF THE UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH  
— DESIGNATION OF AN EXECUTING AGENCY OF THE UNITED NATIONS DEVELOPMENT PROGRAMME REGARDING ELIGIBILITY FOR SUPPORT COST FLEXIBILITY ARRANGEMENTS

*Memorandum to the Deputy Assistant Administrator, Bureau for Finance and Administration, United Nations Development Programme*

1. This is in reference to an inquiry as to whether the United Nations Institute for Training and Research, if designated an executing agency of UNDP, can be regarded as an autonomous institution within the United Nations system for purposes of the application of Governing Council decision 81/40 of 30 June 1981, on eligibility for support cost flexibility arrangements for executing agencies.

*An autonomous body*

2. In general, an autonomous institution is one that possesses the following characteristics: (a) legal capacity for carrying into effect its functions; (b) capacity to conclude agreements and to incur responsibility; (c) capacity to acquire and dispose of movable and immovable property; (d) special resources different and distinct from those of the parent organization; (e) an independent budget; and (f) its own administrative organization and governing body.

*Background of decision*

3. The Governing Council in its decision 81/40 provides, in article 4, that “only autonomous organizations within the United Nations system shall be eligible for support cost flexibility arrangements”. That decision was adopted on the basis of the recommendations of the Administrator contained in his Report DP/556 of 31 March 1981. The salient provisions of that Report are as follows:

(a) In paragraph 16, the Administrator recommended that the flexibility arrangements be extended to “(a) organizations of the United Nations system and (b) organizations whose total regular budget resources are limited and whose total level of technical cooperation delivery is inadequate to establish minimum programme support capacity ...”

(b) In paragraph 17 of the Report, which elaborates on the points raised in paragraph 16, the Administrator points out that “executing agencies would *not* be considered eligible for flexibility arrangements if they are component parts of the United Nations, *financed under the United Nations regular budget ...*” (emphasis added).

(c) Subparagraphs (a) and (b) of paragraph 19 of the report contain the specific proposals of the UNDP Administrator and lay down two conditions for the determination of eligibility for such flexibility arrangements: “(a) Eligibility for support cost flexibility arrangements will be limited to

executing agencies which are autonomous organizations within the United Nations; and (b) support cost flexibility arrangements may be granted to eligible executing agencies whose levels of annual delivery do not exceed \$20 million ...”

4. The Governing Council in its decision 81/40 adopted the recommendation contained in subparagraph (a) of paragraph 19 of the report, thereby extending the eligibility status for flexibility arrangements to executing agencies which are autonomous organizations within the United Nations system. It did not, however, adopt the recommendations contained in subparagraph (b), which proposed that the said flexibility arrangements may be granted to eligible executing agencies whose levels of annual delivery do not exceed \$20 million.

#### UNITAR

5. UNITAR was established pursuant to General Assembly resolutions 1934 (XVIII) of 11 December 1963 and 42/197 of 11 December 1987 as “an autonomous institution within the framework of the United Nations” and possesses the following characteristics:

(a) The Institute has its own governing body — the Board of Trustees — which, *inter alia*, and as provided by paragraph 2(a) of article III of UNITAR’s statute, formulates “principles and policies to govern the activities and operations of the Institute”. According to paragraph 4 of the same article, the Board of Trustees also considers the methods of financing the Institute with a view to ensuring “the Institute’s autonomous character within the framework of the United Nations”.

(b) Paragraphs 2 and 3 of article VIII of the statute stipulate that “the expenses of the Institute shall be met from voluntary contributions made by Governments, intergovernmental organizations and from foundations and other non-governmental sources” and that the Institute “shall operate on the basis of paid-in voluntary contributions and such other additional resources as may be available”. Furthermore, pursuant to paragraph 11 of article VIII, UNITAR’s funds “shall be held and administered solely for the purposes of the Institute”. Paragraph 10 of the same article provides that “the funds of the Institute shall be kept in a special account to be established by the Secretary-General”.

(c) The Institute has its own staff, the salaries and emoluments of which are paid from the funds of the Institute (statute article IV, paras. 1-4).

(d) According to paragraph 2 of article X of the Statute, the Institute may “enter into contracts with organizations, institutions or firms for the purpose of carrying out its programmes. The Institute may acquire and dispose of real and personal property and may take other legal action necessary to the performance of its functions.”

6. In the light of the above, it seems to us that UNITAR meets the criteria of an autonomous body and the requirements of the Governing Council Decision that the eligible executing agency be an “autonomous organization within the United Nations system”. We would, however, wish to add one qualification to this conclusion, and that is that, from a purely legal viewpoint, UNITAR, like all other organs of the United Nations, and unlike the specialized agencies, does not possess separate legal capacities under international law from the United Nations. But we do not read the Governing Council Decision as being so restrictive in its application.

24 October 1989

SECRETARIAT

21. TOPONYM “PERSIAN GULF” — PRACTICE OF THE SECRETARIAT ON TERMINOLOGY ISSUES

*Cable to the Legal Adviser of the United Nations  
Industrial Development Organization*

United Nations practice in documents and publications of the Secretariat is to use what has been the historically accepted toponym “Persian Gulf” to indicate that international body of water. The Secretariat is aware of the fact that there are differences of terminology in this respect but, since it is desirable to have a certain measure of conformity in geographical references in United Nations documents, the Secretariat has felt that the term “Persian Gulf” should be used in documents, maps, etc., prepared by it on its own responsibility, thereby following the most accepted historical usage.

It should be noted, however, that when a representative in an intervention in a United Nations body refers to the international body of water by another name, the Secretariat uses the speaker’s terminology in the records of the meeting in which the reference is made. Similarly, when a delegation requests the circulation of a communication including reference to that body of water or to any geographical area for which there are varying toponyms, the Secretariat makes no change in the terminology used by the originator of the communication. Also, when a resolution or decision adopted by a deliberative body of the United Nations uses a particular terminology, the Secretariat in dealing with that resolution or decision is guided by that terminology.

On occasion, the use of neutral terms such as “the Gulf” and “Gulf States” is authorized in documents emanating from the Secretariat that deal with matters affecting specifically States that do not themselves find acceptable the term “Persian Gulf” and employ a different toponym.

Should you wish to make references in the further handling of this matter to the Office of Legal Affairs, please check that reference with us.

29 March 1989

## TREATIES

22. SIGNATURES AFFIXED TO THE ORIGINAL OF A TREATY DEPOSITED WITH THE SECRETARY-GENERAL ELSEWHERE THAN THE PLACE PROVIDED FOR UNDER THE PROVISIONS OF THE TREATY — DISCRETION OF DEPOSITARY

### *Memorandum to the Director and Deputy to the Under-Secretary-General in charge of the Office of Legal Affairs*

1. The United Nations Office at Vienna has recently communicated its desire to be allowed to keep the original of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 19 December 1988<sup>10</sup> until 6 March 1989, since it is anticipated that a number of Ministers for Foreign Affairs will be at that time in Vienna to attend the European Conference on Disarmament and would like to take that opportunity to sign the Convention.

2. It is recalled that article 26 of the Convention provides as follows:

“This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989.”

3. On that basis, I had originally replied to United Nations Office at Vienna that the original had to be returned to Headquarters on 29 February 1989.

4. However, the Director-General of United Nations Office at Vienna has now personally insisted, in a cable addressed to the Legal Counsel, on the desirability of allowing for such signatures.

5. I have accordingly reviewed our practice and have ascertained that, at least on one occasion, the original of a treaty, which was open for signature at Headquarters in New York in accordance with its provisions, was taken to another city where signatures were then affixed. This exception was made in the case of the Convention on the Elimination of All Forms of Discrimination against Women,<sup>11</sup> which originally was transferred to Copenhagen in order to allow for signatures to be affixed on the occasion of the World Conference of the United Nations Decade for Women (14-30 July 1980). Although the situation here is slightly different, the principle involved — signature during a certain time period at a place other than that provided — is the same.

6. On two other occasions, a different procedure, but to the same effect, was used to allow such signatures: the originals were kept at Headquarters, as provided for in the agreements, but separate signature pages (for those States that had not yet signed at the time) were attached to a certified true copy, so as to form a “neo-original”. Signatures of the Agreement establishing the Common Fund for Commodities were thus allowed to be affixed at Paris for the duration of the United Nations Conference on Least Developed Countries (1-14 September 1981), and at Belgrade for the duration of the sixth United Nations Conference on Trade and Development (6-30 June 1983).

7. My concerns, in connection with the retention of the original in Vienna, are the following:

(a) In principle, the depositary should perform his functions strictly as provided for in the treaty;

(b) In general, the more exceptions are made, the more difficult it is to perform satisfactory depositary functions;

(c) The depositary might find himself at Headquarters in the position of having to advise a potential signatory that, to accommodate others, his own signature will have to be deferred, even though, under the clear provisions of the Convention, the original should not have been left in Vienna;

(d) In previous cases, the signatures were allowed on the occasion of a meeting convened within the framework of a conference related to the subject matter of the treaty concerned. Here, the treaty concerns narcotics, and the conference concerns disarmament. Multiplying the practice might result in "travelling" originals which would follow United Nations conferences all over the world.

8. However, it may of course conversely be maintained that the depositary always has some discretion in the performance of his duties and that, if he determines that the earlier implementation of the treaty concerned may be obtained by facilitating its signature, he then may use the procedures he may deem fit for the purpose.

9. Therefore, and under the special circumstances indicated by the Director-General of the United Nations Office at Vienna, and taking into account that the action envisaged would only result in a slight delay in the transfer of the original and that no additional risks of loss of the original would be entailed, an exception could perhaps also be made in the present case. If a potential signatory came forward in New York, we would first suggest that he defer the signature. If there were an urgency to have the signature affixed, we could as a last resort apply, in reverse, the procedure outlined in the paragraph above and have the signature affixed on a page which would be attached, under the depositary's responsibility, to a copy of the agreement.

10. Finally, with reference to your suggestion of having an announcement published in the *Journal of the United Nations*, perhaps we could word the announcement in such a way as not to underline the difficulty. The announcement, for example, could read:

"Opening for signature in New York as at ... March 1989 (until that date the Convention remains open for signature at Vienna)."

11. In conclusion, if it were felt that it was indeed desirable to go along with the Director-General's suggestion, there are precedents for the practice involved, and practical solutions could be found to remedy difficulties that could occur in that connection.

28 February 1989

**B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations**

UNITED NATIONS INDUSTRIAL DEVELOPMENT  
ORGANIZATION

(Legal opinions issued or prepared by the Legal Service)

1. MEMBERSHIP IN UNIDO — POSSIBLE REQUEST BY PALESTINE

*Memorandum to the Director-General*

1. You have requested advice on the legal implications of a possible request by Palestine for membership in UNIDO. In the following I shall refer to and comment on the applicable provisions of the Constitution of UNIDO and of the rules of procedure of the General Conference.

2. The basic provision is contained in article 3 of the Constitution, which reads as follows:

*“Article 3*

*Members*

Membership in the Organization is open to all States which associate themselves with the objectives and principles of the Organization:

(a) States Members of the United Nations or of a specialized agency or of the International Atomic Energy Agency may become members of the Organization by becoming parties to this Constitution in accordance with article 24 and paragraph 2 of article 25;

(b) States other than those referred to in subparagraph (a) may become members of the Organization by becoming parties to this Constitution in accordance with paragraph 3 of article 24 and subparagraph 2(c) of article 25, after their membership has been approved by the Conference, by a two-thirds majority of the members present and voting, upon the recommendation of the Board.”

3. It is seen that there are two alternative procedures for obtaining membership. If the requesting State is already a member of either the United Nations, a specialized agency of the United Nations or of the International Atomic Energy Agency, such a State may become a member of UNIDO when it accedes to the Constitution by depositing its instrument of ratification with the depositary,<sup>12</sup> namely, the Secretary-General of the United Nations.<sup>13</sup> The depositary functions of the Secretary-General are discharged by the Legal Counsel assisted by the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat.

4. In the event that there should be a difference of view between the depositary and one or more States Members of UNIDO regarding an action taken, or to be taken, by the depositary of the Constitution, it is the duty of the depositary to notify the States parties to the Constitution, as well as the Director-General, of the matter.<sup>14</sup>

5. In the event that the requesting State is not already a member of one of the organizations of the United Nations referred to in article 3(a) of the Constitution, it follows from article 3(b) that accession to the Constitution requires the prior approval of membership by a two-thirds majority of the members of the General Conference present and voting, upon recommendation of the Industrial Development Board. The recommendation by the Industrial Development Board requires a simple majority of the members of the Board present and voting.<sup>15</sup> The more detailed procedural requirements are addressed in rules 105 and 106 of the rules of procedure of the General Conference. It is seen, *inter alia*, that the request shall be made in the form of an application submitted to the Director-General and that the application shall be accompanied by a formal declaration of acceptance of the Organization's objectives and principles, as well as its Constitution. The application (and the Board's recommendation on it) shall be considered by the General Conference at its next regular or special session. If the Board's recommendation is made during a session of the General Conference, the application shall be considered at that session.

6. Whether in case of the procedure under article 3(a) or the procedure under article 3(b) of the Constitution, the question of an applicant's eligibility for membership in UNIDO will ultimately be decided by the members of UNIDO. As some members may hold the view that Palestine does not presently have all the attributes required by international law for an entity to constitute a sovereign State, it is relevant to recall the precedent set by the admission of Namibia, represented by the United Nations Council for Namibia, to membership in UNIDO even though several members held (and continue to hold) the view that "Namibia is not a State". Namibia, represented by the Council for Namibia, being already a full member of ILO, UNESCO, FAO, IAEA and ITU and an associate member of WHO, was admitted under article 3(a) of the UNIDO Constitution.

18 April 1989

## 2. COMMERCIALIZATION OF UNIDO'S TECHNOLOGIES

### *Memorandum to the Chairman of the Operational Task Force*

1. I wish to refer to your memorandum of 15 February 1989, requesting the information on certain legal aspects connected with the possible commercialization of environmental technologies developed by UNIDO. The delay in replying to your requests is attributable to the pressure of work, which leaves little time for the consideration of future strategies.

2. Generally speaking, if a programme were to be started by UNIDO, which has as an essential component the generation of substantial income to the Organization from the sale or licensing of technology developed by the Organi-

zation, this would constitute a departure from the general policies and practices followed so far by UNIDO. Whether or not such a departure would require endorsement by the policy-making organs of UNIDO, and in which form, is a matter that may need consideration.

3. Although the files of the Legal Service indicate that the old UNIDO held a patent to an industrial process jointly with the Government of India, no income was received from the patent. As the following will show, the general policy of UNDP and of UNIDO is to ensure that technology developed on projects executed by UNIDO is freely available for anyone to use. Therefore, applications for patents are not filed, but the technology or know-how is ceded to the public domain.

4. Most of the technical cooperation projects executed by UNIDO are funded by UNDP and, therefore, governed by the legal arrangements made by UNDP and the Governments receiving assistance and with executing agencies of UNDP (such as UNIDO). The policy of UNDP with regard to inventions or know-how resulting from work on projects funded by UNDP is set out in article III, paragraph 8, of the UNDP Standard Basic Assistance Agreement with Governments, as well as in the Basic Agreements with executing agencies. The former reads:

“8. Patent rights, copyrights and other similar rights to any discoveries or work resulting from UNDP assistance under this Agreement shall belong to UNDP. Unless otherwise agreed by the parties in each case, however, the Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of similar nature.”

It follows from this clause that UNDP must agree to any application for a patent and in this connection UNIDO would have to negotiate all aspects with UNDP on an ad hoc basis if and when a patentable discovery has been made. In practice, UNIDO does not pursue such possibilities with UNDP. There may be a variety of reasons for this, including lack of interest of the recipient Government (which in any case has the rights inside the country) and the considerable cost of filing applications and obtaining patents worldwide.

5. If a project is funded by UNIDO (Industrial Development Fund or trust fund) the applicable policy established by the Industrial Development Board and the General Conference is stated in article IV, paragraph 10, of the Standard Basic Cooperation Agreement between UNIDO and Governments receiving assistance from UNIDO, adopted on 12 December 1985, by General Conference decision GC.1/Dec.40. The provision reads:

“10. Patent rights, copyrights and other similar rights to any discoveries or work resulting from UNIDO assistance under this Agreement shall belong to UNIDO. Unless otherwise agreed by the Government and UNIDO in each case, however, the Government shall have the rights to any such discoveries or work within the country free of royalty or any charge of similar nature.”

It is seen that the basic principle in the case of UNIDO-funded projects is the same as for UNDP-funded projects. In the former case, however, UNDP's agreement is not required before UNIDO files a patent application. Nevertheless, no such application has been filed for the same variety of reasons that UNDP has not been approached by UNIDO on the matter of filing for patents.

6. If it were to be determined in a concrete case that UNIDO should protect the know-how on technology developed by it by holding patent rights in one or more countries, it would for legal and practical reasons be necessary to retain specialized patent attorney(s) in one or more countries and to charge the — not insignificant — legal costs to the project concerned. The Legal Service of UNIDO would be in a position to instruct and guide the patent attorney(s) concerned and in this manner safeguard UNIDO's legal interests in the matter.

7. The comments under paragraph 6 above also apply to the projects being executed by UNIDO for the establishment in New Delhi and Trieste of the International Centre for Genetic Engineering and Biotechnology. In this connection legal assistance also will be required for the formulation of agreements with non-UNIDO research institutions on the modalities for so-called collaborative research programmes, including the approach to and disposition of eventual intellectual property rights in the work resulting from the collaborative research programmes.

5 May 1989

3. QUESTION OF ATTRIBUTING AUTHORSHIP TO STAFF MEMBERS — RANKING SYSTEM OF THE RULES OF UNIDO — AUTHORITY TO AMEND THE RULES AND THE FORM OF SUCH AMENDMENT

*Memorandum to the Chairman of the Publications Board*

1. It has been brought to my attention that the Publications Board at its meeting to be held on 8 August 1989 will review the varying practice in the United Nations system concerning whether and in which cases authorship of publications may or should be attributed to staff members. In view of the wide implications of this issue both from a policy and a legal viewpoint, I wish to offer the following observations for your consideration.

2. The informal note (Pub 21 — item 4, Attribution of authorship), distributed in advance of the meeting of the Publications Board, first recalls the applicable United Nations rule, namely that attribution to individual staff members may not be made in papers, documents or publications of the United Nations. Then the note makes the following untrue statement:

“While UNIDO was part of the United Nations, the rule quoted above applied also to its publications. When UNIDO became a specialized agency, however, it was no longer bound by United Nations rules.”

In fact, this matter is expressly dealt with by article 26.2 of the Constitution of UNIDO, which reads:

“2. The rules and regulations governing the organization established by United Nations General Assembly resolution 2152 (XXI) shall govern the Organization and its organs until such time as the latter may adopt new provisions.”

Upon reflection, it is obvious that the new UNIDO at first necessarily had to function under the system of internal rules of the former UNIDO; to have

abandoned all internal rules would have been tantamount to decreeing anarchy. Consequently, the above-quoted United Nations rule continues to apply to UNIDO, notwithstanding that the Languages and Documentation Division admits to having had difficulty in maintaining consistent practice in this respect.

3. In fact, the United Nations rule on attribution of authorship is only one of many rules making up the body of rules, which was applicable to the old UNIDO between 21 June 1985, when the Constitution entered into effect, and 31 December 1985, when the old UNIDO was abolished, and which continues to apply to the present Organization, unless replaced by a different rule duly adopted by the appropriate authority of the new UNIDO.

4. The foregoing considerations lead to the question of which is the authority in the new UNIDO that is competent to amend the United Nations rule on attribution of authorship? And what is the appropriate form? The answers to these questions may be prefaced by noting that the United Nations rule was in the form of an administrative instruction issued under the authority of the Secretary-General of the United Nations in his capacity of Chief Administrative Officer of the Organization.<sup>17</sup> In the practice of the United Nations Secretariat, an administrative instruction is used for rules that are normative and binding on the staff and which in the hierarchy of such norms rank below staff and financial rules. Staff and financial rules also are issued by the Secretary-General and therefore rank below the Staff Regulations and Financial Regulations since the latter are adopted by the General Assembly. UNIDO has a similar ranking system:

*Level 1: The Constitution*

*Level 2: Rules of procedure of the policy-making organs; Financial and Staff Regulations*

(a) The General Conference adopts its own rules of procedure (Const. art. 8.5)

(b) The Industrial Development Board adopts its own rules of procedure (Const. art. 9.5)

(c) The Programme and Budget Committee adopts its own rules of procedure (Const. art. 10.5)

(d) The General Conference approves Financial Regulations (Const. art. 8.3(c))

(e) The General Conference, upon recommendation of the Board, establishes Staff Regulations. (Const. art. 11.5).

*Level 3: Headquarters Regulations:* Based on article III, section 8, of the 1967 Headquarters Agreement and pursuant to rule 60 of its rules of procedure, the General Conference, upon recommendation of the Board, may establish regulations operative within the headquarters seat of UNIDO.

*Level 4: Financial and Staff Rules*

(a) Financial rules are issued by the Director-General pursuant to financial regulation 12.1 and they are applied subject to the Financial Regulations.

(b) Staff rules are issued by the Director-General pursuant to financial regulation 12.4 (of the United Nations: see GC.2/Dec.29) and they are applied subject to the Financial Regulations.

*Level 5: Administrative instructions*

(a) Administrative instructions may be issued by the Deputy Director-General for Administration in consultation with the Director-General to amplify the Financial Rules (Fin. Rule 112.4).

(b) Administrative instructions may be issued by the Director, Personnel Services Division, in consultation with the Deputy Director-General for Administration, or the Director-General, as appropriate (staff rule 113.2). Such administrative instructions amplify the Staff Rules.

*Level 6: Director-General's bulletins*

A considerable number of bulletins have been issued by the Director-General in his capacity of Chief Administrative Officer. The contents range from binding rules such as financial and staff rules, over guidelines and model legal texts, to the establishment of intra-Secretariat committees, including their terms of reference and membership. Administrative instructions have not been issued as bulletins of the Director-General.

*Level 7: Directives and instructions with limited circulation*

While the rules at levels 1 to 6 are given general circulation to all staff, personnel directives were issued by the United Nations Assistant Secretary-General for Personnel Services only to Personnel Officers. The United Nations Administrative Tribunal has held that such personnel directives are binding, can be invoked by a staff member before the Tribunal and may constitute a valid basis for a claim. Financial Services instructions are issued by the Head, Financial Services Division of UNIDO, and are distributed only to relevant staff in that division.<sup>18</sup>

Not included in any of the foregoing seven categories are numerous other circulars which predominantly contain information or are of a limited duration or scope.

5. Having set out the general ranking order of the internal rules of UNIDO,<sup>19</sup> which must be observed when applying the rules, I wish to turn again to the question of how the currently applicable United Nations rule on the attribution of authorship might appropriately be amended. An examination of the

terms of reference of the Publications Board shows that it does not have the authority to amend or issue binding rules at the level of the administrative instruction, or at a higher level. It is, however, clear that a change that would allow attribution of authorship involves not only a policy issue appropriate for consideration by the Publications Board, but also would affect the employment relationship between staff members and the Organization.

In fact, there are two staff rules that directly affect the substance of the matter, namely rule 101.05 on proprietary rights and rule 101.02 on communication of information. Rule 101.05 provides that:

“All rights, including title, copyright and patent rights, in any work performed by a staff member as part of his or her official duties, shall be vested in the Organization.”

Rule 101.02 provides, *inter alia*:

“Except in the normal course of official duties, staff members shall be required to seek prior approval of the Director-General for performance of any of the following acts, if such acts relate to the purpose, activities or interests of the Organization:

(iv) Submit articles, books or other material for publication.”

In addition to being an aspect of the employment relationship that is important for at least some of the staff at the Professional level, the question whether authorship may be attributed has policy implications for all departments of the Secretariat as well as for the Office of the Director-General, and it therefore might be helpful to circulate contemplated new rules in draft to all concerned for written comments and, if necessary, to recirculate a revised draft based on the comments. Considering, finally, that the new rules may be considered to amplify the staff rules and that authority to issue administrative instructions has not been delegated to a greater extent than in the Financial and Staff Rules mentioned above, it would seem to be the most appropriate approach for the Publications Board to take up the matter initially with the Deputy Director-General for Administration and the Director for Personnel Services, as well as at a later stage with the Director-General himself, with a view to preparing the issuance of an administrative instruction pursuant to staff rule 113.02(c).

3 August 1989

## NOTES

<sup>1</sup>United Nations, *Treaty Series*, vol. 555, p. 132.

<sup>2</sup>See United Nations Administrative Tribunal Judgements Nos. 230, 233, 255, 281 and 298.

<sup>3</sup>United Nations, *Treaty Series*, vol. 11 (1947), p. 11.

<sup>4</sup>“Mention of firm names and commercial products does not imply the endorsement of the United Nations.”

<sup>5</sup>“Inclusion in the ‘World Aid’ supplement to *Development Business* does not necessarily imply the endorsement of any firm or product by the United Nations or its specialized agencies.”

<sup>6</sup>E.g., the word “necessarily” should be deleted if the disclaimer set forth in the second footnote to para. 9 continues to be used.

<sup>7</sup>United Nations publication, Sales No. E.83.V5.

<sup>8</sup>United Nations, *Treaty Series*, vol. 1, p. 15.

<sup>9</sup>*Ibid.*, vol. 500, p. 95.

<sup>10</sup>E | CONF.82 | 15, Corr.1 and 2. English only.

<sup>11</sup>United Nations, *Treaty Series*, vol. 1249, p. 13.

<sup>12</sup>UNIDO Constitution, Article 24.3.

<sup>13</sup>Article 28.1.

<sup>14</sup>Article 28.2 of the Constitution provides: “In addition to notifying the States concerned, the depositary shall notify the Director-General of all matters affecting this Constitution.”

<sup>15</sup>Rule 51.4 of the rules of procedure of the Industrial Development Board.

<sup>16</sup>Administrative instruction ST/AI/189/Add.6/Rev.2.

<sup>17</sup>Charter of the United Nations, Article 97.

<sup>18</sup>In view of the issuance by the Director-General of new financial and staff rules for UNIDO, the continued validity of these Personnel Directives and Financial Services Instructions is legally questionable, in particular, as far as issuances after the entry into force of the financial and staff rules are concerned and in case of inconsistency with a financial or staff rule.

<sup>19</sup>It is an interesting comment on the complexity created by the multitude of rules issued at divergent levels of authority that at the present time no Office in the Secretariat appears to have responsibility for streamlining the system and coordinating the issuance of new rules.



**Part Three**

**JUDICIAL DECISIONS ON QUESTIONS  
RELATING TO THE UNITED NATIONS AND  
RELATED INTERGOVERNMENTAL  
ORGANIZATIONS**



## Chapter VII

### DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

#### International Court of Justice

##### APPLICABILITY OF ARTICLE VI, SECTION 22, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS<sup>1</sup> (REQUEST FOR ADVISORY OPINION)

*Request for an advisory opinion by the Economic and Social Council of the United Nations — Competence of I.C.J. in case — Propriety of I.C.J. to give an advisory opinion in case — “Experts on mission” — Question of members and special rapporteurs of the Subcommission being regarded as experts on mission — Question of whether health problems changed status of individual appointed special rapporteur*

On 24 May 1989 the Economic and Social Council of the United Nations adopted resolution 1989/75, whereby it requested the Court to give, on a priority basis, an advisory opinion

“on the legal question of the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations<sup>2</sup> in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Subcommission”

on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights.

The letter from the Secretary-General, transmitting to the Court the request for advisory opinion and certified copies of the English and French texts of the resolution, was received in the Registry on 13 June 1989.

In an Order of 14 June 1989 (*I.C.J. Reports 1989*, p. 9), the President of the Court decided that the United Nations and the States parties to the Convention on the Privileges and Immunities of the United Nations were considered likely to be able to furnish information on the question and, bearing in mind that the request was expressed to be made “on a priority basis”, fixed 31 July 1989 as the time limit for the submission of written statements and 31 August 1989 for the submission of subsequent written comments on those statements.

Pursuant to the Statute, the Secretary-General of the United Nations transmitted to the Court a dossier of documents likely to throw light upon the question.

Written statements were filed, within the time limit fixed, by the United Nations and by Canada, the Federal Republic of Germany, Romania and the United States of America.

At public sittings held on 4 and 5 October 1989, oral statements were made before the Court by Mr. Carl-August Fleischhauer, the United Nations Legal Counsel, on behalf of the Secretary-General, and by Mr. Abraham Sofaer, Legal

Adviser, Department of State, on behalf of the United States of America. Questions were put by Members of the Court to the representative of the Secretary-General, and answered before the close of the oral proceedings.

At a public sitting held on 15 December 1989, the Court delivered its Advisory Opinion (*I.C.J. Reports 1989*, p. 177), of which a summary outline and the complete text of the operative paragraph are given below.

I. *Review of the proceedings and summary of facts* (paras. 1-26)

The Court outlined the successive stages of the proceedings before it (paras. 1-8) and then summarized the facts of the case (paras. 9-26).

On 13 March 1984 the Commission on Human Rights — a subsidiary organ of the Economic and Social Council (hereinafter called “the Council”), created by it in 1946 in accordance with Articles 55 (c) and 68 of the Charter of the United Nations — elected Mr. Dumitru Mazilu, a Romanian national nominated by Romania, to serve as a member of the Subcommission on Prevention of Discrimination and Protection of Minorities — a subsidiary organ set up in 1947 by the Commission on Human Rights (hereinafter called “the Commission”) — for a three-year term due to expire on 31 December 1986. As the Commission had called upon the Subcommission on Prevention of Discrimination and Protection of Minorities (hereinafter called “the Subcommission”) to pay due attention to the role of youth in the field of human rights, the Subcommission at its thirty-eighth session adopted on 29 August 1985 resolution 1985/12 whereby it requested Mr. Mazilu to:

“prepare a report on human rights and youth analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education and work”

and requested the Secretary-General to provide him with all necessary assistance for the completion of the task.

The thirty-ninth session of the Subcommission, at which Mr. Mazilu’s report was to be presented, was not convened in 1986 as originally scheduled but was postponed until 1987. The three-year mandate of its members — originally due to expire on 31 December 1986 — was extended by Council decision 1987/102 for an additional year. When the thirty-ninth session of the Subcommission opened in Geneva on 10 August 1987 no report had been received from Mr. Mazilu, nor was he present. By a letter received by the United Nations Office at Geneva on 12 August 1987, the Permanent Mission of Romania to that Office informed it that Mr. Mazilu had suffered a heart-attack and was still in hospital. According to the written statement of the Secretary-General, a telegram signed “D. Mazilu” was received in Geneva on 18 August 1987 and informed the Subcommission of his inability, owing to heart illness, to attend the current session. In these circumstances, the Subcommission adopted decision 1987/112 on 4 September 1987, whereby it deferred consideration of item 14 of its agenda — under which the report on human rights and youth was to have been discussed — until its fortieth session rescheduled for 1988. Notwithstanding the scheduled expiration on 31 December 1987 of Mr. Mazilu’s term as a member of the Subcommission, the latter included reference to a report to be submitted by him, identified by name, under the agenda item “Prevention of discrimination

and protection of children”, and entered the report, under the title “Human rights and youth” in the “List of studies and reports under preparation by members of the Subcommission in accordance with the existing legislative authority”.

After the thirty-ninth session of the Subcommission, the Centre for Human Rights of the United Nations Secretariat in Geneva made various attempts to contact Mr. Mazilu to provide him with assistance in the preparation of his report, including arranging a visit to Geneva. In December 1987, Mr. Mazilu informed the Under-Secretary-General for Human Rights that he had not received the previous communications of the Centre. In January 1988, Mr. Mazilu informed him that he had been twice in hospital in 1987, and that he had been forced to retire, as of 1 December 1987, from his various governmental posts. He also stated that he was willing to travel to Geneva for consultations, but that the Romania authorities were refusing him a travel permit. In April and May 1988, Mr. Mazilu, in a series of letters, further described his personal situation; in particular, he alleged that he had refused to comply with the request addressed to him on 22 February 1988 by a special commission from the Romanian Ministry of Foreign Affairs voluntarily to decline to submit his report to the Subcommission and, moreover, consistently complained that strong pressure had been exerted on him and on his family.

On 31 December 1987, the terms of all members of the Subcommission, including Mr. Mazilu, expired as has already been indicated. On 29 February 1988 the Commission, upon nomination by their respective Governments, elected new members of the Subcommission among whom was Mr. Ion Diaconu, a Romanian national.

All the rapporteurs and special rapporteurs of the Subcommission were invited to attend its fortieth session (8 August-2 September 1988), but Mr. Mazilu again did not appear. A special invitation was cabled to him, to go to Geneva to present his report, but the telegrams were not delivered and the United Nations Information Centre in Bucharest was unable to locate Mr. Mazilu. On 15 August 1988, the Subcommission adopted decision 1988/102, whereby it requested the Secretary-General:

“to establish contact with the Government of Romania and to bring to the Government’s attention the Subcommission’s urgent need to establish personal contact with its Special Rapporteur Mr. Dumitru Mazilu and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Subcommission and the secretariat to help him in the completion of his study on human rights and youth if he so wished”.

The Under-Secretary-General for Human Rights informed the Subcommission on 17 August 1988 that, in contacts between the Secretary-General’s Office and the Chargé d’affaires of the Permanent Mission of Romania to the United Nations in New York, he had been told that the position of the Romanian Government was that any intervention by the United Nations Secretariat and any form of investigation in Bucharest would be considered interference in Romania’s internal affairs. On 1 September 1988, the Subcommission adopted resolution 1988/37, by which, *inter alia*, it requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations (hereinafter

called “the General Convention”); and further requested him, in the event that the Government of Romania did not concur in the applicability of the provisions of that Convention in that case, to bring the difference between the United Nations and Romania immediately to the attention of the Commission in 1989. It also requested the Commission, in that event, to urge the Council:

“to request, in accordance with General Assembly resolution 89 (I) of 11 December 1946, from the International Court of Justice an advisory opinion on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the present case and within the scope of the present resolution”.

Pursuant to that resolution the Secretary-General, on 26 October 1988, addressed a note verbale to the Permanent Representative of Romania to the United Nations in New York, in which he invoked the General Convention in respect of Mr. Mazilu and requested the Romanian Government to accord Mr. Mazilu the necessary facilities in order to enable him to complete his assigned task. As no reply had been received to that note verbale, the Under-Secretary-General for Human Rights on 19 December 1988 wrote a letter of reminder to the Permanent Representative of Romania to the United Nations Office at Geneva, in which he asked that the Romanian Government assist in arranging for Mr. Mazilu to visit Geneva so that he could discuss with the Centre for Human Rights the assistance it might give him in preparing his report. On 6 January 1989, the Permanent Representative of Romania handed to the Legal Counsel of the United Nations an aide-mémoire in which was set forth the Romanian Government’s position concerning Mr. Mazilu. On the facts of the case, Romania stated that Mr. Mazilu, who had not prepared or produced anything on the subject entrusted to him, had in 1987 become gravely ill; that he had had repeatedly to go into hospital; that he had, at his own request, been placed on the retired list on grounds of ill-health for an initial period of one year, in accordance with Romanian law; and that retirement had been extended after he had been further examined by a similar panel of doctors. On the law, Romania expressed the view that “the problem of the application of the General Convention [did] not arise in this case”. It went on to explain, *inter alia*, that the Convention “does not equate rapporteurs, whose activities are only occasional, with experts on missions for the United Nations”; that “even if rapporteurs are given some of the status of experts ... they can enjoy only functional immunities and privileges”; that the “privileges and immunities provided by the Convention begin to apply only at the moment when the expert leaves on a journey connected with the performance of his mission”; and that “in the country of which he is a national ... an expert enjoys privileges and immunities only in respect of actual activities ... which he performs in connection with his mission”. Moreover, Romania stated expressly that it was opposed to a request for advisory opinion from the Court of any kind in this case. Similar contentions were also put forward in the written statement presented by Romania to the Court.

On 6 March 1989, the Commission adopted its resolution 1989/37 recommending that the Council request an advisory opinion from the Court. The Council on 24 May 1989 adopted its resolution 1989/75, by which it requested the Court to render an opinion.

The Court had also been informed by the Secretary-General of the following events which occurred after the request for advisory opinion was made: A report on human rights and youth prepared by Mr. Mazilu was circulated as a document of the Subcommission bearing the date 10 July 1989; the text of this report had been transmitted by Mr. Mazilu to the Centre for Human Rights through various channels. On 8 August 1989, the Subcommission decided, in accordance with its practice, to invite Mr. Mazilu to participate in the meetings at which his report was to be considered: no reply was received to the invitation extended. By a note verbale dated 15 August 1989 from the Permanent Mission of Romania to the United Nations Office at Geneva addressed to that office, the Permanent Mission referred to “the so-called report” by Mr. Mazilu, expressed surprise “that the medical opinions made available to the Centre for Human Rights ... have been ignored” and indicated, *inter alia*, that since becoming ill in 1987, Mr. Mazilu did not

“possess the intellectual capacity necessary for making an objective, responsible and unbiased analysis that could serve as the substance of a report consistent with the requirements of the United Nations”.

On 1 September 1989, the Subcommission adopted resolution 1989/45, entitled “The report on human rights and youth prepared by Mr. Dumitru Mazilu” by which, noting that Mr. Mazilu’s report had been prepared in difficult circumstances and that the relevant information collected by the Secretary-General appeared not to have been delivered to him, it invited him to present the report in person to the Subcommission at its next session, and also requested the Secretary-General to continue providing Mr. Mazilu with all the assistance he might need in updating his report, including consultations with the Centre for Human Rights.

## II. *The question laid before the Court* (para. 27)

The Court recalled the terms of the question laid before it by the Council. It pointed out that, in his written statement, the Secretary-General had emphasized that the Council’s request related to the applicability of section 22 of the Convention in the case of Mr. Mazilu but not to

“the consequences of that applicability, that is ... [the question of] what privileges and immunities Mr. Mazilu might enjoy as a result of his status and whether or not these had been violated”.

The Court moreover noted that, during the oral proceedings, the representative of the Secretary-General had observed that it was suggestive of the Council’s intention that, having referred to a “difference”, it “then did not attempt to have that difference as a whole resolved by the question it addressed to the Court”, but “merely addressed a preliminary legal question to the Court”.

## III. *Competence of the Court to give an advisory opinion* (para. 28-36)

The Court began by pointing out that the request for advisory opinion was the first request made by the Council, pursuant to paragraph 2 of Article 96 of the Charter. It went on to note that, in accordance with that provision, the Gen-

eral Assembly, by its resolution 89 (I) of 11 December 1946, had authorized the Council to request advisory opinions of the Court on legal questions arising within the scope of its activities. Then, having considered the question which was the subject of the request, the Court took the view, first, that it was a legal question in that it involved the interpretation of an international convention in order to determine its applicability and, moreover, that it was a question arising within the scope of the activities of the Council, as Mr. Mazilu's assignment was pertinent to a function and programme of the Council and as the Subcommission, of which he was appointed special rapporteur, was a subsidiary organ of the Commission which was itself a subsidiary organ of the Council.

As Romania had nonetheless contended that the Court "cannot find that it has jurisdiction to give an advisory opinion" in this case, the Court then considered its arguments. Romania claimed that, because of the reservation made by it to section 30 of the General Convention, the United Nations could not, without Romania's consent, submit a request for advisory opinion in respect of its difference with Romania. The reservation, it was said, subordinated the competence of the Court to "deal with any dispute that may have arisen between the United Nations and Romania, including a dispute within the framework of the advisory procedure," to the consent of the parties to the dispute. Romania pointed out that it did not agree that an opinion should be requested of the Court in this case.

Section 30 of the General Convention provides that:

"All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

The reservation contained in Romania's instrument of accession to that Convention is worded as follows:

"The Romanian People's Republic does not consider itself bound by the terms of section 30 of the Convention which provide for the compulsory jurisdiction of the International Court in differences arising out of the interpretation or application of the Convention; with respect to the competence of the International Court in such differences, the Romanian People's Republic takes the view that, for the purpose of the submission of any dispute whatsoever to the Court for a ruling, the consent of all the parties to the dispute is required in every individual case. This reservation is equally applicable to the provisions contained in the said section which stipulate that the advisory opinion of the International Court is to be accepted as decisive."

The Court began by referring to its earlier jurisprudence, recalling that the consent of States is not a condition precedent to its competence under Article 96 of the Charter and Article 65 of the Statute to give advisory opinions, although such advisory opinions are not binding. This applies even when the request for

an opinion is seen as relating to a legal question pending between the United Nations and a Member State. The Court then noted that section 30 of the General Convention operates on a different plane and in a different context from that of Article 96 of the Charter as, when the provisions of that section are read in their totality, it is clear that their object is to provide a dispute settlement mechanism. If the Court had been seised with a request for an advisory opinion made under section 30, it would of course have had to consider any reservation which a party to the dispute had made to that section. However, in this case, the Court recalled that the Council's resolution contained no reference to section 30 and considered that it was evident from the dossier that, in view of the existence of the Romanian reservation, it was not the intention of the Council to invoke that section. The Court found that the request was not made under section 30 and that it accordingly did not need to determine the effect of the Romanian reservation to that provision.

Romania had, however, contended, *inter alia*, that

“If it were accepted that a State party to the Convention, or the United Nations, might ask for disputes concerning the application or interpretation of the Convention to be brought before the Court on a basis other than the provisions of section 30 of the Convention, that would disrupt the unity of the Convention, by separating the substantive provisions from those relating to dispute settlement, which would be tantamount to a modification of the content and extent of the obligations entered into by States when they consented to be bound by the Convention.”

The Court recalled that the nature and purpose of the proceedings before it were those of a request for advice on the applicability of a part of the General Convention, and not the bringing of a dispute before the Court for determination. It added that the “content and extent of the obligations entered into by States” — and, in particular, by Romania — “when they consented to be bound by the Convention” were not modified by the request and by the Court's advisory opinion.

The Court thus found that the reservation made by Romania to section 30 of the General Convention did not affect the Court's jurisprudence to entertain the request submitted to it.

#### IV. *Propriety of the Court giving an opinion* (paras. 37-39)

While the absence of the consent of Romania to the proceedings before the Court could have no effect on its jurisdiction, the Court found that this was a matter to be considered when examining the propriety of its giving an opinion. The Court had recognized in its earlier jurisprudence, *inter alia*, that in “certain circumstances ... the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character” and had observed that an

“instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”.

The Court considered that in this case to give a reply would have no such effect. Certainly the Council, in its resolution 1989/75, did conclude that a difference had arisen between the United Nations and the Government of Romania as to the *applicability* of the Convention to Mr. Dumitru Mazilu. It nonetheless seemed to the Court that this difference, and the question put to the Court in the light of it, was not to be confused with the dispute between the United Nations and Romania with respect to the *application* of the General Convention in the case of Mr. Mazilu. Accordingly, the Court did not find any “compelling reason” to refuse an advisory opinion, and decided to reply to the legal question on which such an opinion had been requested.

V. *Meaning of article VI, section 22, of the General Convention* (paras. 40-52)

The General Convention contains an article VI entitled “Experts on missions for the United Nations”, divided into two sections. Section 22 provides as follows:

“Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) Inviolability for all papers and documents;

(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.”

The Court considered first what was meant by “experts on missions” for the purposes of section 22 and noted that the General Convention gave no definition of “experts on missions”. From section 22 it was clear, firstly that the officials of the Organization, even if chosen in consideration of their technical

expertise in a particular field, were not included in the category of experts within the meaning of that provision; and secondly that only experts performing missions for the Organization were covered by section 22. That section did not, however, furnish any indication of the nature, duration or place of these missions. Nor did the *travaux préparatoires* provide any more guidance in this respect. The Court found that the purpose of section 22 is nevertheless evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization and to guarantee them “such privileges and immunities as are necessary for the independent exercise of their functions”. The Court noted that in practice, according to the information supplied by the Secretary-General, the United Nations had had occasion to entrust missions — increasingly varied in nature — to persons not having the status of United Nations officials. Such persons had been entrusted with mediation, with preparing reports, preparing studies, conducting investigations or finding and establishing facts. In addition, many committees, commissions or similar bodies whose members served, not as representatives of States, but in a personal capacity, had been set up within the Organization. In all these cases, the practice of the United Nations showed that the persons so appointed, and in particular the members of these committees and commissions, had been regarded as experts on missions within the meaning of section 22.

The Court then turned its attention to the meaning of the phrase “during the period of their missions, including the time spent on journeys”, which is part of that Section. In this connection the question arose whether “experts on missions” are covered by section 22 only during missions requiring travel or whether they are also covered when there is no such travel or apart from such travel. To answer this question the Court considered it necessary to determine the meaning of the word “mission” in English and “*mission*” in French, the two languages in which the General Convention was adopted. Initially, the word referred to a task entrusted to a person only if that person was sent somewhere to perform it. It had however long since acquired a broader meaning and nowadays embraced in general the tasks entrusted to a person, whether or not those tasks involved travel. The Court considered that section 22, in its reference to experts performing missions for the United Nations, used the word “mission” in a general sense. While some experts have necessarily to travel in order to perform their tasks, others can perform them without having to travel. In either case, the intent of section 22 was to ensure the independence of such experts in the interests of the Organization by according them the privileges and immunities necessary for the purpose. The Court accordingly concluded that section 22 was applicable to every expert on mission, whether or not he travelled.

The Court finally took up the question whether experts on missions can invoke the privileges and immunities provided for in section 22 against the States of which they are nationals or on the territory of which they reside. In this connection, it noted that section 15 of the General Convention provides that the terms of article IV, sections 11, 12 and 13, relating to the representatives of Members, “are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative”, and observed that article V, concerning officials of the Organization, and article VI, concerning experts on missions for the United Nations, did not contain any comparable rule. It found that this difference of approach could readily

be explained: the privileges and immunities of articles V and VI were conferred with a view to ensuring the independence of international officials and experts in the interests of the Organization; this independence should be respected by all States, including the State of nationality and the State of residence. The Court noted, moreover, that some States parties to the General Convention had entered reservations to certain provisions of article V or of article VI itself, as regards their nationals or persons habitually resident on their territory. In its view, the very fact that it was necessary to make these reservations confirmed that in the absence of such reservations, experts on missions enjoyed the privileges and immunities provided for under the General Convention in their relations with the States of which they were nationals or on the territory of which they resided.

To sum up, the Court took the view that section 22 of the General Convention was applicable to persons (other than United Nations officials) to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in this section with a view to the independent exercise of their functions; that during the whole period of such missions, experts enjoyed these functional privileges and immunities whether or not they travelled; and that those privileges and immunities might be invoked as against the State of nationality or of residence unless a reservation to section 22 of the General Convention had been validly made by that State.

*VI. Applicability of article VI, section 22, of the General Convention to special rapporteurs of the Subcommission (paras. 53-55)*

Having emphasized that the situation of rapporteurs of the Subcommission was one which touched on the legal position of rapporteurs in general and was thus one of importance for the whole of the United Nations system, the Court noted that on 28 March 1947, the Council had decided that the Subcommission would be composed of 12 eminent persons, designated by name, subject to the consent of their respective national Governments, and that the members of the Subcommission, at present 25 in number, had subsequently been chosen by the Commission under similar conditions; it observed that the Council, in its resolution 1983/32 of 27 May 1983, expressly “recall[ed] ... that members of the Subcommission are elected by the Commission ... as experts in their individual capacity”. The Court therefore found that, since their status was neither that of a representative of a Member State nor that of a United Nations official, and since they performed independently for the Subcommission functions contemplated in its remit, the members of the Subcommission should be regarded as experts on missions within the meaning of Section 22.

The Court further noted that, in accordance with the practice followed by many United Nations bodies, the Subcommission had from time to time appointed rapporteurs or special rapporteurs with the task of studying specified subjects; it also noted that, while these rapporteurs or special rapporteurs are normally selected from among members of the Subcommission, there have been cases in which special rapporteurs have been appointed from outside the Sub-

commission or have completed their report only after their membership of the Subcommission had expired. In any event, rapporteurs or special rapporteurs are entrusted by the Subcommission with a research mission. The Court concluded that since their status is neither that of a representative of a Member State nor that of a United Nations official, and since they carry out such research independently on behalf of the United Nations, they must be regarded as experts on missions within the meaning of section 22, even in the event that they are not, or are no longer, members of the Subcommission. This led the Court to infer that they enjoy, in accordance with that section, the privileges and immunities necessary for the exercise of their functions, and in particular for the establishment of any contacts which may be useful for the preparation, the drafting and the presentation of their reports to the Subcommission.

*VII. Applicability of article VI, section 22, of the General Convention in the case of Mr. Mazilu (paras. 56-60)*

The Court observed, in the light of the facts presented, that Mr. Mazilu had, from 13 March 1984 to 29 August 1985, the status of a member of the Subcommission; that from 29 August 1985 to 31 December 1987, he was both a member and a rapporteur of the Subcommission; and finally that, although since the last-mentioned date he had no longer been a member of the Subcommission, he had remained a special rapporteur. The Court found that at no time during the period had he ceased to have the status of an expert on mission within the meaning of section 22, or ceased to be entitled to the privileges and immunities provided for therein.

The Court nevertheless recalled that doubt had been expressed by Romania as to whether Mr. Mazilu was capable of performing his task as special rapporteur after being taken seriously ill in May 1987 and being subsequently placed on the retired list pursuant to decisions taken by the competent medical practitioners, in accordance with the applicable Romanian legislation; that Mr. Mazilu himself had informed the United Nations that the state of his health did not prevent him from preparing his report or from going to Geneva; and finally that, when a report by Mr. Mazilu had been circulated as a document of the Subcommission, Romania had called into question his "intellectual capacity" to draft "a report consistent with the requirements of the United Nations". After pointing out that it was not for it to pronounce on the state of Mr. Mazilu's health or on its consequences on the work he had done or was to do for the Subcommission, the Court pointed out that it was for the United Nations to decide whether in the circumstances it wished to retain Mr. Mazilu as special rapporteur and took note that decisions to that effect had been taken by the Subcommission.

The Court was of the opinion that in those circumstances Mr. Mazilu continued to have the status of special rapporteur, that as a consequence he should be regarded as an expert on mission within the meaning of section 22 of the General Convention and that that section was accordingly applicable in the case of Mr. Mazilu.

*Operative paragraph (para. 61)*

“For these reasons,

THE COURT,

Unanimously,

*Is of the opinion* that article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Mr. Dumitru Mazilu as a special rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities.”

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Judges Oda, Evensen and Shahabuddeen appended separate opinions to the Advisory Opinion (*I.C.J. Reports 1989*, pp. 200-209, 210-211 and 212-221).

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NOTES

<sup>1</sup>*I.C.J. Yearbook 1989-90*, p. 145.

<sup>2</sup>United Nations, *Treaty Series*, vol. I, p.15.

## Chapter VIII

### DECISIONS OF NATIONAL TRIBUNALS

#### Mexico

##### Ministry of Foreign Affairs

###### COMMUNIQUÉ TO THE PRESIDENT OF THE SPECIAL FEDERAL CONCILIATION AND ARBITRATION BOARD No. 14<sup>1</sup>

*Former employee of Mexican nationality dismissed by UNHCR filed employment claim with local labour board — Confirmation of immunity of UNHCR from jurisdiction of conciliation and arbitration boards.*

On 31 March 1989, an employee of Mexican nationality who had been recruited as a typist by the UNHCR office in Mexico City filed an employment claim against that office before Special Federal Conciliation and Arbitration Board No. 14, on the grounds that he had been unjustly dismissed.

On 19 April 1989, UNHCR requested the Ministry of Foreign Affairs to intervene with the Board in order to confirm the immunity of UNHCR from jurisdiction.

On 11 December 1989, the Ministry of Foreign Affairs sent the following communiqué to the President of the Board, confirming the immunity of UNHCR from jurisdiction:

“Having carefully reviewed the agreements and, in particular, the precedents of international law, the Ministry of Foreign Affairs has not found any precedents whereby the national courts or tribunals of members of the international community, including Mexico, have exercised jurisdiction over the United Nations, its organs or specialized agencies.

“Moreover, while it is true that the current trend in international law with regard to inter-State practice is not to recognize immunity from jurisdiction in labour matters concerning employees who are nationals of the State in which the court or arbitration board is situated in order not to deprive them of the opportunity of defending themselves, international organizations, for that same reason, offer their employees internal administrative remedies to protect their labour rights, as in the case in question.

“Accordingly, in the view of the Ministry of Foreign Affairs, international organizations enjoy immunity from the jurisdiction of conciliation and arbitration boards, unless the employee can prove that the international organization in question denied him justice by not allowing him to avail himself of his internal administrative remedies.”

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#### NOTE

<sup>1</sup>Translation prepared by the Secretariat of the United Nations.



**Part Four**

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