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## FOREWORD

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

Chapters I and II of the present volume—the thirty-third of the series [1/.m] 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 1995. Decisions given in 1995 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 lag time 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 1995.

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

ECE	Economic Commission for Europe
ECA	Economic Commission for Africa
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
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 Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
OECD	Organization for Economic Cooperation and Development
OIOS	(United Nations) Office of Internal Oversight Services
PAHO	Pan American Health Organization
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNDCP	United Nations International Drug Control Programme
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
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
UPU	Universal Postal Union
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization



**Part One**

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



## Chapter I

### LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### 1. Australia

AN ACT TO PROVIDE FOR THE COMMONWEALTH TO HELP THE INTERNATIONAL WAR CRIMES TRIBUNALS PERFORM THEIR FUNCTIONS, AND FOR RELATED PURPOSES<sup>1</sup>

##### PART 1. PRELIMINARY

...

##### *The objects of this Act*

3. The objects of this Act are to enable the Commonwealth to cooperate with a Tribunal in the investigation and prosecution of persons accused of committing Tribunal offences, and in particular:

- (a) To enable the Tribunal to make request for assistance (see part 2); and
- (b) To provide for persons accused of Tribunal offences to be surrendered to the Tribunal (see part 3); and
- (c) To provide the Tribunal with other forms of assistance in the investigation and prosecution of Tribunal offences (see part 4); and
- (d) To enable the Tribunal to sit in Australia (see part 5); and
- (e) To enable forfeiture orders of the Tribunal to be enforced (see part 6).

...

##### PART 2. REQUESTS BY A TRIBUNAL FOR ASSISTANCE

##### *Tribunal may request assistance*

7. (1) A request by a Tribunal for assistance that it needs to perform its functions in respect of an investigation or prosecution it is conducting or proposes to conduct, is to be made to the Attorney General, or a person authorized by the Attorney General.

(2) Without limiting subsection (1), the request may be for assistance of one or more of the following types:

- (a) Arresting and surrendering to the Tribunal a person in relation to whom the Tribunal has issued an arrest warrant;

- (b) Executing a request for search and seizure;
- (c) Obtaining evidence, a document or other article;
- (d) Providing a document or other record;
- (e) Locating and identifying a witness or suspect;
- (f) Arranging for a person to give evidence or assist an investigation;
- (g) Causing the forfeiture of property or the proceeds of crime;
- (h) Serving documents;
- (i) Arranging for the Tribunal to sit in Australia.

(3) If a request by a Tribunal is made to, or received by, a person authorized under subsection (1), the request is taken for the purposes of this Act to have been made to, or received by, the Attorney General.

#### *Form of requests*

8. (1) The request must be in writing and must indicate:

(a) Who may be, is to be or has been charged with a Tribunal offence as a result of the investigation or prosecution in respect of which the request is made; and

(b) The nature of and such charge; and

(c) The intended time and place of and hearing of any such charge.

(2) The request must also indicate:

(a) The nature of the investigation or prosecution in respect of which the request is made; and

(b) The International convention or other legal basis on which the Tribunal relies for conducting the investigation or prosecution; and

(c) The nature of the assistance sought; and

(d) The procedure (if any) that the Tribunal wants the Attorney-General to follow in complying with the request, including the form in which material must be given to the Tribunal; and

(e) The period within which the Tribunal wants the request complied with; and

(f) Any confidentiality requirements that the Tribunal wants observed; and

(g) Any other matters that might assist in complying with the request.

(3) Failure to comply with subsection (2) does not invalidate a request.

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#### NOTE

<sup>1</sup>No. 18 of 1995; assented to on 29 March 1995.

## 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 Nation

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

The following States became parties to the Convention:<sup>2</sup>

<i>State</i>	<i>Date of receipt of instrument of accession or succession</i>
Republic of Moldova	12 April 1995

As at 31 October 1995, there were 136 States parties to the Convention.<sup>3</sup>

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

- (a) Agreement between the United Nations and the Government of Germany regarding the first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.<sup>4</sup> Signed at Geneva on 24 January 1995<sup>5</sup>

The secretariat of the United Nations Framework convention on Climate Change (hereinafter referred to as “the Secretariat of the Convention”), as represented by the Interim Secretariat of the Convention in accordance with article 21.1 and the Government of the Federal Republic of Germany (hereinafter referred to as “the Government”)

Recalling resolution 48/ 189 of 21 December 1993 whereby the General Assembly of the United Nations decided that the first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (hereinafter referred to as “the Convention”) would be held from 28 March to 7 April 1995;

Whereas the General Assembly of the United Nation accepted with deep appreciation the generous offer of the Government to host at Berlin the first session of the Conference of the Parties (hereinafter referred to as “the Conference”);

Whereas in accordance with article 8, paragraph 1 of the Convention a Secretariat has been established, among the functions of which is to “make arrangements for sessions of the Conference of the Parties and its subsidiary bodies” and “to provide them with services as required;”

Whereas the Secretariat of the Convention, pursuant to paragraph (f) of article 8 of the Convention, is empowered, *inter alia*, to enter into contractual arrangements as may be required;”

Whereas under paragraph 1 of article 21 of the Convention, the functions of the Secretariat of the Convention are carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties (hereinafter referred to as “the interim secretariat”);

Have agreed as follows:

### *Article 1*

#### DATE AND PLACE OF THE CONFERENCE

The Conference shall be held at the “International Congress Center Berlin” (ICC Berlin) from 28 March to 7 April 1995.

### *Article 2*

#### ATTENDANCE AT THE CONFERENCE

1. In accordance with the provisions of the Convention, the first session of the Conference of the Parties shall be open to:

- (a) Representatives of the Parties to the Convention;
- (b) Representatives of observer States referred to in paragraph 6 of article 7 of the Convention;
- (c) Representatives of the United Nations, its specialized agencies and the International Atomic Energy Agency;
- (d) Representatives of the observer organization referred to in paragraph 6 of article 7 of the Convention;
- (e) Other persons invited by the interim secretariat.

2. The public meetings of the Conference of the Parties shall be open to representatives of the information media accredited to the Conference in consultation with the Government.

### *Article 3*

#### PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide such conference space and facilities at the “International Congress Center Berlin” as are necessary for the holding of the Conference, including conference rooms for informal meetings, office and

storage space, lounges and other related facilities as well as the necessary space for a registration area, mass media (press, television and radio) and the accredited observers referred to in paragraph 1 (d) of article 2 above as specified in annex I to the Agreement.

2. The premises referred to above shall remain at the disposal of the interim secretariat, for the purposes of the Conference, 24 hours a day throughout the Conference and for such additional time in advance of the opening and after the closing of the Conference as is agreed between the secretariat of the Convention and the Government for the preparation and settlement of all matters connected with the Conference.

3. The Conference rooms shall be equipped for simultaneous interpretation and sound recordings in the six languages of the Conference. Each interpretation booth shall have the capacity to switch to all seven channels (the "floor" i.e. the speaker-plus each channel). The Arabic and Chinese booths require a system whereby the interpreters can override either the English or French booth so that the Arabic and Chinese interpreters can work into those languages without physically moving to either booth.

4. The Government shall at its expense adequately furnish, equip and maintain such equipment as word processors and typewriters with keyboards in the languages needed as specified in annex II to the present Agreement and shall furnish and maintain in good repair all the rooms and equipment as are necessary for the effective conduct of the Conference.

5. The interim secretariat shall provide all stationery supplies as required for the adequate functioning of the Conference.

6. The Government shall provide and bear the cost of all necessary utility services, such as water and electricity as well as local telephone communications of the secretariat of the Conference and its communications by telex, telefax, electronic mail transmission or telephone with United Nations Office at Geneva and the United Nations Headquarters in New York when such communications are authorized by the Executive Secretary of the interim secretariat or the persons delegated by him.

7. The Government shall provide and bear the cost of transport and insurance charges from any established United Nations Office to the site of the Conference and return of all secretariat supplies and equipment required for the adequate functioning of the Conference. The interim secretariat, in consultation with the Government, shall determine the mode of shipment of such equipment and supplies. The Government may also provide equivalent equipment at the conference venue instead.

8. The Government shall provide, if possible within the conference area, on a commercial basis, banking, post office, telephone, telefax and other telecommunications facilities, catering facilities and travel agency, and a secretarial service centre, equipped in consultation with the interim secretariat, for use by the persons referred to in article 2.

9. The Government shall install, at no cost to the interim secretariat, facilities for written coverage, film coverage, radio and television broadcasting of the proceedings, to the extent required by the interim secretariat.

10. In addition to the press, film, radio and television broadcasting facilities mentioned in paragraph 9 above, the Government shall provide, at no cost to the interim secretariat, a press working area, a briefing room for correspondents, radio and television studio and areas for interviews and programme preparation.

*Article 4*

MEDICAL FACILITIES

The Government shall provide adequate medical facilities for first aid in emergencies within the conference area. Immediate access and admission to hospital will be assured by the Government whenever required, and the transport shall be constantly available on call.

*Article 5*

POLICE PROTECTION

The Government shall furnish at its expense such police protection that may be required to ensure the efficient functioning of the Conference without interference of any kind. Such police service shall be under the direct supervision and control of a senior officer to be provided by the Government. He shall work in close cooperation with the Security Liaison Officer designated by the interim secretariat for the purpose, so as to ensure a proper atmosphere of security and tranquillity.

*Article 6*

HOTEL ACCOMMODATION

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

*Article 7*

TRANSPORTATION

1. The Government shall ensure the availability of adequate transportation for all Conference participants and interim secretariat staff, as well as other United Nations officials, to and from the airport for time required before and after the Conference, as well as transportation to and from the principle hotels and the Conference premises for the duration of the Conference. This shall be guaranteed by local public passenger transport.

2. In addition, the Government shall also provide a minibus (including driver) to the interim secretariat and other United Nations officials during the segment of the Conference at the level of senior officials and another minibus (also including driver) during the ministerial segment. The coordination of the use of the buses will be ensured by transportation dispatchers to be provided by the Government (included in annex III).

## *Article 8*

### LOCAL PERSONNEL

1. The Government shall appoint an official who shall act as a liaison officer between the Government and the interim secretariat and shall be responsible, in consultation with the Executive Secretary of the interim secretariat, for carrying out the administrative and personnel arrangements for the Conference as required under this Agreement.

2. The Government shall engage and provide at its expense and place under the general supervision of the Executive Secretary of the interim secretariat the local personnel required in addition to the secretariat staff:

(a) To ensure the proper functioning of the equipment and facilities referred to in article 3 above;

(b) To reproduce and distribute the documents and press releases needed by the Conference;

(c) To work as secretaries, typists, clerks, messengers, conference room ushers, drivers, etc.

Detailed required for local personnel are specified in annex III hereto attached.

3. The Government shall arrange at its own expense, at the request of the Executive Secretary of the interim secretariat, for some of the local staff referred to in paragraph 2 above, to be available before the opening and after the closing of the Conference, as required by the Secretariat.

4. The Government shall arrange at its own expense, at the request of the Executive Secretary of the interim secretariat, for adequate numbers of the local personnel referred to in paragraph 2 above to be available in order to maintain such night services as may be required in connection with the Conference.

## *Article 9*

### FINANCIAL ARRANGEMENTS

1. The Government in addition to the financial obligations provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Conference in Berlin rather than at Geneva. Such costs, which are provisionally estimated at approximately (\$US 671, 400 United States dollars six hundred seventy-one thousand four hundred) shall include but not be restricted to, the actual additional costs of travel and staff entitlements of the officials of the interim secretariat and other United Nations officials assigned to plan for or attend the Conference (see annex IV) as well as the costs of shipment of equipment and supplies not readily available locally in accordance with article 3, paragraph 5, and, as appropriate, annex II. Arrangements for the travel of the interim secretariat officials and other officials of the United Nations required to plan for or service the Conference and for the shipment of any necessary equipment and supplies shall be made by the interim secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standards, baggage allowances, subsistence payments and terminal expenses.

2. The Government shall, no later than 31 January 1995, deposit with the United Nations Secretariat the sum of (\$US 671, 400 United States dollars six hundred seventy-one thousand four hundred) representing the total estimated costs referred to in paragraph 1, and as detailed in annex IV. If necessary, the Government shall make further advances as requested by the interim secretariat 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.

3. The deposit and the advances required by paragraph 2 shall be used only to pay the obligations of the interim secretariat in respect of the Conference.

4. After the Conference, the United Nations Secretariat shall give the Government a detailed set of accounts showing the actual additional costs incurred by the interim secretariat and to be borne by the Government pursuant to paragraph 1. 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 Secretariat, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or the advances required by paragraph 2. Should the actual additional costs exceed the deposit, the Government shall remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts shall be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustments of accounts shall be subject to any observations which may arise from the audit carried out by the United Nations Board of Auditors, whose determination shall be accepted final by both the interim secretariat and the Government.

#### *Article 10*

##### LIABILITY

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

(a) Injury to persons or damage to or loss of property in the premises referred to in article 3 that are provided by or are under the control of the Government;

(b) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in article 7 that are provided by or are under the control of the Government;

(c) The employment for the Conference of the personnel provided by the Government under article 8.

2. The Government shall hold harmless the interim secretariat, the United Nations and their officials in respect of any such action, claim or other demand.

## Article 11

### *Privileges and immunities*

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Federal Republic of Germany is a party, shall be applicable, *mutatis mutandis*, in respect to the Conference. In particular the representatives of the Parties, referred to in paragraph 1(a) of article 2 above, shall enjoy the privileges and immunities provided under article IV of the Convention on the Privileges and Immunities of the United Nations, the officials of the interim secretariat and other United Nations officials performing functions in connection with the Conference shall enjoy the privileges and immunities provided under articles V and VII of the Convention on the Privileges and Immunities of the United Nations, and any experts on missions for the United Nations in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the United Nations.

2. The representatives of observer States, referred to in paragraph 1(b) of article 2 above, shall enjoy the privileges and immunities provided under article IV of the Convention on the Privileges and Immunities of the United Nations.

3. The representatives of the specialized agencies and the International Atomic Energy Agency shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947<sup>6</sup> or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1 July 1959,<sup>7</sup> as appropriate.

4. The other observers referred to in paragraph 1(d) and (e) of article 2 above 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 Conference.

5. The personnel provided by the Government under article 8, above, shall enjoy, immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity with the Conference.

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

7. All persons referred to in article 2 shall have the right of entry into and exit from the Federal Republic of Germany, and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival.

8. The Conference premises and access thereto shall be subject to the authority and control of the interim secretariat with assistance by the Government as specified in article 5 above. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up.

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

### *Article 12*

#### SETTLEMENT OF DISPUTES

Any dispute between the Secretariat of the Convention 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 arbitrators. 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.

- (b) Exchange of letters constituting an agreement between the United Nations and the Government of Mongolia regarding a Training Course on the Administration of Justice and the Independence of the Judiciary to be held at Ulaanbaatar from 20 to 24 February 1995. Signed at Geneva on 27 January and 10 February 1995<sup>8</sup>

#### I

#### LETTER TO THE UNITED NATIONS

27 January 1995

Sir,

I have the honour to refer to the comprehensive programme of technical assistance to Mongolia discussed between representatives of the Government of Mongolia and officials of the United Nations Centre for Human Rights during their consultation mission to Ulaanbaatar in September 1994, in particular, the activities scheduled for 1995. These activities will include the organization

of a Training Course on the Administration of Justice and the Independence of the Judiciary to be held at Ulaanbaatar.

With respect to the above-mentioned Training Course, please find set out below the text of an Agreement between the United Nations and the Government of Mongolia (hereinafter referred to as “the Government”):

Agreement between the United Nations and the Government of Mongolia, regarding a training course on the Administration of Justice and the Independence of the Judiciary to be held at Ulaanbaatar from 20 to 24 February 1995

1. The Training Course will last for five working days, and is intended for legal practitioners including judges, magistrates, lawyers, prosecutors, members of the General Council of Courts, as well as professors of the law school, government officials and representatives of non-governmental organizations active in the field of human rights. The Training Course will be limited to an absolute maximum of 50 participants. Ability to attend the full week of the Course shall be a prerequisite for registration of participants, who will be invited by the United Nations Centre for Human Rights.

2. The United Nations Centre for Human Rights will send to Ulaanbaatar two staff members to organize and direct the Training Course and will invite five international experts to conduct the Course.

3. The United Nations shall meet the travel expenses including subsistence costs in respect of the four international experts, and United Nations staff, for the duration of the Training Course, at applicable United Nations staff, for the duration of the Training Course, at applicable United Nations rates and in accordance with the Organization’s Rules and Regulations (see attached annex).

4. The Government shall assume the financial responsibility for local transportation for the four international experts and United Nations staff, as specified in the attached annex.

5. The Government shall provide for the Training Course adequate facilities, including personnel resources, space and office supplies as described in the attached annex, at no cost to the United Nations.

6. The Government shall be responsible for ensuring that, by 28 April 1995, a follow-up report be submitted by the Ministry of Justice and/or the Supreme Court of Mongolia to the United Nations Centre for Human Rights, on the activities undertaken to disseminate knowledge and skills gained by the participants during the Training Course. The report will provide the Centre with an evaluation of the training programme and of follow-up activities, and indicate how such evaluation may be useful for the future training activities envisaged by the Centre for Human Rights in the proposed comprehensive programme of technical assistance to Mongolia.

7. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to person or damage to property in conference or office premises provided for the Training Course; (ii) the transportation provided by the Government; and (iii) the employment for the Training Course of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

8. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Mongolia is a party, shall be applicable to the Training Course. In particular:

(a) Staff of the United Nations participating in or performing functions in connections with the Training Course shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(b) The experts, invited in accordance with paragraph 2 above, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations, by articles VI and VII of the Convention;

(c) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all experts and persons performing functions in connection with the Training Course shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions, in connection with the Training Course;

(d) Participants invited and personnel provided by the Government pursuant to this Agreement, 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 Training Course;

(e) All experts, officials of the United Nations, and all persons performing functions in connection with the Training Course shall have the right of unimpeded entry into, and exit from Mongolia. Visas and entry permits, where required, shall be granted promptly and free of charge.

9. The rooms, offices and related localities and facilities put at the disposal of the Training Course by the Government, shall be the conference area, which will constitute United Nations premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

10. The Government shall notify the local authorities of the convening of the Training Course and request appropriate protection.

11. 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 agree otherwise, 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 will 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 will 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.

I have the honour to propose that this letter and your affirmative answer shall constitute an Agreement between the United Nations and the Government of Mongolia, which shall enter into force on the date of your reply and shall remain in force for the duration of the Training Course, and for such additional period as is necessary for their preparation and winding up including completion of the follow-up component as described in paragraph 6 above.

(Signed) Vladimir PETROVSKY  
Director-General of the United Nations Office at Geneva

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF MONGOLIA TO THE UNITED NATIONS OFFICE AT GENEVA

Geneva, 10 February 1995

In reference to your letter of 27 January 1995 concerning a Training Course on the Administration of Justice and the Independence of the Judiciary to be held from 20 to 24 February 1995 in Ulaanbaatar, I have the honour to confirm to you that the Government of Mongolia has accepted the Agreement between the United Nations and the Government of Mongolia regarding the above-mentioned Training Course.

(Signed) Sh. YUJAY  
Ambassador

- (c) Agreement between the United Nations and the Government of Haiti regarding the status of the United Nations mission in Haiti. Signed at Port-au-Prince on 15 March 1995<sup>9</sup>

## I. DEFINITIONS

1. For the purpose of the present Agreement the following definitions shall apply:

(a) "UNMIH" means the United Nations Mission in Haiti established pursuant to Security Council resolution 867 (1993) of 23 September 1993 and whose mandate was revised and extended in accordance with the provisions of paragraphs 9 and 10 of Security Council resolution 940 (1994) of 31 July 1994. UNMIH was subsequently strengthened pursuant to Security Council resolution 975 (1995) of 30 January 1995. UNMIH is to comprise:

(i) The "Special Representative" appointed by the Secretary-General of the United Nations. Except as provided in paragraph 24 below, any mention of the Special Representative in the present Agreement shall include any member of UNMIH to whom the Special Representative may have delegated his authority;

(ii) A “civilian component” made up of United Nations officers and other persons, including the civilian police, assigned by the Secretary-General to assist the Special Representative or placed at the disposal of UNMIH by the participating States;

(iii) A “military component” made up of military personnel and specialized civilian personnel placed at the disposal of UNMIH by the participating States;

(b) “member of UNMIH” means a member of the civilian or military component;

(c) “Locally recruited personnel” means United Nations officers who are recruited locally, with the exception of those who are assigned to hourly rates, in accordance with General Assembly resolution 76 (I) of 7 December 1946;

(d) “participating State” means a State contributing personnel to the aforementioned UNMIH components;

(e) “the Government” means the Government of Haiti;

(f) “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 THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNMIH or any member thereof apply throughout territory of Haiti.

## III. APPLICATION OF THE CONVENTION

3. UNMIH, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Haiti is a Party.

4. Article II of the Convention, which applies to UNMIH, shall also apply to the property, funds and assets of participating States used in connection with UNMIH.

## IV. STATUS OF UNMIH

5. UNMIH and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNMIH and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observation of those obligations.

6. The Government undertakes to respect the exclusively international nature of UNMIH.

7. Without prejudice to the mandate of UNMIH and its international status:

(a) The United Nations shall ensure that UNMIH fulfils its mission in Haiti in such a manner as to respect fully the principles and spirit of the general international conventions relating to the conduct of military personnel.

These international conventions include the four Geneva Conventions (Red Cross) of 12 August 1949<sup>10</sup> and the Additional Protocols thereto of 8 June 1977<sup>11</sup> and the UNESCO Convention for the Protection of Cultural Property in the event of Armed Conflict<sup>12</sup>

(b) The Government shall undertake to treat UNMIH military personnel at all times in such a manner as to respect fully the principles and spirit of the general international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions (Red Cross) of 12 August 1949 and the Additional Protocols thereto of 8 June 1977.

UNMIH and the Government shall ensure that the members of their respective military personnel are fully aware of the principles and spirit of the aforementioned international instruments.

#### *United Nations flag and vehicle markings*

8. The Government recognizes the right of UNMIH to display within Haiti the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNMIH shall give sympathetic consideration to observations or requests of the Government of Haiti.

9. UNMIH vehicles, vessels and aircraft shall carry a distinctive United Nations identification, which shall be notified to the Government.

#### *Communications*

10. UNMIH shall enjoy the facilities in respect to communications provided for in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(a) UNMIH shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of Haiti with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention<sup>13</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.

(b) UNMIH shall enjoy, within the territory of Haiti, the right to communication, in accordance with paragraph 11(a), 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 UNMIH premises, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones 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 charged at the most favorable rate.

(c) UNMIH may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNMIH. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNMIH or its members. In the event that postal arrangements applying to private mail of members of UNMIH 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*

12. UNMIH and its members shall enjoy, together its vehicles, vessels, aircraft and equipment, freedom of movement throughout Haiti. That freedom shall, with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Haiti, be coordinated with the Government. The Government undertakes to supply UNMIH, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

13. UNMIH vehicles, including all military vehicles, vessels and aircraft, 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.

14. UNMIH may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including war-fare charges. However, UNMIH will not claim exemption from charges, which are in fact charges for services rendered.

#### *Privileges and immunities of UNMIH*

15. UNMIH, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to UNMIH shall also apply to the property, funds and assets of participating States used in Haiti, in connection with the national contingents serving in UNMIH, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of UNMIH in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNMIH or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of members of UNMIH, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. 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 UNMIH, and he shall give sympathetic consideration to observations or request of the Government concerning the operation of the commissaries;

(c) To 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 UNMIH or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of 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 Haiti or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNMIH and the Government at the earliest possible date.

## V. FACILITIES

### *Premises required for conducting the operational and administrative activities of UNMIH and for accommodating members of UNMIH*

16. The government of Haiti shall provide without cost to UNMIH and in agreement with the Special Representative such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNMIH and for the accommodation of members of UNMIH. Without prejudice to the fact that all such premises remain Haitian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where UNMIH military personnel are co-located with military personnel of Haiti, a permanent, direct and immediate access by UNMIH to those premises shall be guaranteed.

17. The Government undertakes to assist UNMIH as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or where this is not possible, at the most favorable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of UNMIH as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by UNMIH on terms to be agreed with the competent authority. UNMIH shall be responsible for the maintenance and upkeep of facilities so provided.

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

19. The United Nations alone may consent to the entry of any government officials or of any other person not member of UNMIH to such premises.

*Provisions, supplies and services, and sanitary arrangements*

20. The Government undertakes to assist UNMIH as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNMIH shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNMIH from general sales taxes in respect of all official local purchases.

21. UNMIH 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 convention.

*Recruitment of local personnel*

22. UNMIH may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNMIH and to accelerate the process of such recruitment.

*Currency*

23. The Government undertakes to make available to UNMIH, against reimbursement in mutually acceptable currency, Haitian currency required for the use of UNMIH, including the pay of its members, at the exchange most favorable to UNMIH.

VI. STATUS OF MEMBERS OF UNMIH

*Privileges and immunities*

24. The Special Representative, the commissioner in charge of the civilian police, the Commander of the military component of UNMIH, 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 sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

25. Members of the United Nations Secretariat and the United Nations Volunteers assigned to the civilian component to serve with UNMIH are entitled to the privileges and immunities of articles V and VII of the Convention.

26. The other members of the civilian component, namely UNMIH civilian police, military instructors and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative shall be considered as experts on mission within the meaning of article VI of the Convention.

27. Military personnel of national contingents assigned to the military component of UNMIH shall have the privileges and immunities specifically provided for in the present Agreement.

28. Unless otherwise specified in the present Agreement, locally recruited members of UNMIH shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18(a), (b) and (c) of the Convention.

29. Members of UNMIH shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Haiti. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

30. Members of UNMIH shall have the right import free of duty their personal effects in connection with their arrival in Haiti. They shall be subject to the laws and regulations of Haiti governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Haiti with UNMIH. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNMIH, including the military component, upon prior written notification. On departure from Haiti, members of UNMIH 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 the present provisions in the interests of the Government and the members of UNMIH.

31. 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 Haiti by the members of UNMIH in accordance with the present Agreement.

#### *Entry, residence and departure*

32. The Special Representative and members of UNMIH shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Haiti.

33. The Government of Haiti undertakes to facilitate the entry into and departure from Haiti of the Special Representative and international members of UNMIH and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNMIH shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Haiti. They shall also be exempt from any regulations governing the residence of aliens in Haiti, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Haiti.

34. For the purpose of such entry or departure, international members of UNMIH 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 35 of the present 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 identity card.

### *Identification*

35. The Special Representative shall issue to each member of UNMIH before or as soon as possible after such member's first entry into Haiti, as well as to all locally recruited personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNMIH. The identity cards shall be issued to locally recruited personnel solely in connection with their official duties within the framework of UNMIH.

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

### *Uniform and arms*

37. Military members of UNMIH and the UNMIH civilian police shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements, namely the United Nations beret and insignia. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNMIH may be authorized by the Special Representative at other times. Military members of UNMIH, UNMIH civilian police 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*

38. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of UNMIH, including locally recruited personnel, of any UNMIH transport of communication equipment and for the practice of any profession or occupation in connection with the functioning of UNMIH provided that not licence to drive a vehicle, pilot an aircraft or practice a profession shall be issued to any person who is not already in possession of an appropriate and valid licence.

39. Without prejudice to the provisions of paragraph 37, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of UNMIH for the carrying or use of firearms or ammunition in connection with the functioning of UNMIH. Under no circumstances shall such licence or permit be granted to Haitian personnel. The Special Representative shall notify the Government of permits or licences issued.

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

40. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNMIH, as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of the UNMIH 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 in so far as the Special Representative deems such employment necessary to maintain discipline and order among members of UNMIH.

41. The UNMIH military police shall have the power of arrest over military members of UNMIH. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above may also take into custody any other person who commits an offence on UNMIH premises. 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

42. The Government authorities shall not take into custody members of the UNMIH military component, members enjoying for the purposes of the present Agreement the status of diplomatic envoys or members enjoying the status of experts on mission for the United Nations. Officials of the Government may take into custody any other member of UNMIH only:

(a) When so requested by the Special Representative; or

(b) When such member of UNMIH is apprehended in the commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate UNMIH representative, whereafter the provisions of paragraph 47 shall apply *mutatis mutandis*.

43. When a person is taken into custody under paragraph 41 or paragraph 42(b), UNMIH 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.

44. UNMIH 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 items connected with an offence. The handing over of any such items 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 41 to 43.

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

#### *Jurisdiction*

46. All members of UNMIH 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 to be employed by UNMIH and after the expiration of the other provisions of the present Agreement.

47. Should the Government consider that any member of UNMIH 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 24:

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 52 of the present Agreement;

(b) Members of the UNMIH military component 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 Haiti.

48. If any civil proceeding is instituted against a member of UNMIH before any Haitian court, 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 50 of the present Agreement shall apply;

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNMIH 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 UNMIH 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 UNMIH 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*

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

### VII. SETTLEMENT OF DISPUTES

50. Except as provided in paragraph 52, any dispute or claim of a private law character to which UNMIH or any member thereof is a party and over which the courts of Haiti do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the

request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 52. The awards of the commission shall be notified to the parties and, if against a member of UNMIH, the Special Representative or the Secretary-General of the United Nations shall use his best endeavors to ensure compliance.

51. 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.

52. Any other dispute between UNMIH and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 50 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 decision of the tribunal shall be final and binding on both parties.

53. All differences between the United Nations and the Government of Haiti arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

#### VIII. SUPPLEMENTAL ARRANGEMENTS

54. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

#### IX. LIAISON

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

#### X. MISCELLANEOUS PROVISIONS

56. Wherever the present Agreement refers to the privileges, immunities and rights of UNMIH and to the facilities Haiti undertakes to provide to UNMIH, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate Haitian authorities.

57. The present Agreement shall enter into force on the date of its signature by the Special Representative of the Secretary-General and the Minister for Foreign Affairs of the Republic of Haiti.

58. The present Agreement shall remain in force until the departure of the final UNMIH element from Haiti except that:

- (a) The provisions of paragraphs 46, 52 and 53 shall remain in force;
- (b) The provisions of paragraph 50 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.
- (d) Exchange of letters constituting an agreement between the United Nations and the Government of the Philippines regarding the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights, held at Manila from 18 to 21 April 1995.<sup>14</sup> Geneva, 5 and 12 April 1995.

## I

### LETTER FROM THE UNITED NATIONS

Geneva, 5 April 1995

Madam,

I have the honour to refer to discussions which were held between representatives of the United Nations Centre for Human Rights and of the Permanent Mission of the Philippines to the United Nations Office at Geneva, regarding the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights, to be held pursuant to paragraph 10 of Commission on Human Rights resolution 1994/64 of 9 March 1994 and Economic and Social Council decision 1994/256 of 22 July 1994, and organized by the United Nations Centre for Human Rights in cooperation with the Philippines Commission on Human Rights. In this connection I also refer to an exchange of letters between the United Nations Assistant Secretary-General for Human Rights (20 June 1994) and the Chairman of the Philippine Commission on Human Rights (22 April and 2 June 1994) regarding the organization of the Workshop, copies of which are enclosed for your information.

I would like to thank Your Excellency's Government for agreeing to host the Workshop and to put at the disposal of the United Nations, free of charge, the necessary facilities to allow the Workshop to take place in Manila.

The Centre for Human Rights would like to assure your Government of its complete cooperation in organizing the Workshop whose principal objective is to encourage the establishing of national institutions for the promotion and protection of human rights and the strengthening of those which already exist.

Please find set out below the text of an Agreement between the United Nations and the Government of the Philippines (hereinafter referred to as "the Government"), regarding the Workshop referred to above:

Agreement between the United Nations and the Government of the Philippines regarding the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights, to be held at Manila from 18 to 21 April 1995

1. Participants in the Workshop shall be (30) representatives of national institutions for the promotion and protection of human rights who shall be invited by the United Nations Centre for Human Rights according to an equitable geographical distribution.

2. Representatives of States Members of the United Nations, representatives of the specialized agencies and non-governmental organizations concerned with the subject matters shall also be invited by the Centre to participate as observers in the Workshop in accordance with the procedure established under the Technical Cooperation Programme in the field of human rights.

3. The United Nations shall send eleven staff members (five of the Centre of Human Rights and six interpreters) to Manila in order to service the Workshop.

4. The United Nations shall arrange for the travel of 23 representatives of national institutions who were determined by the Coordinating Committee of National Institutions at its meeting in Geneva on 22 and 23 February 1995. It shall also provide a daily allowance to cover incidental expenses in accordance with the Organization's Rules and Regulations, as set out in the attached annex.

5. The Government shall provide meals and accommodation, according to United Nations standards and at no cost to the Organization or the persons concerned, for up to 30 representatives of national institutions and the United Nations staff members, referred to in paragraph 3 above, during the Workshop.

6. The Government shall provide for the Workshop, at no cost to the Organization, adequate conference facilities, including personnel resources, space and office supplies, as well as transportation, as described in the attached annex.

7. The Government shall also meet the costs relating to telephone/facsimile communications between Manila and Geneva in connection with the holding of the Workshop.

8. 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 property in conference or office premises provided for the Workshop;

(b) The transportation provided by the Government;

(c) The employment for the Workshop of personnel provided or arranged by the Government;

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

9. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Philippines is a party, shall be applicable to the Workshop, in particular:

(a) The participants invited by the United Nations Centre for Human Rights pursuant to paragraph 1 above shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention;

(b) Staff 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; officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(c) Representatives of Member States invited in accordance with paragraph 2 above, shall enjoy the privileges and immunities provided under article IV of the Convention;

(d) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and 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;

(e) Personnel provided by the Government pursuant to this Agreement and representatives of non-governmental organizations invited in accordance with paragraph 2 above to participate as observers in the Workshop, 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;

(f) All participants, including observers, United Nations staff and persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the Philippines. Visas and entry permits, where required, shall be granted promptly and free of charge.

10. The rooms, offices and related localities and facilities put at the disposal of the Workshop by the Government shall be the conference area, which shall constitute United Nations premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

11. The Government shall notify the local authorities of the convening of the Workshop and request appropriate protection.

12. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provision of the Convention on the Privileges and Immunities of the United Nations or any other agreement, shall, unless the parties agree otherwise, 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 will 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 names 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 will 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.

I have the honour to propose that this letter and your affirmative answer shall constitute an Agreement between the United Nations and the Government of the Philippines which shall enter into force on the date of your reply and shall remain in force for the duration of the Workshop, and for such additional period as is necessary for their preparation and winding up.

(Signed) Vladimir PETROVSKY  
Director-General of the United Nations Office at Geneva

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF THE PHILIPPINES TO THE UNITED NATIONS OFFICE AT GENEVA

12 April 1995

Excellency:

I have the honour to refer to your letter of 5 April 1995 with ref. No. G/SO 214 (32-2), setting out the text of the agreement between the United Nations and the Government of the Philippines regarding the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights, to be held at Manila from 18 to 21 April 1995.

In accordance with the last paragraph of the above mentioned Agreement, this letter would constitute the agreement of the Government of the Philippines to the terms and conditions of the said Agreement.

(Signed) Lilia R. BAUTISTA  
Ambassador

(e) Agreement between the United Nations and the Government of Japan relating to the Statistical Institute for Asia and the Pacific. Signed at Bangkok on 14 April 1995<sup>15</sup>

The United Nations and the Government of Japan (hereinafter referred to as “the Government”), *Recalling* that the Asian Statistical Institute, later renamed Statistical Institute for Asia and the Pacific (hereinafter referred to as “the Institute”), was brought into existence pursuant to the Agreement between the Government of Japan and the United Nations Development Programme concerning Assistance for the Establishment and Operation of the Asian Statistical Institute of 9 September 1969 and to part I, paragraph 2 of the 1 May 1970 Plan of Operation between the United Nations Development Programme, the United Nations as the then Executing Agency, the Government as the host government to the Institute and other Governments participating in the project of the Institute, and that the Institute has since been located in Japan, *Considering* that the

Institute is to be established, as of 1 April 1995 as a subsidiary body of the Economic and Social Commission for Asia and the Pacific (hereinafter referred to as “the Commission”) pursuant to resolution 50/5 adopted by the Commission on 13 April 1994 and Economic and Social Council decision 1994/289 of 26 July 1994, *Recalling* the Commission’s strong desire that the Institute be provided with a durable institutional framework and that it continue to function as a regional institution supported by the United Nations, *Desiring* that the Institute continue to be located in Japan,

*Have agreed* as follows:

### *Article I*

#### STATUS AND LOCATION OF THE INSTITUTE

1. The Government recognizes that the Institute has the status of a subsidiary body of the Commission, the purposes of which are to strengthen, through practically oriented training of official statisticians, the capability and activities of the developing countries of the region to collect, to analyze and disseminate statistics as well as to produce timely and high-quality statistics that can be utilized for economic and social development planning, and to assist those developing countries in establishing or strengthening their statistical training capability and other related activities.

2. The Government agrees that the Institute is located in the Tokyo metropolitan area, Japan.

### *Article II*

#### CONTRIBUTION BY THE GOVERNMENT

The Government shall, on the basis of its relevant and applicable laws and regulations and in accordance with its annual budgetary appropriations, make contributions to the Commission in cash as well as in kind, including the provision of office space, equipment, facilities and services of local personnel, to be utilized for the Institute’s activities.

### *Article III*

#### FINANCIAL AND RELATED ARRANGEMENTS

All expenses of the Institute, including remuneration of its staff, shall be met from voluntary contributions accepted by the Commission, in cash and/or in kind, from the Government, other governments, other United Nations bodies and specialized agencies and other sources, and those voluntary contributions shall be administered in accordance with the financial Regulations and Rules of the United Nations.

### *Article IV*

#### FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government shall apply to the United Nations, including the Institute, and its officials and experts on mission, the provisions of the Convention on the Privileges and Immunities of the United Nations, to which the Government is a party.

2. The Government shall apply to each specialized agency of the United Nations and its officials and experts on mission the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, to which the Government is a party, including any annex to the Convention applicable to such specialized agency.

#### *Article V*

##### COOPERATION BETWEEN THE UNITED NATIONS AND THE GOVERNMENT

There shall be close cooperation between the United Nations and the Government to facilitate the operation of the Institute. To that end, they shall consult with each other as and when appropriate and shall make available to each other all information and assistance relating to the activities of the Institute as may reasonably be requested.

#### *Article VI*

##### ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the date of its signature.
2. This Agreement may be terminated by mutual consent or by either Party serving twelve months' written notice to the other Party.

*In Witness Whereof* the undersigned, being the duly authorized representatives of the United Nations and of the Government respectively, have signed this Agreement at Bangkok on 14 April 1995, in two originals in the English language.

- (f) Agreement between the United Nations and the Government of Angola on the status of the United Nations Peacekeeping operation in Angola. Signed at Luanda on 3 May 1995.

#### I. DEFINITIONS

1. For the purpose of the present Agreement the following definitions shall apply:

(a) "UNAVEM III" means the United Nations peacekeeping operation established pursuant to Security Council resolution 976 (1995) of 8 February 1995 to assist the parties in restoring peace and achieving national reconciliation in Angola on the basis of the "Acordos de Paz", the Lusaka Protocol and the relevant Security Council resolutions. UNAVEM III will be comprised of:

- (i) the "Special Representative" appointed by the Secretary-General. Any reference to the Special Representative in this Agreement shall, except in paragraph 25 include any member of UNAVEM III to whom he delegates a specified function or authority;
- (ii) a "civilian component" consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative or made available by participating States to serve as part of UNAVEM III;

- (iii) a “military component” consisting of military and special civilian personnel made available by participating States to serve as part of UNAVEM III;
- (iv) a “civilian police component” consisting of police personnel made available by participating States at the request of the Secretary-General;
- (b) a “member of UNAVEM III” means any member of the civilian, military or police components;
- (c) a “participating State” means a State contributing personnel to any of the above-mentioned components of UNAVEM III;
- (d) “the Government” means the Government of the Republic of Angola;
- (e) the “Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

## II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Republic of Angola or any privilege, immunity, facility or concession granted to UNAVEM III or any member thereof apply in Angola only.

## III. APPLICATION OF THE CONVENTION

3. UNAVEM III, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Angola is a party.

4. Article II of the Convention, which applies to UNAVEM III, shall also apply to the property, funds and assets of participating States used in connection with UNAVEM III.

## IV. STATUS OF UNAVEM III

5. UNAVEM III and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNAVEM III and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of those obligations.

6. Without prejudice to the mandate of UNAVEM III and its international status:

(a) The United Nations shall ensure that UNAVEM III shall conduct its operations in Angola with full respect for the principles and spirit of the general conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the Event of Armed Conflict;

(b) The Government undertakes to treat at all times the military personnel of UNAVEM III with full respect for the principles and spirit of the general international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions of 12 April 1949 and their Additional Protocols of 8 June 1977. UNAVEM III and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.

7. The Government undertakes to respect the exclusively international nature of UNAVEM III.

8. The Government undertakes to protect on its territory UNAVEM III, its operations and its members, facilities and property.

#### *United Nations flag and vehicle markings*

9. The Government recognizes the right of UNAVEM III to display within Angola the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNAVEM III shall give sympathetic consideration to observations or requests of the Government of Angola.

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

#### *Communications*

11. UNAVEM III shall enjoy the facilities in respect to communications provided in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

12. Subject to the provisions of paragraph 11:

(a) UNAVEM III shall install, in consultation with the Government, and operate United Nations radio stations to disseminate information relating to its mandate. UNAVEM III shall also have the right to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of Angola with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The United Nations radio stations and telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the relevant frequencies on which any such stations may be operated shall be decided upon in co-operation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board;

(b) UNAVEM III shall enjoy, within the territory of Angola, the right to unrestricted communication by radio (including satellite, mobile, cellular 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 UNAVEM III, including the laying of cables and land

lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in co-operation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones 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 charged at the most favorable prevailing rate in the country. UNAVEM III will enjoy preferential access to the Angolan Communication Systems;

(c) UNAVEM III may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNAVEM III. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNAVEM III or its members. In the event that postal arrangements applying to private mail of members of UNAVEM III 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*

13. UNAVEM III and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout Angola. That freedom shall, with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Angola, be coordinated with the Government. The Government undertakes to supply UNAVEM III, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

14. Vehicles, including all military vehicles, vessels and aircraft of UNAVEM III 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.

15. UNAVEM III may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls, navigation fees, port fees, landing fees, parking fees, wharfage charges or any other charge. However, UNAVEM III will not claim exemption from charges which are in fact charges for services rendered.

#### *Privileges and immunities of UNAVEM III*

16. UNAVEM III, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to UNAVEM III shall also apply to the property, funds and assets of participating States used in Angola in connection with the national contingents serving in UNAVEM III, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of UNAVEM III in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNAVEM III or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNAVEM III, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. 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 UNAVEM III, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To 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 UNAVEM III or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of 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 Angola or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNAVEM III and the Government at the earliest possible date.

## V. FACILITIES FOR UNAVEM III

### *Premises required for conducting the operational and administrative activities of UNAVEM III and for accommodating members of UNAVEM III*

17. The Government of Angola shall provide without cost to UNAVEM III and in agreement with the Special Representative such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNAVEM III, including warehouses and office space in ports and airports, and for the accommodation of the members of UNAVEM III. Without prejudice to the fact that all such premises remain Angolan territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations troops are co-located with military or police personnel of Angola, a permanent, direct and immediate access by UNAVEM III to those premises shall be guaranteed. UNAVEM III shall make no alteration to the premises provided by the Government without the Government's prior authorization.

18. The Government undertakes to assist UNAVEM III as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or, where this is not possible, at the most favorable prevailing rate in the country, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of UNAVEM III as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by UNAVEM III on terms to be agreed with the competent authority. UNAVEM III shall be responsible for the maintenance and upkeep of facilities so provided.

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

20. The United Nations alone may consent to the entry of any government officials or of any other person not member of UNAVEM III to such premises.

*Provisions, supplies and services, and sanitary arrangements*

21. The Government shall make available to UNAVEM III, free of charge, facilities and supplies, such as aircraft and vehicle parking facilities and harbor space for vessels. The Government undertakes to assist UNAVEM III as far as possible in obtaining equipment, provisions, and other goods and service required for its subsistence and operations, including fuel at the lower possible or preferential prices below the international price. In making purchases on the local market, UNAVEM III shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNAVEM III from general sales taxes in respect of all official local purchases.

22. UNAVEM III and the Government shall cooperate with respect to sanitary services and shall extend to each other the fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

*Recruitment of local personnel*

23. UNAVEM III may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNAVEM III and to accelerate the process of such recruitment.

*Currency*

24. The Government undertakes to make available to UNAVEM III, against reimbursement in mutually acceptable currency, the amount in novo kwanzas required for the use of UNAVEM III, including the pay of its members, at the rate of exchange most favourable to UNAVEM III.

VI. STATUS OF THE MEMBERS OF UNAVEM III

*Privileges and immunities*

25. The Special Representative, the Deputy Special Representative, the Force Commander, the Deputy Force Commander of the military component, the Chief Police Observer of the civilian police component and such other high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

26. Members of the United Nations Secretariat as well as United Nations Volunteers, assigned to the civilian component to serve with UNAVEM III, shall enjoy the privileges and immunities provided for under articles V and VII of the Convention.

27. Military observers, civilian police personnel and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative shall be considered experts on mission within the meaning of article VI of the Convention.

28. Military personnel of national contingents assigned to the military component of UNAVEM III shall have the privileges and immunities specifically provided for the present Agreement.

29. Unless otherwise specified in the present Agreement, locally recruited members of UNAVEM III shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18(a), (b) and (c) of the Convention.

30. Members of UNAVEM III shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Angola. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

31. Members of UNAVEM III shall have the right to import free of duty their personal effects in connection with their arrival in Angola. They shall be subject to the laws and regulations of Angola governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Angola with UNAVEM III. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNAVEM III, including the military component, upon prior written notification. On departure from Angola, members of UNAVEM III may, notwithstanding the above-mentioned exchanged 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 reasonably residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNAVEM III.

32. 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 Angola by the members of UNAVEM III, in accordance with the present Agreement.

#### *Entry, residence and departure*

33. The Special Representative and members of UNAVEM III shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Angola.

34. The Government of Angola undertakes and facilitates the entry into and departure from Angola of the Special Representative and members of UNAVEM III and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNAVEM III shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Angola. They shall also be exempt from any regulations on entering into or departing from Angola. They shall also be exempt from any regulations governing the residence of aliens in Angola, including registration, but shall not be considered as acquiring any right to permanent

residence or domicile in Angola. Without prejudice to the above-mentioned provisions, the Special Representative and members of UNAVEM III shall respect immigration and customs facilities.

35. For the purpose of such entry or departure, members of UNAVEM III 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 participating State; and (b) a personal identity card issued in accordance with paragraph 36 of the present 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 identity card.

#### *Identification*

36. The Special Representative shall issue to each member of UNAVEM III before or as soon as possible after such member's first entry into Angola, as well as to all locally recruited personnel, a numbered identity card in the English and Portuguese languages, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 35 of the present Agreement, such identity card shall be the only document required of a member of UNAVEM III. The Government shall be notified of the issuance of these identity cards.

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

#### *Uniform and arms*

38. Military members and the United Nations civilian police of UNAVEM III shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNAVEM III may be authorized by the Special Representative at other times. Military members and civilian police of UNAVEM III 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*

39. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of UNAVEM III, including locally recruited personnel, of any UNAVEM III transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of UNAVEM III, 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. Without prejudice to the status of UNAVEM III, its members and property, a list of all permits and licences issued by the Special Representative shall be notified to the Government. Members of UNAVEM III intending to drive vehicles other than UNAVEM III in Angola for private purpose shall obtain a national driving licence provided that they are in possession of a valid driving licence.

40. Without prejudice to the provisions of paragraph 38, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of UNAVEM III for the carrying or use of firearms or ammunition in connection with the functioning of UNAVEM III.

*Military police, arrest and transfer of custody, and mutual assistance*

41. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNAVEM III, as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of UNAVEM III 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 in so far as such employment is necessary to maintain discipline and order among members of UNAVEM III.

42. The military police of UNAVEM III shall have the power of arrest over the military members of UNAVEM III. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 41 above may take into custody any other person on the premises of UNAVEM III. 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.

43. Subject to the provisions of paragraphs 25 and 27, officials of the Government may take into custody any member of UNAVEM III:

- (a) When so requested by the Special Representative; or
- (b) When such a member of UNAVEM III is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNAVEM III, whereafter the provision of paragraph 48 shall apply *mutatis mutandis*.

44. When a person is taken into custody under paragraph 42 or paragraph 43(b), UNAVEM III 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.

45. UNAVEM III 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 items connected with an offence. The handing over of any such items 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 provision of paragraphs 42 to 44.

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

### *Jurisdiction*

47. All members of UNAVEM III 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 UNAVEM III and after the expiration of the other provisions of the present Agreement.

48. Should the Government consider that any member of UNAVEM III 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 25:

(a) If the accused person is a member of either of the civilian components or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 53 of the present Agreement;

(b) Military members of the military component of UNAVEM III 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 Angola.

49. If any civil proceeding is instituted against a member of UNAVEM III before any court of Angola, 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 51 of the present Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNAVEM III 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 UNAVEM III 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 judgment, decision or order. The personal liberty of a member of UNAVEM III shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

### *Deceased members*

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

## VIII. SETTLEMENT OF DISPUTES

51. Except as provided in paragraph 53, any dispute or claim of a private law character to which UNAVEM III or any member thereof is a party and over which the courts of Angola do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of 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 53. The awards of the commission shall be notified to the parties and, if against a member of the United Nations peacekeeping operation, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

52. 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.

53. Any other dispute between UNAVEM III and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 51 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 tribunal. The decisions of the tribunal shall be final and binding on both parties.

54. All differences between the United Nations and the Government of Angola arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

## IX. SUPPLEMENTAL ARRANGEMENTS

55. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

## X. LIAISON

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

## XI. MISCELLANEOUS PROVISIONS

57. Wherever the present Agreement refers to the privileges, immunities and rights of UNAVEM III and to the facilities Angola undertakes to provide to UNAVEM III, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Angolan authorities.

58. The present Agreement shall enter into force upon signature by the United Nations and the Government.

59. The present Agreement shall remain in force until the departure of the final element of UNAVEM III from Angola except that:

(a) The provisions of paragraphs 47, 53 and 54 shall remain in force;

(b) The provisions of paragraph 51 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

60. The present Agreement is done in two originals, in the English and Portuguese languages, both texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

*In Witness Whereof*, the undersigned being duly authorized plenipotentiary of the Government and duly appointed representative of the United Nations, have on behalf of the Parties signed the present Agreement.

*Done* at Luanda on this 3<sup>rd</sup> day of May nineteen hundred and ninety-five.

For the United Nations:

Mr. Alioune Blondin BEYE

For the Government of  
the republic of Angola:

Mr. Jose Anibal Lopes ROCHA

(g) Agreement between the United Nations and the Government of Croatia regarding the status of the United Nations forces and operations in Croatia. Signed at Zagreb on 15 May 1995.<sup>16</sup>

## I. DEFINITIONS

1. For the purpose of the present Agreement,

(a) The United Nations forces and operations in the Republic of Croatia (referred to hereinafter as “the United Nations forces and operations”) are as follows:

(i) “UNCRO” means the United Nations Confidence Restoration Operation in Croatia established pursuant to Security Council resolution 981 (1995) of 31 March 1995 with the mandate described in the above-mentioned resolution;

- (ii) “UNPROFOR” means the United Nations Protection Force the continued presence of which in Croatia is as required pursuant to operative paragraphs 4 and 5 of Security Council resolution 982 (1995) of 31 March 1995;
  - (iii) “UNPF-HQ” means the United Nations Peace Forces headquarters as described in paragraph 84 of the Secretary-General’s report dated 22 March 1995 (S/1995/222) containing arrangements which were approved by the Security Council in resolution 981 (1995) of 31 March 1995;
  - (iv) “UNPREDEP” means, in accordance with the decision of the Security Council in its resolution 983 (1995), the United Nations Preventive Deployment Force in the former Yugoslav Republic of Macedonia which shall carry out support and logistic operations in Croatia;
- (b) The following definitions shall apply:
- (i) the “Special Representative” appointed by the Secretary-General of the United Nations with the consent of the Security Council; any reference to the Special Representative in this Agreement shall, except in paragraph 24, include any member of the United Nations forces and operations to whom he delegates a specified function or authority;
  - (ii) “military component” consisting of military and civilian personnel made available to the United Nations forces and operations by participating States at the request of the Secretary-General;
  - (iii) “police component” consisting of police personnel made available to the United Nations forces and operations by participating States at the request of Secretary-General;
  - (iv) “civilian component” consisting of United Nations officials and other persons assigned by the Secretary-General or made available by participating States to serve as part of the United Nations forces and operations;
  - (v) “member of the United Nations forces and operations” means any member of the military, police or civilian components of the operations mentioned in sub paragraph 1(a) above, as relevant, but unless specifically stated otherwise does not include locally recruited personnel and international contractual personnel provided by means of contractual arrangements with the United Nations;
  - (vi) “participating State” means a State contributing personnel to the above-mentioned components;
  - (vii) “territory” means the territory of the Republic of Croatia;
  - (viii) “the Government” means the Government of the Republic of Croatia;
  - (ix) “the Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

## II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to the United Nations forces and operations or any member thereof as well as international contractual personnel apply in the territory.

## III. APPLICATION OF THE CONVENTION

3. The United Nations forces and operations, their members, property, funds and assets, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which the Republic of Croatia is a party.

4. Article II of the Convention, which applies to the United Nations forces and operations, shall also apply to the property, funds and assets of participating States used in connection with the United Nations forces and operations.

## IV. STATUS OF THE UNITED NATIONS FORCES AND OPERATIONS

5. The United Nations forces and operations and their members as well as international contractual personnel shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. The United Nations forces and operations and their members as well as international contractual personnel shall respect all local laws and regulations. The special Representative shall take all appropriate measures to ensure the observance of those obligations.

6. The Government undertakes to respect the exclusively international nature of the United Nations forces and operations.

7. Without prejudice to mandate of the United Nations forces and operations and their international status:

(a) The United Nations Shall ensure that the United Nations forces and operations shall respect conduct their activities in the Republic of Croatia with full respect for the provincials and spirit of the general conventions applicable to the conduct of military personnel; these international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the Event of Armed Conflict;

(b) The Government undertakes to treat at all times the military personnel of the United Nations forces and operations with full respect for the principles and spirit of the general international conventions applicable to the treatment of military personnel; these international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977.

The United Nations Forces and operations and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.

### *United Nations flag and vehicle markings*

8. The Government recognizes the right of the United Nations forces and operations to display in the territory the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative.

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

### *Communications*

10. The United Nations forces and operations shall enjoy the facilities in respect to communications provided in Article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of their tasks. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the convention.

11. Subject to the provisions of paragraph 10:

(a) The United Nations forces and operations shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points in the territory with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention 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. The telecommunication services shall include radio broadcasting stations and television broadcasting slots which shall be used by the United Nations forces and operations to disseminate information relating to their official activities. For this purpose, the Government shall provide the United Nations forces and operations, suitable radio broadcasting frequencies and television broadcasting slots at no cost to the United Nations.

(b) The United Nations forces and operations shall enjoy, in 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 the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in co-operation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones 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 charged at the most favourable rate.

(c) The United Nations forces and operations may make arrangements through their own facilities for the processing and transport of private mail addressed to or emanating from members of the United Nations forces and operations including international contractual personnel. The Government shall be in-

formed of the nature of such arrangements and shall not be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of the United Nations forces and operations or their members including international contractual personnel. In the event that postal arrangements applying to private mail of members of the United Nations forces and operations 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*

12. The United Nations forces and operations and their members, as well as international contractual personnel shall enjoy, together with their vehicles, vessels, aircraft, including chartered aircraft, and equipment, freedom of movement throughout the territory. That freedom shall, with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within the territory, be coordinated with the Government. The Government undertakes to supply the United Nations forces and operations, where necessary and possible, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating their movements.

13. Vehicles, including all military vehicles, vessels and aircraft, including chartered aircraft, of the United Nations forces and operations 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.

14. The United Nations forces and operations, their aircraft including chartered aircraft, specifically used for the carriage of authorized personnel by the United Nations, vehicles, equipment, stores, fuel and cargo, may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, the United Nations forces and operations will not claim exemption from charges which are in fact charges for service rendered.

#### *Privileges and immunities of the United Nations forces and operations*

15. The United Nations forces and operations, as subsidiary organs of the United Nations, enjoy the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to the United Nations forces and operations shall also apply to the property, funds and assets of participating States used in the territory in connection with the national contingents serving in the United Nations forces and operations, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of the United Nations forces and operations in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the United Nations forces and operations for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at their headquarters, camps and posts for the benefit of the members of the United Nations forces and operations, but not of locally recruited personnel and international contractual

personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. 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 the United Nations forces and operations, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To clear ex customs and excises warehouse, free of duty to other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the United Nations forces and operations or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of 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 Republic of Croatia or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, mutually satisfactory procedures, including documentation, shall be agreed between the United Nations forces and operations and the Government at the earliest possible date.

#### V. FACILITIES FOR THE UNITED NATIONS FORCES AND OPERATIONS

##### *Premises required for conducting the operational and administrative activities of the United Nations forces and operations and for accommodating members of the United Nations forces and operations*

16. The Government shall provide without cost to the United Nations forces and operations and in agreement with the Special Representative such areas and buildings for headquarters, camps or other premises as many be necessary for the conduct of the operational and administrative activities of the United Nations forces and operations and for the accommodation of the members of the United Nations forces and operations as well as international contractual personnel. Without prejudice to the legal status of all such premises, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations troops are co-located with military personnel of the Republic of Croatia, and operations to those premises shall be guaranteed.

17. The Government undertakes to assist the United Nations forces and operations in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or where this is not possible, at the most favorable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of the United Nations forces and operations as to essential services. Where such utilities or facilities are not provided free of charge, payment shall be made by the United Nations forces and operations on terms to be agreed with the competent authorities of the Republic of Croatia. The United Nations forces and operations shall be responsible for the maintenance and upkeep of facilities so provided.

18. The United Nations forces and operations shall have the right, where necessary, to generate, within their premises, electricity for their use and to transmit and distribute such electricity.

19. The United Nations alone may consent to the entry of any government officials or of any other person not a member of the United Nations forces and operations and operations to its premises.

*Provisions, supplies and services, and sanitary arrangements*

20. The Government undertakes to assist the United Nations forces and operations as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for their subsistence and operations. In case of purchases made by the United Nations forces and operations on the local market, the United Nations forces and operations shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The United Nations forces and operations shall be exempt from general sales taxes in respect of all official local purchases.

21. The United Nations forces and operations 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*

22. The United Nations forces and operations and operations may recruit locally such personnel as they require. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by the United Nations forces and operations and to accelerate the process of such recruitment.

*Currency*

23. The Government undertakes to make available to the United Nations forces and operations, against reimbursement in mutually acceptable currency, Croatian kuna required for the use of the United Nations forces and operations, including the pay of their members, at the rate of exchange most favourable to the United Nations forces and operations.

VI. STATUS OF THE MEMBERS OF UNITED NATIONS FORCES  
AND OPERATIONS

*Privileges and immunities*

24. The Special Representative, the Assistant Secretaries-General, the Theater Force Commander and the Commanders UNCRO, UNPROFOR and UNPREDEP, the Director of Civil Affairs of the civilian component, the Director of Administration, the Police Commissioner, and such high ranking members of the United Nations forces and operations as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

25. Officials of the United Nations Secretariat assigned to the civilian component as well as United Nations Volunteers who, for the purpose of the Agreement shall be assimilated to officials for the United Nations, shall enjoy the privileges and immunities of articles V and VII of the convention.

26. Military observers, police personnel and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative shall be considered as expert on mission within the meaning of article VI of the Convention.

27. Military personnel of national contingents assigned to the military component shall have the privileges and immunities specifically provided for in the present Agreement.

28. Unless otherwise specified in the present Agreement, locally recruited members of the United Nations forces and operations shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18(a), (b) and (c) of the Convention.

29. International contractual personnel shall enjoy the immunity concerning official acts and shall be entitled to repatriation facilities provided for in section 18(a) and (f) of the Convention.

30. Members of the United Nations forces and operations shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside the territory. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

31. Members of the United Nations forces and operations shall 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 governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the territory with the United Nations forces and operations. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of the United Nations forces and operations including the military component as well as international contractual personnel, upon prior written notification. On departure from the territory, members of the United Nations forces and operations as well as international contractual personnel may, notwithstanding any foreign exchange regulations in force, take with them such funds as the Special Representative certifies were received in pay and emoluments from, as the case may be, the United Nations, a participating State or the employer of international contractual personnel, and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the United Nations forces and operations. 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 by the members of the United Nations forces and operations as well as international contractual personnel, in accordance with the present Agreement.

#### *Entry, residence and departure*

32. The Special Representative and members of the United Nations forces and operations as well as international contractual personnel shall whenever so required by the Special Representative, have the right to enter into reside in and depart from the territory.

33. The Government undertakes to facilitate the entry into and departure from the territory, of the Special Representative and members of the United Nations forces and operations as well as international contractual personnel and shall be kept informed of such movement. For that purpose, the Special Representative and members of the United Nations forces and operations shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from the territory. They shall also 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 or domicile in the territory.

34. For the purpose of such entry or departure, members of the United Nations forces and operations as well as international contractual personnel 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 35 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State or, in the case of international contractual personnel, their national passport, shall be accepted in lieu of the said identity card.

#### *Identification*

35. The Special Representative shall issue, as appropriate, to each member of the United Nations forces and operations before or as soon as possible after such member's first entry into the territory, as well as to all locally recruited personnel and international contractual personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required.

36. Members of the United Nations forces and operations and operations as well as locally recruited personnel and international contractual personnel shall be required to present, but not to surrender, their identity cards upon demand of an appropriate official of the Government.

#### *Uniform and arms*

37. Military members and police personnel of the United Nations forces and operations shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of United Nations forces and operations may be authorized by the Special Representative at other times. Military members and police personnel of the United Nations forces and operations 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*

38. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of the United Nations forces and operations, including locally recruited personnel and international contractual personnel, of any transport or communica-

tion equipment of the United Nations forces and operations and for the practice of any profession or occupation in connection with the functioning of the United Nations forces and operations, 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.

39. Without prejudice to the provisions of paragraph 37, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a members of the United Nations forces and operations for the carrying or use of firearms or ammunition in connection with the functioning of the United Nations forces and operations.

*Military police, arrest and transfer of custody, and mutual assistance*

40. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of the United Nations forces and operations, as well as locally recruited personnel. Personnel designated by the Special Representative shall police the premises of the United Nations forces and operations 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 in so far as such employment is necessary to maintain discipline and order among members of the United Nations forces and operations.

41. The military police of the United Nations forces and operations shall have the power of arrest over the military members of the United Nations forces and operations. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel designated by the Special Representative and mentioned in paragraph 40 above may take into custody any other person on the premises of the United Nations forces and operations. 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.

42. Subject to the provisions of paragraphs 24 and 26, officials of the Government may take into custody any member of the United Nations forces and operations:

(a) When so requested by the Special Representative; or

(b) When such a member of the United Nations forces and operations is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of the United Nations forces and operations, whereafter the provision of paragraph 47 shall apply *mutatis mutandis*.

43. When a person is taken into custody under paragraph 41 or paragraph 42(b), the United Nations forces and operations 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.

44. The United Nations forces and operations 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 items connected with an offence. The handing over of any such items 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 provision of paragraphs 41 to 43.

45. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the United Nations forces and operations or their members which, if committed in relations to the forces of the Government, would have rendered such acts liable to prosecution.

#### *Jurisdiction*

46. All members of the United Nations forces and operations 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 the United Nations forces and operations and after the expiration of the other provisions of the present Agreement.

47. Should the Government consider that any member of the United Nations forces and operations 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 24:

(a) If the accused person is a member of either of the civilian components or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 52 of the present Agreement.

(b) Military members of the military component of the United Nations forces and operations 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.

48. If any civil proceeding is instituted against a member of the United Nations forces and operations 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. Depending on the contents of such certification, the following shall apply:

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 50 of the present Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of the United Nations forces and operations is unable because of official duties or authorized absence to protect his/her 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 the United Nations forces and operations 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 judgment, decision or order. The personal liberty of a member of the United Nations forces and operations shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

#### *Deceased members*

49. The Special Representative shall have the right to take charge of and dispose of the body of a member of the United Nations forces and operations as well as international contractual personnel 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

50. Except as provided in paragraph 52, any dispute or claim of a private law character to which the United Nations forces and operations or any member thereof is a party and over which the courts of the territory do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of 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 52. The awards of the commission shall be notified to the parties and, if against a member of the United Nations forces and operations, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

51. 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.

52. Any other dispute between the United Nations forces and operations and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 50 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 tribunal. The decisions of the tribunal shall be final and binding on both parties.

53. All differences between the United Nations and the Government arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

#### VIII. SUPPLEMENTAL ARRANGEMENTS

54. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

#### IX. LIAISON

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

#### X. MISCELLANEOUS PROVISIONS

56. Wherever the present Agreement refers to the privileges, immunities and rights of the United Nations forces and operations and to the facilities Government undertakes to provide to the United Nations forces and operations, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Croatian authorities.

57. The present Agreement shall enter into force upon signature by the United Nations and the Government.

58. The present Agreement shall remain in force until the departure of the final element of the United Nations forces and operations from the territory except that:

- (a) The provisions of paragraphs 46, 52 and 53 shall remain in force;
- (b) The provisions of paragraph 50 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

*Done at Zagreb on 15 May 1995.*

For the Government of the  
Republic of Croatia  
  
Mate GRANIĆ  
Deputy Prime Minister  
of Foreign Affairs of the  
Government of the Republic of Croatia

For the United Nations  
  
Yasushi AKASHI  
Special Representative of  
the Secretary-General for  
the Former Yugoslavia

- (h) Exchange of letters constituting an agreement between the United Nations and the Government of Hungary concerning arrangements regarding the Study Tour of the Working party on the Chemical Industry, subsidiary body of the Economic Commission for Europe, to be held in Hungary from 22 to 25 June 1995. Signed at Geneva on 17 March and 17 May 1995<sup>17</sup>

I

LETTER FROM THE UNITED NATIONS

17 March 1995

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of Hungary (hereinafter referred to as “the Government”) in connection with the Study Tour of the Working Party on the Chemical Industry, subsidiary body of the Economic Commission for Europe, to be held, at the invitation of the Government, in Hungary, from 22 to 25 June 1995.

*Arrangements between the United Nations and the Government of Hungary regarding the Study Tour of the Working Party on the Chemical Industry, subsidiary body of the Economic Commission for Europe, to be held in Hungary from 22-25 June 1995.*

1. Participants in the Study Tour will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the Rules of procedure of the Commission and its subsidiary organs.

2. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to person or damage to property in conference or office premises provided for the Study Tour; (ii) the transportation provided by the Government; and (iii) the employment for the Study Tour of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

3. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations to which Hungary is a party, shall be applicable to the Study Tour, in particular:

(a) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Study Tour shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Study shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Study Tour;

(c) Personnel provided by the Government pursuant to this Agreement 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 Study Tour;

(d) All participants and all persons performing functions in connection with the Study Tour shall have the right of unimpeded entry into and exit from Hungary. Visas and entry permits, where required, shall be granted promptly and free of charge.

4. The Government may, if it so wishes, invite officials of the Organization to take part in the Study Tour, provided it bears all the costs arising from such participation.

5. Any dispute concerning the interpretation or implementation of these Arrangements, 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, will unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will 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 will 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 will 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 will be final and, even if rendered in default of one of the parties, be binding on both of them.

...

I have the honour to propose that this letter and your affirmative answer shall constitute an agreement between the United Nations and the Government of Hungary which shall enter into force on the date of your reply and shall remain in force for the duration of the Study Tour.

(Signed) Vladimir PETROVSKY  
Director-General of the United  
Nations Office at Geneva

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF HUNGARY TO THE UNITED NATIONS OFFICE AT GENEVA

17 May 1995

With reference to your letter 17 March 1995 regarding the Study Tour of the Working Party on the Chemical Industry, subsidiary body of the Economic Commission for Europe, to be held in Hungary from 22 to 25 June 1995, I have the honour to inform you that the Government of Hungary gave its consent to the conditions of the proposed agreement.

By this letter the agreement between the United Nations and the Government of Hungary enters into force and remains in force for the duration of the Study Tour and for such additional period as is necessary for its preparation and winding up.

(Signed) Dr. György BOYTHA  
Ambassador

- (i) Exchange of letters constituting an agreement between the United Nations and the Government of Denmark regarding the Workshop on a Permanent Forum for Indigenous People, to be held at Copenhagen from 26 to 28 June 1995. Signed at Geneva on 19 May 1995<sup>18</sup>

## I

### LETTER FROM THE UNITED NATIONS

Geneva, 19 May 1995

Sir,

I have the honour to give you below the text of the Agreement between the United Nations, represented by the United Nations Centre for Human Rights, and the Government of Denmark (hereinafter referred to as "the Government") in connection with the Workshop on a Permanent Forum for Indigenous People, to be held at Copenhagen from 26 to 28 June 1995.

Agreement between the United Nations and the Government of Denmark regarding the Workshop on a Permanent Forum for Indigenous People, to be held at Copenhagen from 26 to 28 June 1995

1. The United Nations will invite to the Workshop, through the Centre for Human Rights, a maximum of 20 representative of Governments, a maximum of 20 representatives of organizations of indigenous people and two (2) independent experts to participate in the Meeting. With the exception of those representatives and independent experts referred to in paragraph 4, all participants shall be responsible for their travel and daily subsistence expenses, accommodation and visa arrangements.

2. A maximum of six (6) representatives of specialized agencies and a maximum of ten (10) representatives of non-governmental organizations specially concerned with the subject matter shall also be invited by the United Nations Centre for Human Rights to participate as observers in the Workshop. These specialized agencies and non-governmental organizations shall also be responsible for their travel and daily subsistence expenses, accommodation and visa arrangements.

3. The United Nations Centre for Human Rights shall send two staff members to Copenhagen in order to service the Workshop. The Centre for Human Rights will, in accordance with United Nations rules and practices governing travel, defray travel accommodation and terminal expenses for these staff members.

4. The United Nations will invite and arrange for the travel of four (4) representatives of organizations of indigenous people and two (2) independent experts. It shall also cover the daily subsistence allowance and the terminal expenses of the four invited representatives of indigenous organizations and the two invited independent experts in accordance with the Organizations Rules and Regulations.

5. The Government shall provide for the Workshop, at no cost to the Organization, adequate conference facilities, including personnel, office space and supplies, as well as English/Spanish interpretation, as described in the attached annex.

6. 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 property in the conference or office premises provided for the Workshop;

(b) The employment for the Workshop of personnel provided or arranged by the Government;

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

7. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Denmark is a party, shall be applicable to the Workshop, in particular:

(a) The participants invited by the United Nations Center for Human Rights pursuant to paragraph 1 above shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention;

(b) Staff of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provide under articles V and VII of the Convention; officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and immunities of the Specialized Agencies of 21 November 1947;

(c) Representatives of Member States invited in accordance with paragraph 2 above, shall enjoy the privileges and immunities provided under article IV of the Convention;

(d) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and 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;

(e) Personnel provided by the Government pursuant to this Agreement and representatives of non-governmental organizations invited in accordance with paragraph 2 above to participate as observers in the Workshop, shall enjoy immunity from legal process in respect of words spoken or written, an any act performed by them in their official capacity in connection with the Workshop;

(f) All participants, including observers, United Nations staff and persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Denmark. Visas and entry permits, where required, shall be granted promptly and free of charge.

8. The rooms, offices and related localities and facilities put at the disposal of the Workshop by the Government shall be the conference area, which shall constitute United Nations premises within the meaning of Article II, Section 3, of the Convention of 13 February 1946.

9. The Government shall notify the local authorities of the convening of the Workshop and request appropriate protection.

10. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provision of the Convention on the Privileges and Immunities of the United Nations or any other agreement, shall unless the parties agree otherwise, 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 will 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 names 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 will adopt its own rules of procedure, provide for the reimbursement of its members and the disruption 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.

I have the honour to propose that this letter and your affirmative answer shall constitute an Agreement between the United Nations and the Government of Denmark which shall enter into force on the date of your reply and shall remain in force for the duration of the Workshop, and for such additional period as is necessary for their preparation and winding up.

(Signed) Vladimir PETROVSKY  
Director-General of the United  
Nations Office at Geneva

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF  
DENMARK TO THE UNITED NATIONS OFFICE AT GENEVA

19 May 1995

Sir,

Further to your letter dated 19 May 1995 and the enclosed text of the Agreement between the United Nations, represented by the United Nations Centre for Human Rights, and the Government of Denmark in connection with the Workshop on a Permanent Forum for Indigenous People, to be held at Copenhagen from 26 to 28 June 1995, this Mission, acting upon instruction, has the honour of conveying herewith its affirmative reply. This constitutes an Agreement between the United Nations and the Government of Denmark entered into force on this date and remaining in force for the duration of the Workshop, and for such additional period as is necessary for its preparation and winding up.

Yours faithfully,

(Signed) Ole Egberg MIKKELSEN  
Deputy Permanent Representative

- (j) Exchange of letters constituting an agreement between the United Nations and the Government of Trinidad and Tobago concerning the Caribbean Regional Seminar to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port of Spain from 3 to 5 July 1995. New York, on 26 and 29 June 1995<sup>19</sup>

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LETTER FROM THE UNITED NATIONS

26 June 1995

Excellency,

I have the honour to refer to General Assembly resolutions 46/181 of 19 December 1991, 47/202 of 22 December 1992 and 49/89 of 16 December 1994 as well as the invitation from the Government of the Republic of Trinidad and Tobago dated 1 June 1995 in connection with the Caribbean Regional Seminar to be organized by the Special Committee on the Situation with regard to the

Implementation of the Declaration on the Granting of Independence to Colonial Countries and People at Port of Spain, Republic of Trinidad and Tobago from 3 to 5 July 1995. With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

1. The seminar will be attended by approximately 45 participants including members of the Special Committee of 24, representatives of administering Powers, of bodies, international organizations, of the peoples of Non-Self-Governing Territories, experts, representatives of non-governmental organizations and observers, and assisted by approximately seven United Nations staff members.

2. *Premises for the Seminar*

The Government of the Republic of Trinidad and Tobago will assist the United Nations in making the arrangements for conference hall facilities and equipment.

3. *Communication equipment*

The Government of the Republic of Trinidad and Tobago will make the necessary arrangements for the installation of telex, telephone and facsimile facilities at the site of the Seminar. Rental, installation and other charges for these facilities will be borne by the United Nations.

4. *Office equipment*

The United Nations will make arrangements with private companies to purchase or hire office equipment needed for the conduct of the Seminar.

5. *Accommodation*

While arrangements for the accommodation of participants will be the responsibility of the individual participants themselves, the Government of the Republic of Trinidad and Tobago will assist in facilitating such arrangements at reasonable commercial rates.

6. *Transportation*

The Government of the Republic of Trinidad and Tobago will provide three (3) VIP cars and one (1) 25-seater bus for transport between the airport and the hotel and vice versa of participants and for use by visiting dignitaries as appropriate.

7. *Liaison and Protocol Officers*

The Government of the Republic of Trinidad and Tobago will provide four persons to perform the duties of Liaison Officers to the Seminar and will assign one (1) Protocol Officer to assist in the planning and coordination of the Seminar.

8. *Local support staff*

The Government of the Republic of Trinidad and Tobago will provide the following fifteen (15) support staff to the Seminar:

- (i) Five (5) secretaries;
- (ii) Six (6) Conference support staff; and
- (iii) Four (4) machine operators

The United Nations will meet the cost of overtime, meals and transport of the above staff, where necessary.

9. *Security*

The security coverage for the Seminar will be the responsibility of the Government of the Republic of Trinidad and Tobago.

10. *Medical facilities*

The Government of the Republic of Trinidad and Tobago will be responsible for making arrangements for medical treatment and admission to a hospital to be provided for Seminar participants should this prove necessary.

11. *Tax Exemption*

The Government of the Republic of Trinidad and Tobago shall exempt United Nations personnel and holders of diplomatic passports from the airport departure tax.

I wish to propose that the following terms shall apply to the Seminar:

- (a) (i) The Convention on the Privileges and Immunities of the United Nations of 1946 shall be applicable in respect of the Seminar. The participants invited by the United Nations shall enjoy the privileges and accorded immunities to experts on mission for the United Nations by Article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention on the Privileges and immunities of the United Nations.
- (ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar.
- (iii) Personnel provided by the Government, pursuant to this Agreement, 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 Seminar.

(b) All participants and all persons performing functions in connection with the Seminar shall have the right of unimpeded entry into and exist from the Government of the Republic of Trinidad and Tobago. Visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

(c) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nation arising out of (i) death, injury to persons or damage to property in conference or office premises provided for the Seminar; (ii) death, injury or damage to person or property occurring during use of the transportation referred to in paragraph 6, above; and (iii) the employment for the Seminar of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

(d) 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 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 arbitrators, 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.

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and The Government of the Republic of Trinidad and Tobago regarding the provision of host facilities by your Government for the Seminar.

(Signed) Marrack GOULDING  
Under-Secretary General for  
Political Affairs

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF TRINIDAD AND TOBAGO TO THE UNITED NATIONS

29 June 1995

Sir,

I have the honour to refer to your letter of 26 June 1995 which contains the Agreement on the hosting of the Caribbean Regional Seminar to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port of Spain, Republic of Trinidad and Tobago from 3 to July 1995.

I have the honour to confirm that the above arrangements are acceptable to the Government of the Republic of Trinidad and Tobago and this exchange of letters constitutes an Agreement between the Government of the Republic of Trinidad and Tobago and the United Nations regarding the provision of host facilities by my Government for the Seminar.

(Signed) Annette DES LLES  
Ambassador

- (k) Exchange of letters constituting an agreement between the United Nations and the Government of Estonia concerning arrangements regarding the Study Tour of the Committee on Human Settlements, principal subsidiary body of the Economic Commission for Europe, to be held in Estonia from 24 to 27 September 1995. Signed at Geneva on 19 May 1995 and at New York on 6 July 1995<sup>20</sup>

I

LETTER FROM THE UNITED NATIONS

19 May 1995

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of the Republic of Estonia (hereinafter referred to as "the Government") in connection with the Study Tour of the Committee on Human Settlements, principal subsidiary body of the Economic Commission for Europe, to be held, at the invitation of the Government, in Hungary, from 24 to 27 September 1995.

Arrangements between the United Nations and the Government of the Republic of Estonia regarding the Study Tour of the Committee on Human Settlements, principal subsidiary body of the Economic Commission for Europe, to be held in the Republic of Estonia from 24 to 27 September 1995

1. Participants in the Study Tour will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the Rules of procedure of the Commission and its subsidiary organs.

2. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to person or damage to property in conference or office premises provided for the Study Tour; (ii) the transportation provided by the Government; and (iii) the employment for the Study Tour of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

3. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations to which the Republic of Estonia is a party, shall be applicable to the Study Tour, in particular:

(a) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Study Tour shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Study shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Study Tour;

(c) Personnel provided by the Government pursuant to this Agreement 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 Study Tour;

(d) All participants and all persons performing functions in connection with the Study Tour shall have the right of unimpeded entry into and exit from the Republic of Estonia. Visas and entry permits, where required, shall be granted promptly and free of charge.

4. The Government may, if it so wishes, invite officials of the Organization to take part in the Study Tour, provided it bears all the costs arising from such participation.

5. Any dispute concerning the interpretation or implementation of these Arrangements, 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, will unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will 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 will 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 will 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 will be final and, even if rendered in default of one of the parties, be binding on both of them.

...

I have the honour to propose that this letter and your affirmative answer shall constitute an agreement between the United Nations and the Government of the Republic of Estonia which shall enter into force on the date of your reply and shall remain in force for the duration of the Study Tour.

(Signed) Vladimir PETROVSKY  
Director-General of the United  
Nations Office at Geneva

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF  
ESTONIA TO THE UNITED NATIONS OFFICE AT GENEVA

6 July 1995

Sir,

I have the honour to confirm receipt of your letter of 19 May 1995 containing your proposal for arrangements between the United Nations and the Government of the Republic of Estonia regarding the Study Tour of the Committee on Human Settlements, principal subsidiary body of the Economic Commission for Europe, to be held in the Republic of Estonia from 24 to 27 September 1995.

The text proposed in your letter is acceptable to the Government of Estonia and the present letter together with your proposed text may be understood to constitute an Agreement between the United Nations and the Government of Estonia.

(Signed) Trivimi VELLISTE  
Ambassador

- (l) Memorandum of Understanding between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland regarding the contribution of personnel to the International Criminal Tribunal for Rwanda. Signed at New York on 14 July 1995<sup>21</sup>

The United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter: "the Participants") have reached the following understanding:

*Article I*

RESPONSIBILITIES OF THE GOVERNMENT

1. The Government of the United Kingdom will make available for the duration and purposes of this Memorandum of Understanding the services of three investigators (hereinafter: "United Kingdom personnel") listed in annex I hereto. Changes and modifications to the annex may be made from time to time with the approval of the participants.
2. The Government of the United Kingdom will pay all expenses in connection with the services of the United Kingdom personnel, including salaries, travel costs to and from the duty station and other benefits to which they are entitled, except as hereinafter provided.
3. The Government of the United Kingdom will ensure that during the entire period of service under this Memorandum of Understanding adequate coverage for illness, disability or death is provided for United Kingdom personnel.

## *Article II*

### RESPONSIBILITY OF THE UNITED NATIONS

1. The United Nations will provide the United Kingdom personnel with office space, support staff, equipment and other resources necessary to carry out the tasks assigned to them in the Prosecutor's office.

2. During any mission assignment of the United Kingdom personnel away from their duty station, the United Nations will be responsible for the payment of travel costs to the mission area and return.

3. The United Nations will pay the United Kingdom personnel a daily subsistence allowance (DSA) for the duration of their service with the Prosecutor's Office under this Memorandum of Understanding in accordance with the schedule of rates established for United Nations personnel. The Government of the United Kingdom will reimburse the United Nations for these payments up to a total of £100,000.

4. While on mission assignment in the territory of Rwanda, the United Nations will provide to the United Kingdom personnel, through Assistance Mission for Rwanda (UNAMIR) such protection as may be required for the performance of their functions during their presence in the UNAMIR area of operation.

5. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of or related to the provision of services under this Memorandum of Understanding, except where such illness, injury or death results directly from the gross negligence of the officials or staff of the United Nations.

## *Article III*

### RESPONSIBILITIES OF THE UNITED KINGDOM PERSONNEL

The Government of the United Kingdom accepts the terms and conditions specified below, and will, as far as possible, ensure that United Kingdom personnel performing services under this Memorandum of Understanding comply with these conditions.

(a) The United Kingdom personnel will perform their functions under the authority, and in full compliance with the instructions of the Prosecutor, and any person acting on his behalf.

(b) The United Kingdom personnel will conduct field investigations, witness interviews, statement taking and the preparation of prosecution briefs in conjunction with the prosecutors.

(c) The United Kingdom personnel will respect the impartiality and independence of the International Tribunal and will neither seek nor accept instructions regarding the services performed under this Memorandum of Understanding from any Government or from any authority external to the International Tribunal.

(d) The United Kingdom personnel will refrain from any conduct which would adversely reflect on the International Tribunal or the United Nations and will not engage in any activity which is incompatible with the aims and objectives of the United Nations.

(e) The United Kingdom personnel will comply with all rules, regulations, instructions, procedures or directives issued by the International Tribunal.

(f) The United Kingdom personnel will exercise the utmost discretion in all matters relating to their functions and will not communicate, at any time, without the authorization of the Prosecutor to the media or to any institution, person, Government or other authority external to the International Tribunal, any information that has not been made public, and which has not become known to them by reason of their association with the International Tribunal. They will not use any such information without the written authorization of the Prosecutor, and in any event, such information will not be used for personal gain. These responsibilities do not lapse upon expiration of this Memorandum of Understanding.

(g) The members of the United Kingdom personnel will sign an undertaking in accordance with annex II hereto.

#### *Article IV*

##### LEGAL STATUS OF THE UNITED KINGDOM PERSONNEL

1. The United Kingdom personnel will not be considered in any respect as being officials or staff of the United Nations.

2. The United Kingdom personnel shall be considered “experts on missions” within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and shall enjoy the privileges, immunities and facilities specified in that article wherever they perform missions for the Tribunal.

3. The United Kingdom personnel may be granted such additional privileges, immunities and facilities as may be agreed upon between the United Nations and the State of the duty station or the mission area.

#### *Article V*

##### SETTLEMENT OF DISPUTES

Any dispute regarding the interpretation or application of this Memorandum of Understanding will be resolved by consultation between the participants.

#### *Article VI*

##### AMENDMENT

This Memorandum of Understanding may be amended at any time, in writing, by the mutual consent of the participants. Each participant will give full consideration to any proposal for an amendment made by the other participant.

## Article VII

### EFFECTIVE DATE AND TERMINATION

This Memorandum of Understanding will be given retroactive effect as of 1 May 1995, and will remain in operation until 30 November 1995 unless terminated by either participant giving the other one month's written notice.

Similar agreements were concluded with the United States of America on 6 January 1995 and on 6 September 1995, and with the Netherlands on 15 September 1995.

Agreements for the contribution of personnel to the International Tribunal for the Former Yugoslavia were also concluded between the United Nations and the United Kingdom of Great Britain and Northern Ireland on 19 January 1995, and with Finland on 15 December 1995.

- (m) Agreement between the United Nations and the Government of the United Republic of Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda. Signed at New York on 31 August 1995<sup>22</sup>

*Whereas* the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations, *inter alia*, decided, by its resolution 955 (1994) of 8 November 1994, "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994";

*Whereas* the International Tribunal for Rwanda is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

*Whereas* the Security Council, by its resolution 977 (1995) of 22 February 1995 decided that "subject to the conclusion of appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the International Tribunal for Rwanda shall have its seat at Arusha";

*Whereas* the United Nations and the United Republic of Tanzania wish to conclude an Agreement regulating matters arising from the establishment and necessary for the proper functioning of the International Tribunal for Rwanda in the United Republic of Tanzania;

The United Nations and the United Republic of Tanzania have agreed as follows:

## Article I

### DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

- (a) "the Tribunal" means the International Tribunal for Rwanda established by the Security Council pursuant to its resolution 955 (1994);

- (b) "the premises of the Tribunal" means buildings, parts of buildings and areas, including installations and facilities made available to maintain, occupied or used by the Tribunal in the host country in connection with its functions and purposes;
- (c) "the host country" means the United Republic Tanzania;
- (d) "the Government" means the Government of the United Republic of Tanzania;
- (e) "the United Nations" means the United Nations, an international governmental organization established under the Charter of the United Nations;
- (f) "the Security Council" means the Security Council of the United Nations
- (g) "the Secretary-General" means the Secretary-General of the United Nations;
- (h) "the competent authorities" means national, regional, municipal and other competent authorities under the law of the host country;
- (i) "the Statute" means the Statute of the Tribunal adopted by the Security Council by its resolution 955 (1994);
- (j) "the judges" means the judges of the Tribunal as referred in article 12 of the Statute;
- (k) "the President" means the President of the Tribunal as referred to in article 13 of the Statute;
- (l) "the Prosecutor" means the Prosecutor of the Tribunal as referred to in Article 15 of the Statute;
- (m) "the Registrar" means the Registrar of the Tribunal as appointed by the Secretary-General pursuant to article 16 of the Statute;
- (n) "the staff of the Tribunal" means the staff of the Office of the Prosecutor as referred to in paragraph 3 of article 15 of the Statute and the staff of the Registry as referred to in paragraph 4 of article 16 of the Statute;
- (o) "persons performing missions for the Tribunal" means persons performing certain missions for the Tribunal in the investigation or prosecution or in the judicial appellate proceedings;
- (p) "the witnesses" means persons referred to as such in the Statute;
- (q) "experts" means persons called at the instance of Tribunal, the Prosecutor, the suspect or the accused to present testimony based on special knowledge, skills, experience or training;
- (r) "counsel" means a person referred to as such in the Statute;
- (s) "the suspect" means a person referred to as such in the Statute;
- (t) "the accused" means a person referred to as such in the Statute;
- (u) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the United Republic of Tanzania acceded on 29 October 1962;
- (v) "The Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961<sup>23</sup> to which the United Republic of Tanzania acceded on 5 November 1962;
- (w) "the regulations" means the regulations adopted by the Tribunal pursuant to this Agreement;
- (x) "Rules of Procedure and Evidence" means the rules of procedure and evidence adopted by the judges in accordance with article 14 of the Statute.

## *Article II*

### PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the United Republic of Tanzania.

## *Article III*

### JURIDICAL PERSONALITY OF THE TRIBUNAL

1. The Tribunal shall possess in the host country full juridical personality. This shall, in particular, include the capacity:
  - (a) To Contract;
  - (b) To acquire and dispose of movable and immovable property;
  - (c) To institute legal proceedings.
2. For the purpose of this article the Tribunal shall be represented by the Registrar.

## *Article IV*

### APPLICATION OF THE GENERAL AND VIENNA CONVENTIONS

The General Convention and the Vienna Convention shall be applicable *mutatis mutandis* to the Tribunal, its property, funds and assets, to the premises of the Tribunal, to the judges, the Prosecutor and the Registrar, the staff of the Tribunal and persons performing missions for the Tribunal.

## *Article V*

### INVIOLABILITY OF THE PREMISES OF THE TRIBUNAL

1. The premises of the Tribunal shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without the express consent of the Tribunal. The property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
2. The competent authorities shall not enter the premises of the Tribunal to perform any official duty, except with the express consent, or at the request of, the Registrar or an official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Tribunal except with the consent of and in accordance with conditions approved by the Registrar.

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

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

The Tribunal may expel or exclude persons from the premises of the Tribunal for violation of its regulations.

#### *Article VI*

##### LAW AND AUTHORITY ON THE PREMISES OF THE TRIBUNAL

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

2. Except as otherwise provided in this Agreement or in the General Convention the laws and regulations of the host country shall apply within the premises of the Tribunal.

3. The Tribunal shall have the power to make regulations operative on the premises of the Tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No law or regulation of the host country which is inconsistent with a regulation of the Tribunal shall, to the extent of such inconsistency, be applicable within the premises of the Tribunal.

4. Any dispute between the Tribunal and the host country, as to whether a regulation of the Tribunal is authorized by this article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by this article, shall be promptly settled by the procedure set out in article XXIX, paragraph 2 of this Agreement. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Tribunal to the extent that the Tribunal claims it to be inconsistent with its regulation.

#### *Article VII*

##### PROTECTION OF THE PREMISES OF THE TRIBUNAL AND THEIR VICINITY

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquility of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity and shall provide to the premises of the Tribunal the appropriate protection as may be required.

2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal of persons therefrom.

### *Article VIII*

#### FUNDS, ASSETS AND OTHER PROPERTY

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

2. Without being restricted by financial controls, regulations or moratoria of any kind, the Tribunal:

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

(b) shall be free to transfer its funds, gold or currency from one country to another, or with in the host country, to the United Nations or any other agency.

### *Article IX*

#### INVIOIABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE TRIBUNAL

The archives of the Tribunal, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

### *Article X*

#### EXEMPTION FROM TAXES AND DUTIES

1. The Tribunal, its assets, income and other property shall be exempt from all direct taxes levied by state and other regional or local authorities or otherwise. It is understood, however, that the Tribunal shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. While the Tribunal will not generally claim exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the Tribunal including rentals, nevertheless when the Tribunal is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall make appropriate administrative arrangements for the remissions or refund of such taxes or duties.

3. The Tribunal, its funds, assets and other property shall be exempt from all customs duties in respect of articles imported or exported by the Tribunal for its official use, including motor vehicles. The Tribunal shall also be exempt

from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications. Assets and other property for which an exemption from customs duties has been obtained shall not be sold within the United Republic of Tanzania except in accordance with conditions agreed to with the Government.

### *Article XI*

#### COMMUNICATIONS FACILITIES

1. The Tribunal shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, and charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of the Tribunal shall be subject to censorship by the Government. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications, and other forms of communications as may be used by the Tribunal. The Tribunal shall be entitled to use codes and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags.

3. The Tribunal shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those allocated to it by the Government, between the Tribunal offices, installations, facilities and means of transport, within and outside the host country, and in particular with the International Tribunal for the Former Yugoslavia, the Investigative/Prosecutorial Unit in Kigali and the United Nations Headquarters in New York.

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

### *Article XII*

#### PUBLIC SERVICES FOR THE PREMISES OF THE TRIBUNAL

1. The competent authorities shall secure, on fair conditions and upon the request of the Registrar or on his behalf, the public services needed by the Tribunal such as, but not limited to postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In cases where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Tribunal by the competent authorities, or where the prices thereof are under their control, rates for such services shall not exceed the lowest comparable rates accorded to diplomatic missions or other international organizations.

3. In case of *force majeure* resulting in a complete or partial disruption of the aforementioned services, the Tribunal shall for the performance of its functions be accorded the priority given to essential agencies and organs of the Government.

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

#### *Article XII*

##### FLAG, EMBLEM AND MARKINGS

The Tribunal shall be entitled to display its flag, emblem and markings on the premises of the Tribunal, and to display its flag on vehicles used for official purposes.

#### *Article XIV*

##### PRIVILEGES AND IMMUNITIES OF THE JUDGES, THE PROSECUTOR AND THE REGISTRAR

1. The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have the nationality of the United Republic of Tanzania in the host country, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention. They shall *inter alia* enjoy:

- (a) Personal inviolability, including immunity from arrest or detention;
- (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
- (c) Inviolability for all papers and documents;
- (d) Exemption from immigration restrictions, alien registration or national service obligations;
- (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 agents.

2. In the event the Tribunal operates a system for the payments of pensions and annuities to former Judges, Prosecutors and Registrars and their dependents, exemption from income tax in the host country shall not apply to such pensions and annuities.

3. Privileges and immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Tribunal and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie, as concerns the Judges, with the Tribunal in accordance with its rules; as concerns the Prosecutor and the Registrar, with the Secretary-General in consultation with the President.

#### *Article XV*

##### PRIVILEGES AND IMMUNITIES OF THE STAFF OF THE TRIBUNAL

1. The staff of the Tribunal shall be accorded the privileges and immunities as provided for in Articles V and VII of the General Convention. They shall *inter alia*:

(a) Enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Tribunal;

(b) Enjoy exemption from taxation on the salaries and emoluments paid to them by the Tribunal;

(c) Enjoy immunity from national service obligations;

(d) Enjoy immunity, together with members of their families forming part of their household, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable rank of the diplomatic missions established in the host country;

(f) Be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as diplomatic agents;

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

2. Internationally-recruited staff of P-4 level and above who do not have the nationality of the United Republic of Tanzania shall, together with members of their families forming part of their household who do not have the nationality of the United Republic of Tanzania, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Recruited internationally staff, who do not have Tanzanian nationality shall also be entitled to the following additional facilities:

(a) To import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing regulations of the host country;

(b) To import a motor vehicle free of customs and excise duties, including value-added tax, if applicable, in accordance with existing regulations of the host country applicable to members of diplomatic missions of comparable ranks;

(c) To export with relief from duties and taxes, on the termination of their function in the United Republic of Tanzania, their furniture and personal effects, including motor vehicles;

(d) They may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

4. The privileges and immunities are granted to the staff of the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Secretary-General.

5. The rights and entitlements referred to in paragraphs 1(g) and 3 above shall be exercised in accordance with the formal requirements of the host country. These requirements, however shall not affect the general principles laid down in this Article.

#### *Article XVI*

##### PERSONNEL RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES

Personnel recruited by the Tribunal locally and assigned to hourly rates, shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Tribunal. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

#### *Article XVII*

##### PERSONS PERFORMING MISSIONS FOR THE TRIBUNAL

1. Persons performing missions for the Tribunal shall enjoy the privileges, immunities and facilities under articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal.

2. The privileges and immunities are granted to persons performing missions for the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity referred to in paragraph 1 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal.

#### *Article XVIII*

##### WITNESSES AND EXPERTS APPEARING BEFORE THE TRIBUNAL

1. The host country shall not exercise its criminal jurisdiction over witnesses and experts appearing from outside the host country on a summons or a request of the Tribunal, in respect of acts or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in paragraph 1 above shall cease when the witness or expert having had, for a period of fifteen consecutive days from the date when his or her presence is no longer required by the Tribunal or the Prosecutor, an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned, unless such return is on another summons or request of the Tribunal or the Prosecutor.

3. Witnesses and experts referred to in paragraph 1 above shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions for the Tribunal.

### *Article XIX*

#### COUNSEL

1. The counsel of a suspect or an accused who has been admitted as such by the Tribunals, shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions under the Statute.

2. In particular, the counsel shall, when holding a certificate that he or she has been admitted as a counsel by the Tribunal, be accorded:

(a) Exemption from immigration restrictions;

(b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(c) Immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and acts performed by him or her in his or her official capacity as counsel. Such immunity shall continue to be accorded to him or her after termination of his or her function as a counsel of a suspect or accused.

3. This article shall be without prejudice to such disciplinary rules as may be applicable to the counsel in accordance with the Rules of Procedure and Evidence adopted by the Tribunal.

4. The right and the duty to waive the immunity referred to in paragraph 2 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the Secretary-General.

### *Article XX*

#### THE SUSPECT OR ACCUSED

1. The host country shall not exercise its criminal jurisdiction over any person present in its territory, who is to be or has been transferred as a suspect or an accused to the premises of the Tribunal pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in this Article shall cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of fifteen consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

### *Article XXI*

#### COOPERATION WITH THE COMPETENT AUTHORITIES

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

2. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations of the host country. They also have a duty not to interfere in the internal affairs of the host country.

3. The Tribunal shall observe all security directives as agreed with the host country or as issued, in coordination with the United Nations Security Service, by the competent authorities responsible for security conditions within the penitentiary institution where the Tribunal area for detention is located, as well as all directives of the competent authorities responsible for fire prevention regulations.

### *Article XXII*

#### NOTIFICATION

1. The Registrar shall notify the Government of the names and categories of persons referred to in this Agreement, in particular the judges, the Prosecutors, the staff of the Tribunal, persons performing missions for the Tribunal, counsel admitted by the Tribunal, witnesses and experts called to appear before the Tribunal or the Prosecutor, and of any change in their status.

2. The Registrar shall also notify the Government of the name and identity of each official of the Tribunal who is entitled to carry fire arms on the premises of the Tribunal, as well as the name, type caliber and serial number of the arm or arms at his or her disposition.

### *Article XXIII*

#### ENTRY INTO, EXIT FROM AND MOVEMENT WITHIN THE HOST COUNTRY

All persons referred to in articles XIV, XV, XVII, XVIII, and XIX of this Agreement as notified as such by the Registrar to the Government shall have the right of unimpeded entry into, exit from, and movement within, the host country, as appropriate and for the purposes of the Tribunal. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required for official purposes of the Tribunal shall be granted without charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government.

### *Article XXIV*

#### UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

1. The Government shall recognize and accept United Nations laissez-passer as a valid travel document.

2. In accordance with the provisions of section 26 of the General Convention, the Government shall recognize and accept the United Nations certificate issued to persons traveling on the business of Tribunal. The Government agrees to issue any required visas on such laissez-passer or certificates.

*Article XXV*

IDENTIFICATION CARDS

1. At the request of the Tribunal, the Government shall issue identification cards to persons referred to in articles XIV, XV, XVIII, XIX and XX of this Agreement certifying their status under this Agreement.

2. The Security Service of the Tribunal shall maintain photographic and other appropriate records of the suspect and accused persons referred to in article XX.

*Article XXVI*

SECURITY, SAFETY AND PROTECTIONS OF PERSONS REFERRED TO IN THIS AGREEMENT

The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

*Article XXVI*

SOCIAL SECURITY AND PENSION FUND

1. The staff of the Tribunal are subject to the United Nations Staff Regulations and Rules and if they have an appointment of six months' duration or more, become participants in the United Nations Pension Fund. Accordingly, such staff shall be exempt from all compulsory contributions to the social security organizations of the United Republic of Tanzania social security regulations.

2. The Provisions of paragraph 1 above shall apply *mutatis mutandis* to the members of the family forming part of the household of the persons referred to in paragraph 1 above, unless they are employed or self-employed in the host country or receive Tanzanian social security benefits.

*Article XXVII*

ASSISTANCE IN OBTAINING SUITABLE ACCOMMODATION

The Government of the United Republic of Tanzania shall assist persons referred to in articles XIV, XV, XVII, XVIII and XIX in obtaining suitable accommodation in the host country.

*Article XXIX*

SETTLEMENT OF DISPUTES

1. The Tribunal shall make provisions for appropriate modes of settlement of:

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

(b) Disputes involving an official of the Tribunal who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the Tribunal, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment. The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which arbitration was requested; the dispute may be brought before the arbitral tribunal upon application of either Party. Unless the Parties decide otherwise the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes on the basis of applicable rules of international law. In the absence of such rules, it shall decide *ex aequo et bono*. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties.

### *Article XXX*

#### FINAL PROVISIONS

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

2. This Agreement may be amended by mutual consent at any time at the request of either Party.

3. This Agreement shall cease to be in force if the seat of the Tribunal is removed from the territory of the host country or if the Tribunal is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Tribunal at its seat in the host country and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or acts done in an official capacity, even after termination of employment with the Tribunal.

4. The provisions of this Agreement will be applied provisionally as from the date of signature.

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

- (n) Agreement between the United Nations and the Government of Germany concerning the headquarters of the United Nations Volunteers Programme. Signed at New York on 10 November 1995<sup>24</sup>

The United Nations and the Federal Republic of Germany,

*Whereas* the Executive Board of the United Nations Development programme, by its decision 95/2 of 10 January 1995, endorsed the proposal of the Secretary-General to accept the offer of the Government of the Federal Republic of Germany to relocate the headquarters of the United Nations Volunteers Programme to Bonn;

*Whereas* paragraph 1 of Article 105 of the Charter of the United Nations provides that “the Organization shall enjoy the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”;

*Whereas* the Federal Republic of Germany has been a party since 5 November 1980 to the Convention on the Privileges and Immunities of the United Nations;

*Whereas* the Federal Republic of Germany agrees to ensure the availability of all necessary facilities to enable the United Nations Volunteers Programme to perform its functions, including its scheduled programmes of work and any related activities;

*Desiring* to conclude an agreement regulating matters arising from the establishment of and necessary for the effective discharge of the functions of the United Nations Volunteers Programme in the Federal Republic of Germany;

*Have agreed* as follows:

### *Article 1*

#### DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(a) “the Parties” means the United Nations and the Federal Republic of Germany;

(b) “the United Nations” means an international organization established under the Charter of the United Nations;

(c) “the Secretary-General” means the Secretary-General of the United Nations;

(d) “the United Nations Volunteers” or “the Programme” means the United Nations Volunteers Programme, a subsidiary organ within the terms of Article 22 of the Charter of the United Nations, established in 1970 by General Assembly resolution 2659 (XXV) of 7 December 1970;

(e) “the Executive Coordinator” means the Executive Coordinator of the United Nations Volunteers Programme;

(f) “the host country” means the Federal Republic of Germany;

(g) “the Government” means the Government of the Federal Republic of Germany

(h) “the competent authorities” means *Bund* (federal), *Länder* (state) or local authorities under the laws, regulations and customs of the Federal Republic of Germany;

(i) “the headquarters district” means the premises, being the buildings and structures, equipment and other installations and facilities, as well as the surrounding grounds, as specified in the Supplementary Agreement between the United Nations and the Federal Republic of Germany, in accordance with this Agreement, or any other supplementary agreement with the Government;

(j) “the representatives of Members” means the representatives of States Member of the United Nations and other States participating in the United Nations Development Programme;

(k) “officials of the Programme” means the Executive Coordinator and all members of the staff of the United Nations Volunteers Programme, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(I) of 7 December 1946;

(l) “United Nations Volunteers” means persons with professional and technical qualifications, other than officials of the Programme, engaged on volunteer terms and conditions by the United Nations Volunteers Programme to provide services with the framework of programmes and projects of the United Nations;

(m) “experts on missions” means persons, other than officials and United Nations Volunteers, undertaking missions for the United Nations and coming within the scope of articles VI and VII of the Convention on the Privileges and Immunities of the United Nations;

(n) “Offices of the United Nations” means and includes subsidiary bodies and organizational units of the United Nations;

(o) “the Vienna Convention” means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the Federal Republic of Germany acceded on 11 November 1964 and which came into force with respect to the Federal Republic of Germany on 11 December 1964;

(p) “the General Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Federal Republic of Germany acceded on 5 November 1980.

## *Article 2*

### PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the United Nations Volunteers in and from the Federal Republic of Germany.

## *Article 3*

### JURIDICAL PERSONALITY AND LEGAL CAPACITY

1. The United Nations, acting through the United Nations Volunteers, a subsidiary organ of the United Nations, shall possess in the host country full juridical personality and the capacity:

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

2. For the purpose of this Article, the United Nations Volunteers shall be represented by the Executive Coordinator.

#### *Article 4*

##### APPLICATION OF THE GENERAL AND VIENNA CONVENTIONS AND OF THE AGREEMENT

1. The General and Vienna Conventions shall apply to the Headquarters district, the United Nations, including United Nations Volunteers, its property, funds and assets, and to persons referred to in this Agreement as appropriate.

2. This Agreement shall also apply *mutatis mutandis* to such other Offices of the United Nations as may be located in the Federal Republic of Germany with the consent of the Government.

3. This Agreement may also be made applicable *mutatis mutandis* to other intergovernmental entities, institutionally linked to the United Nations, by agreement among such entities, the Government and the United Nations.

#### *Article 5*

##### INVIOABILITY OF THE HEADQUARTERS DISTRICT

1. The headquarters district shall be inviolable. The competent authorities shall not enter the headquarters district to perform any official duty, except with the express consent, or at the request of the Executive Coordinator. Judicial actions and the service or execution of legal development, including the seizure of private property, cannot be enforced in the headquarters district except with the consent of and in accordance with conditions approved by the Executive Coordinator.

2. The competent authorities shall take whatever action may be necessary to ensure that the United Nations Volunteers shall not be dispossessed of all or any part of the headquarters district without the express consent of the United Nations. The property, funds and assets of the United Nations Volunteers, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur in the headquarters district, the consent of the Executive Coordinator or her/his representative to any necessary entry into the Headquarters district shall be presumed if neither of them can be reached in time.

4. Subject to paragraphs 1, 2 and 3 above, the competent authorities shall take the necessary action to protect the Headquarters district against fire or other emergency.

5. The United Nations Volunteers may expel or exclude persons from the Headquarters district for violation of its regulations.

6. Without prejudice to the provisions of this Agreement, the General Convention and the Vienna Convention, the United Nations shall not allow the Headquarters district to become a refuge from justice for persons against whom a penal judgment had been made or who are pursued *flagrante delicto*, or against whom a warrant of arrest or an order of extradition, expulsion or deportation has been issued by the competent authorities.

7. Any location in or outside Bonn which may be used temporarily for meetings by the United Nations and other entities referred to in article 4 above, shall be deemed, with the concurrence of the Government, to be included in the Headquarters district for the duration of such meetings.

#### *Article 6*

##### LAW AND AUTHORITY IN THE HEADQUARTERS DISTRICT

1. The headquarters district shall be under the authority and control of the United Nations, as provided in this Agreement.

2. Except as otherwise provide in this Agreement, in the General Convention, or in regulations established by the United Nations applicable to the United Nations Volunteers, the laws and regulations of the host country shall apply in the headquarters district.

3. The United Nations shall have the power to make regulations to be operative throughout the headquarters district for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The United Nations Volunteers shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No *Bund* (federal), *Länder* (state) or local law regulation of the Federal Republic of Germany which is inconsistent with a regulation of the United Nations authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the headquarters district.

4. Any dispute between the United Nations and the host country, as to whether a regulation of the United Nations is authorized by this article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the United Nations authorized by this article, shall promptly settled by the procedure set out in article 26. Pending such settlement, the regulations of the United Nations shall apply and the law or regulation of the host country shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with its regulation.

#### *Article 7*

##### INVIOLABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE UNITED NATIONS VOLUNTEERS

All documents, materials and archives, in whatever form, which are made available, belonging to or used by the United Nations Volunteers, wherever located in the host country and by whomsoever held, shall be inviolable.

## Article 8

### PROTECTION OF THE HEADQUARTERS DISTRICT AND ITS VICINITY

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Headquarters district and to ensure that the operations of the United Nations Volunteers are not impaired by the intrusion of persons or groups of persons from outside the headquarters district or by disturbances in its immediate vicinity and shall provide to the Headquarters district the appropriate protection as may be required.

2. If so requested by the Executive Coordinator, the competent authorities shall provide adequate police force necessary for the preservation of law and order in the headquarters district or in its immediate vicinity, and for the removal of persons therefrom.

## Article 9

### FUNDS, ASSETS AND OTHER PROPERTY

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

2. The property and assets of the United Nations Volunteers shall be exempt from restrictions, regulations, controls and moratoria of any nature.

3. Without being restricted by financial controls, regulations or moratoria of any kind, the United Nations Volunteers:

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

(b) Shall be free to transfer its funds, gold or currency from one country to another, or within the host country, to the United Nations or any other agency.

## Article 10

### EXEMPTION FROM TAXES, DUTIES, IMPORT AND EXPORT RESTRICTIONS

1. In pursuance of section 7(a) of article II of the General Convention, the United Nations Volunteers, its assets, income and other property shall be exempt from all direct taxes. The direct taxes shall in particular, include, but not be limited to:

- (a) Income tax (*Einkommensteuer*)
- (b) Corporation tax (*Körperschaftsteuer*);
- (c) Trade tax (*Gewerbesteuer*);
- (d) Property tax (*Vermögensteuer*)
- (e) Land tax (*Grundsteuer*);

- (f) Land transfer tax (*Gründerwerbsteuer*);
- (g) Motor vehicle tax (*Kraftfahrzeugsteuer*);
- (h) Insurance tax (*Versicherungsteuer*).

2. In pursuance of section 8 of article II of the General Convention, the United Nations Volunteers shall be exempt from all indirect taxes including value added tax/turnover tax (*Umsatzsteuer*) and excise duties which form part of the price of important purchases intended for the official use of the United Nations Volunteers. However it is understood that exemption from mineral oil tax included in the price of petrol, diesel and heating oil and value added tax/turnover tax (*Umsatzsteuer*) shall take the form of a refund of these taxes to the United Nations Volunteers under the conditions agreed upon with the Government. If the Government enters into an agreement with another international organization setting out a different procedure than that referred to above, this new procedure may also be applicable to the United Nations Volunteers by mutual consent of the Parties.

3. The United Nations Volunteers, its funds assets and other property shall be exempt from all customs duties, prohibitions and restrictions in respect of articles imported or exported by the United Nations Volunteers for its official use, including motor vehicles. It is understood, however, that articles imported or purchased under such an exemption shall not be sold in the Federal Republic of Germany except under the conditions agreed upon with the Government.

4. The exemptions referred to in paragraphs 1 to 3 shall be applied in accordance with the formal requirements of the host country. The requirements, however, shall not affect the general principle laid down in this article. It is understood, however, that the United Nations Volunteers shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services.

5. The United Nations Volunteers shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications, audio-visual materials, etc.

#### *Article 11*

##### PUBLIC AND OTHER SERVICES FOR THE HEADQUARTERS DISTRICT

The Government shall assist the United Nations Volunteers in securing, on fair conditions and upon request of the Executive Coordinator, the public and other services needed by the United Nations Volunteers under the terms and conditions set out in the Supplementary Agreement.

#### *Article 12*

##### COMMUNICATIONS FACILITIES

1. The United Nations Volunteers shall enjoy, in respect of its official communications and correspondence, treatment not less favourable than that accorded by the Government to any diplomatic mission matters of establishment and operation, priorities, tariffs, charges on, but not limited to mail and cablegrams and on teleprinter, facsimile, telephone, electronic data and other communications, as well as rates for information to the press and radio.

2. The official communications and correspondence of the United Nations Volunteers shall be inviolable. No censorship shall be applied to the official correspondence and other official communications of the United Nations Volunteers.

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

4. The United Nations Volunteers shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those assigned to it by the Government, between its offices, within and outside the Federal Republic of Germany.

### *Article 13*

#### PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBERS

1. The representatives of members who reside in the Federal Republic of Germany and who do not have German nationality or permanent residence status in the Federal Republic of Germany shall enjoy the same privileges and immunities, exemptions and facilities as are accorded to diplomats of comparable rank of diplomatic missions accredited to the Federal Republic of Germany in accordance with the Vienna Convention.

2. The representatives of Members who are not resident in the Federal Republic of Germany shall, in the discharge of their duties while exercising their functions, enjoy privileges and immunities as described in article IV of the General Convention.

### *Article 14*

#### PRIVILEGES, IMMUNITIES AND FACILITIES OF OFFICIALS OF THE UNITED NATIONS VOLUNTEERS

1. The officials of the Programme shall, regardless of their nationality, be accorded the privileges and immunities as provided for in Articles V and VII of the General Convention. They shall *inter alia*:

(a) Enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the United Nations Volunteers;

(b) Enjoy exemption from taxation on the salaries and emoluments paid to them by the United Nations Volunteers;

(c) Enjoy immunity from national service obligations;

(d) Enjoy immunity, together with spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable rank of the diplomatic missions established into the host country;

(f) Be given, together with spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic agents;

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

2. In addition to the provisions of paragraph 1 above, the Executive Coordinator and other officials of P-5 level and above who do not have German nationality or permanent residence status in the host country shall be accorded the privileges, immunities, exemptions and facilities as are accorded by the Government to members of comparable rank of the diplomatic staff of Missions accredited to the Government. The name of the Executive Coordinator shall be included in the diplomatic list.

3. The privileges and immunities are granted to officials of the United Nations Volunteers in the interests of the United Nations and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the interests of the United Nations, shall lie with the Secretary-General.

#### *Article 15*

##### UNITED NATIONS VOLUNTEERS

1. The United Nations Volunteers shall be granted the privileges, immunities and facilities under Section 17, 18, 20 and 21 of article V, and article VII of the General Convention.

2. The privileges and immunities are granted to United Nations Volunteers in the interest of the United Nations and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the interests of the United Nations, shall lie with the Secretary-General.

#### *Article 16*

##### EXPERTS ON MISSIONS

1. Experts on missions shall be granted the privileges, immunities and facilities as specified in articles VI and VII of the General Convention.

2. Experts on missions may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

3. The privileges and immunities are granted to experts on missions in the interest of the United Nations and not for their personal benefit. The right and the duty to waive the immunity of any expert, in any case where it can be waived without prejudice to the interests of the United Nations, shall lie with the Secretary-General.

### *Article 17*

#### PERSONNEL RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES

1. Personnel recruited by the United Nations Volunteers locally and assigned to hourly rates, shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the United Nations Volunteers. Such immunity shall continue to be accorded after termination of employment with the United Nations Volunteers. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the United Nations Volunteers. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

2. The immunity from legal process shall be accorded to personnel recruited locally and assigned to hourly rates in the interests of the United Nations and not for their personal benefit. The right and the duty to waive the immunity of any such individuals, in any case where it can be waived without prejudice to the interests of the United Nations, shall lie with the Secretary-General.

### *Article 18*

#### UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

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

2. In accordance with the provisions of section 26 of the General Convention, the Government shall recognize and accept the United Nations certificate issued to persons traveling on the business of the United Nations.

3. The Government further agrees to issue any required visas on the United Nations laissez-passer.

### *Article 19*

#### COOPERATION WITH THE COMPETENT AUTHORITIES

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

2. The United Nations shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to officials of the United Nations Volunteers referred to in article 14, and the persons referred to in articles 15, 16 and 17.

3. If the Government considers that there has been an abuse of the privileges or immunities conferred by this Agreement, consultations will be held between the competent authorities and the Executive Coordinator to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fails to achieve a result satisfactory to the Government and to the United Nations, either Party may submit the question as to whether such an abuse has occurred for resolution in accordance with the provisions on settlement of disputes under article 26.

#### *Article 20*

##### NOTIFICATION

The Executive Coordinator shall notify the Government of the names and categories of persons referred to in this Agreement and of any change in their status.

#### *Article 21*

##### ENTRY INTO, EXIT FROM, MOVEMENT AND SOJOURN IN THE HOST COUNTRY

All persons referred to in this Agreement as notified, and persons invited on official business, by the Executive Coordinator shall have the right of unimpeded entry into, exit from, free movement and sojourn within the host country. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be extended to United Nations Volunteers candidates, if such is requested by the Executive Coordinator. No activity performed by persons referred to above in their official capacity with respect to the United Nations Volunteers shall constitute a reason for preventing their entry into or departure from the territory of the host country or for requiring them to leave such territory.

#### *Article 22*

##### IDENTIFICATION CARDS

1. At the request of the Executive Coordinator, the Government shall issue identification cards to persons referred to in this Agreement certifying their status under this Agreement.

2. Upon demand of an authorized official of the Government, persons referred to in paragraph 1 above, shall be required to present, but not to surrender their identification cards.

### *Article 23*

#### FLAG, EMBLEM AND MARKINGS

The United Nations shall be entitled to display its flag, emblem and markings on the premises of the headquarters district and on vehicles used for official purposes.

### *Article 24*

#### SOCIAL SECURITY

1. The Parties agree that, owing to the fact that officials of the United Nations are subject to the United Nations Staff Regulations and Rules, including article VI thereof which establishes comprehensive social security scheme, the United Nations and its officials, irrespective of nationality, shall be exempt from the laws of the Federal Republic of Germany on mandatory coverage and compulsory contributions to the social security schemes of the Federal Republic of Germany during their employment with the United Nations.

2. The Provisions of paragraph 1 above shall apply *mutatis mutandis* to the members of the family forming part of the household of the persons referred to in paragraph 1 above, unless they are employed or self-employed in the host country or receive German social security benefits.

### *Article 25*

#### ACCESS TO THE LABOUR MARKET FOR FAMILY MEMBERS AND ISSUANCE OF VISAS AND RESIDENCE PERMITS TO HOUSEHOLD EMPLOYEES

1. Spouses of officials of the Programme whose duty station is in the Federal Republic of Germany, and their children forming part of their household who are under 21 years of age or economically dependent, shall not require a work permit.

2. The Government undertakes to issue visas and residence permits, where required, to household employees of officials of the Programme as speedily as possible; no work permit will be required in such cases.

### *Article 26*

#### SETTLEMENT OF DISPUTES

1. The United Nations shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the United Nations Volunteers is a party;

(b) Disputes involving an official of the United Nations Volunteers who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the United Nations Volunteers, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment. The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. Unless the Parties decide otherwise the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes on the basis of applicable rules of international law. In the absence of such rules, it shall decide *ex aequo et bono*. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties.

#### *Article 27*

##### FINAL PROVISIONS

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

2. This present Agreement shall cease to be in force six months after either of the Parties gives note in writing to the other of its decision to terminate the Agreement. This Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of the United Nations Volunteers's activities in the Federal Republic of Germany and the disposition of its property therein, and the resolution of any disputes between the Parties.

3. This Agreement may be amended by mutual consent at any time at the request of either Party.

4. The provisions of this Agreement will be applied provisionally as from the date of signature, as appropriate, pending the fulfilment of the formal requirements for its entry into force referred to in paragraph 5 below.

5. This Agreement shall enter into force on the day following the date of receipt of the last of the notifications by which the Parties will have informed each other of the completion of their respective formal requirements.

*Done* at New York City, on 10 November 1995, in duplicate in the English and the German languages, both texts being equally authentic.

For the United Nations	For the Federal Republic of Germany
James Gustave SPETH Administrator UNDP	Tond EITHEL Permanent Representative

- (o) Exchange of letters constituting an agreement between the United Nations and the Government of Sri Lanka concerning the United Nations/European Space Agency Workshop on Basic Space Science to be held at Colombo from 10 to 12 January 1996. Vienna, 11 and 14 December 1995<sup>25</sup>

I

LETTER FROM THE UNITED NATIONS

11 December 1995

Dear Sir,

*United Nations/European Space Agency Workshop  
on Basic Space Science*

*Hosted by the Arthur C. Clarke Centre for Modern Technologies  
on behalf of the Government of the Democratic Socialist Republic  
of Sri Lanka*

*(Colombo, Sri Lanka, 10-12 January 1996)*

As you are aware, the United Nations and your Government have had discussions on the above-mentioned subject through the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations. The Workshop is being organized in connection with the establishment of the astronomical telescope facility was originally sponsored by the United Nations at the Arthur C. Clarke Centre for Modern Technologies. The Workshop is being conducted in the realization that scientific, educational and economic progress of all countries is strongly interrelated and also in the recognition that basic space science, including physical and mathematical sciences, plays an exceedingly important role in providing solutions to problems of development in general.

On behalf of the United Nations, I would be most grateful to receive your Government's acceptance of the following arrangements:

A. *The United Nations and the European Space Agency*

1. The United Nations and the European Space Agency shall provide round trip international air travel (economy class) to Colombo, Sri Lanka and a daily subsistence allowance for the duration of the Workshop for those participants in need among nominees from developing countries and are invited to participate in the Workshop by the United Nations.

2. The cost of travel per diem of up to two staff members of the Office for Outer Space Affairs of the United Nations shall be borne by the United Nations.

3. The cost of travel and per diem of representatives from specialized organizations of the United Nations system shall be borne by the concerned organizations.

#### B. *Language and participation*

1. The total number of participants will be limited to seventy (forty foreign and thirty national).

2. The language of the Workshop will be English.

#### C. *The Government of the Democratic Socialist Republic of Sri Lanka*

1. The Government will act as host to the Workshop which will be held in Colombo, Sri Lanka.

2. The Government will also designate an official of the Arthur C. Clarke Centre for Modern Technologies as liaison officer between the United Nations and the Government for making the necessary arrangements concerning the contributions described in the following paragraph.

3. The Government will provide and defray the costs of:

(a) Appropriate premises (including duplication facilities and consumables) for holding the Workshop;

(b) Appropriate premises for the 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 (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) Amplification and audio-visual projection equipment as well as tape recorders and tapes as may be necessary and technicians to operate them for the duration of the Workshop;

(e) Local administrative personnel required for the proper conduct of the workshop, including reproduction and distribution of lectures and other documents in connection with the Workshop;

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

(g) Customs clearance and transportation between the port of entry and the location of the Workshop and return of all United Nations supplies and equipment required for the adequate function of the Meeting. The United Nations shall determine the mode of shipment of such equipment and supplies;

(h) All official transportation within the Democratic Socialist Republic of Sri Lanka for the participants at the Workshop;

(i) Local transportation, including airport reception during arrival and departure for all participants at the Workshop;

(j) Local transportation for United Nations staff responsible for the Workshop for official purposes during the Workshop;

(k) Arrangement of adequate accommodations in hotels at reasonable commercial rates for persons who are participating in, attending or servicing the Workshop, at the expense of these same persons;

(l) The services of travel agency to confirm or make new bookings for the departure of participants upon the conclusion of the Workshop;

(m) 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; and

(n) 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 interference of any kind.

#### D. *Privileges and immunities*

I further wish to propose that the following terms shall apply to the Workshop:

1. (a) The Convention on the Privileges and Immunities of the United Nations (1946) shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under article VI of the Convention. 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. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies (1947).

(b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and 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.

(c) Personnel provided by the Government pursuant to this Agreement 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.

2. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Sri Lanka. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible.

3. It is further understood that your Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of:

- (i) Injury to person or damage to property in conference or office premises provided for the Workshop;
- (ii) The transportation provided by your Government;
- (iii) The employment for the Workshop of personnel provided or arranged by your Government;

and your Government shall indemnify the United Nations and its personnel in respect of any such action, claim or other demand except where such action, claim or demand arises as a result of the willful misconduct or gross negligence on the part of the United Nations and its personnel.

4. 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.

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an argument between the United Nations and the Government of the Democratic Socialist Republic of Sri Lanka regarding the provision of host facilities by your Government for this Workshop.

(Signed) Giorgio GIACOMELLI  
Director-General of the United  
Nations Office at Vienna

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF SRI LANKA TO THE UNITED NATIONS OFFICE AT VIENNA

14 December 1995

Your Excellency,

*United Nations/European Space Agency Workshop on Basic Space  
Science hosted by Arthur C. Clarke Centre for Modern Technologies  
on behalf of the Government of the Democratic Socialist Republic of  
Sri Lanka, Colombo, 10-12 January 1996*

I am pleased to acknowledge receipt of the amended Memorandum of Understanding dated 11 December 1995 on the above workshop.

On behalf of the Government of the Democratic Socialist Republic of Sri Lanka, I am pleased to state that the terms outlined in your letter are acceptable to me.

(Signed) M.A.K. GIRIHAGAMA  
Charge d'affaires a.i.

- (p) Agreement between the United Nations and the Government of Lebanon on the status of the United Nations Interim Force in Lebanon. Signed at Beirut on 15 December 1995<sup>26</sup>

The United Nations and the Government of Lebanon agree that the status of the United Nations Interim Force in Lebanon will be regulated in accordance with the following provisions:

## I. DEFINITIONS

1. For the purpose of the present Agreement, the following definitions shall apply:

(a) “UNIFIL” means the United Nations Interim Force in Lebanon established pursuant to Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978, with the terms of reference as described in the report of the Secretary-General of 19 March 1978 (S/12611) which was approved by the Security Council in the above mentioned resolution 426 (1978). Under subsequent Security Council Resolutions, UNIFIL has been further extended. For the purposes of this Agreement UNIFIL shall consist of:

- (i) the “Force Commander” of UNIFIL appointed by the Secretary-General with the consent of the Security Council. Any reference to the Force Commander in this Agreement shall, except in paragraph 24, include any member of UNIFIL to whom he delegates a specified functions or authority;
- (ii) a “civilian element” consisting of United Nations officials and other persons assigned by the Secretary-General to assist the Force Commander or made available by participating States to serve as part of UNIFIL. The civilian element also includes military observers of the United Nations Truce Supervision Organization (UNTSO), who are assigned, in accordance with the Secretary-General’s report concerning the terms of reference of UNIFIL (S/12611) to assist UNIFIL in the fulfilment of its task and are placed under the operational control of the Force Commander;
- (iii) a “military element” consisting of military and civilian personnel made available by participating states to serve as a part of UNIFIL;

(b) a “member of UNIFIL” means any member of the civilian or military element but unless specifically stated otherwise does not include locally recruited personnel;

(c) “Participating State” means a state contributing personnel to any of the above mentioned elements of UNIFIL;

(d) “Government” means the Government of Lebanon, including all competent local authorities;

(e) “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 THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNIFIL or any member thereof apply throughout Lebanon.

## III. APPLICATION OF THE CONVENTION

3. UNIFIL, its property, funds assets, and its members, including the Force Commander, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Lebanon is a Party.

4. Article II of the Convention, which applies to UNIFIL, shall also apply to the property, funds and assets of participating States used in connection with UNIFIL.

## IV. STATUS OF UNIFIL

5. UNIFIL and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. The Force Commander shall take all appropriate measures to ensure the observance of those obligations.

6. The Government undertakes to respect the exclusively international nature of UNIFIL.

7. Without prejudice to the mandate of UNIFIL and its international status:

(a) The United Nations shall ensure that UNIFIL shall conduct its operations in Lebanon with full respect for the principles and spirit of the general conventions applicable to the conduct of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the Event of armed conflict;

(b) The Government undertakes to treat at all times the military and civilian personnel of UNIFIL with full respect for the principles and spirit of the general international conventions applicable to the treatment of military and civilian personnel. These international conventions include the Four Geneva Conventions of 12 April 1949 and their Additional Protocols of 8 June 1977.

UNIFIL and the Government shall therefore ensure the members of their respective military and civilian personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.

### *United Nations flag and vehicle markings*

8. UNIFIL shall enjoy the right to display the United Nations flag at or on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Force Commander. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNIFIL shall give sympathetic consideration to observations or requests of the Government.

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

#### *Communications*

10. UNIFIL shall enjoy the Facilities in respect to communications provided in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(a) UNIFIL shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of Lebanon with each other and with United Nations offices in other countries, and to exchange traffic with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunication network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention 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 Internationally Frequency Registration Board.

(b) UNIFIL shall enjoy, within the territory of Lebanon, 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 UNIFIL, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in Cooperation with the Government. It is understood that connections with the local system of telegraphs, telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of local system of telegraphs, telex and telephones will be charged at the most favourable rate.

(c) UNIFIL may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNIFIL. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNIFIL or its members. In the event that postal arrangements applying to private mail of members of UNIFIL 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*

12. UNIFIL and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout Lebanon. That freedom shall, with respect to large movements of personnel, stores or vehicles

through airports or on railways or roads used for general traffic within Lebanon be coordinated with the Government. The Government undertakes to supply UNIFIL, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles, including all military vehicles, vessels and aircraft of UNIFIL 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.

14. UNIFIL may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, UNIFIL will not claim exemption from charges which are in fact charges for services rendered.

#### *Privileges and immunities of UNIFIL*

15. UNIFIL, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to UNIFIL shall also apply to the property, funds and assets of participating States used in Lebanon in connection with the national contingents serving in UNIFIL, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of UNIFIL in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use UNIFIL or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNIFIL, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Force Commander 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 UNIFIL, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To 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 UNIFIL or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of 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 Lebanon, or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNIFIL and the Government at the earliest possible date.

## V. FACILITIES FOR UNIFIL

### *Premises required for conducting the operational and administrative activities of UNIFIL operation and for accommodating members of UNIFIL*

16. The Government of Lebanon shall provide without cost to UNIFIL and in agreement with the Force Commander such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNIFIL and for the accommodation of the members of UNIFIL. Without prejudice to the fact that all such premises remain Lebanese territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations troops are co-located with the Lebanese military personnel, a permanent, direct and immediate access by UNIFIL to those premises shall be guaranteed.

17. The Government undertakes to assist UNIFIL as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of UNIFIL as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by UNIFIL on terms to be agreed with the competent authority. UNIFIL shall be responsible for the maintenance and up-keep of facilities so provided.

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

19. The United Nations alone may consent to the entry of any government officials or of any other person not member of UNIFIL to such premises.

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

20. The Government undertakes to assist UNIFIL as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNIFIL shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNIFIL from any taxes or duties in respect of all official local purchases.

21. UNIFIL 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*

22. UNIFIL may recruit locally such personnel as it requires. Upon the request of the Force Commander, the Government undertakes to facilitate the recruitment of qualified local staff by UNIFIL and to accelerate the process of such recruitment. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Force Commander.

### *Currency*

23. The Government undertakes to make available to UNIFIL against reimbursement in mutually acceptable currency, Lebanese pounds required for the use of UNIFIL including the pay of its members, at the rate of exchange most favourable to UNIFIL.

## VI. STATUS OF THE MEMBERS OF UNIFIL

### *Privileges and immunities*

24. The Force Commander and such high-ranking members of UNIFIL as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

25. Members of the United Nations Secretariat assigned to the civilian element to serve with UNIFIL remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

26. Military observers and civilian personnel other than United Nations officials, assigned to UNIFIL, whose names are for the purpose notified to the Government by the Force Commander shall be considered as experts on mission within the meaning of article VI of the Convention.

27. Military personnel of national contingents assigned to the military element of UNIFIL shall have the privileges and immunities specifically provided for the present Agreement.

28. Unless otherwise specified in the present Agreement, locally recruited members of UNIFIL shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18(a), (b) and (c) of the Convention.

29. Members of UNIFIL shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Lebanon. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

30. Members of UNIFIL shall have the right to import free of duty their personal effects in connection with their arrival to Lebanon. They shall be subject to the laws and regulations of Lebanon governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Lebanon with UNIFIL. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNIFIL, including the military element, upon prior written notification. On departure from Lebanon, members of UNIFIL may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Force Commander 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 the present provisions in the interests of the Government and the members of UNIFIL.

31. The Force Commander 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 Lebanon by the members of UNIFIL in accordance with the present Agreement.

*Entry, residence and departure*

32. The Force Commander and members of UNIFIL shall, whenever so required by the Force Commander, have the right to enter into, reside in and depart from Lebanon.

33. The Government of Lebanon undertakes to facilitate the entry into the departure of Lebanon of the Force Commander and members of UNIFIL and shall be kept informed of such movement. For that purpose, the Force Commander and members of UNIFIL shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Lebanon. They shall also be exempt from any regulations governing the residence of aliens in Lebanon, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Lebanon.

34. For the purpose of such entry or departure, members of UNIFIL shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Force Commander or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present 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 identity card.

*Identification*

35. The Force Commander shall issue each member of UNIFIL before or as soon as possible after such member's first entry into Lebanon, as well as to all locally recruited personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNIFIL.

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

*Uniforms and arms*

37. Military members of UNIFIL shall wear, while performing official duties, the national military uniform of their respective states with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNIFIL may be authorized by the Force Commander at other times. Military members of UNIFIL and United Nations Security Officers designated by the Force Commander may possess and carry arms while on duty in accordance with their orders.

*Permits and licences*

38. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Force Commander for the operation by any member of UNIFIL, including locally recruited personnel, of any UNIFIL transport or com-

munication equipment and for the practice of any profession or occupation in connection with the functioning of UNIFIL, 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.

39. Without prejudice to the provisions of paragraph 37, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Force Commander to a member of UNIFIL for the carrying or use of fire-arms or ammunition in connection with the functioning of UNIFIL.

*Military police, arrest and transfer of custody, and mutual assistance*

40. The Force Commander shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNIFIL, as well as locally recruited personnel. To this end personnel designated by the Force Commander shall police the premises of UNIFIL 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 in so far as such employment is necessary to maintain discipline and order among members of UNIFIL.

41. The military police of UNIFIL shall have the power of arrest over the military members of UNIFIL. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above may take into custody any other person on the premises of UNIFIL. Such 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.

42. Subject to the provisions of paragraphs 24 and 26, officials of the Government may take into custody any member of UNIFIL:

(a) When so requested by the Force Commander; or

(b) When such a member of UNIFIL is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNIFIL, whereafter the provision of paragraph 47 shall apply *mutatis mutandis*.

43. When a person is taken into custody under paragraph 41 or paragraph 42(b), UNIFIL 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 arresting authority for further interrogation.

44. UNIFIL 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 an, if appropriate, the handing over of items connected with an offence. The handing over of any such items 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 paragraph 41 to 43.

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

#### *Jurisdiction*

46. All members of UNIFIL 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 UNIFIL and after the expiration of the other provisions of the present Agreement.

47. Should the Government consider that any member of UNIFIL has committed a criminal offence, it shall promptly inform the Force Commander and present him any evidence available to it. Subject to the provisions of paragraph 24:

(a) If the accused person is a member of the civilian element or a civilian member of the military element, the Force Commander shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 52 of the present Agreement;

(b) Military members of the military element of UNIFIL 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 Lebanon.

48. If any civil proceeding is instituted against a member of UNIFIL before any court of Lebanon, the Force Commander 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 Force Commander certifies that the proceeding is related to official duties, such proceeding shall be discontinued and provisions of paragraph 50 of the present Agreement shall apply;

(b) If the Force Commander certifies that the proceeding is not related to official duties, the proceeding may continue. If the Force Commander certifies that a member of UNIFIL 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 UNIFIL that is certified by the Force Commander to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgment, decision or order. The personal liberty of a member of UNIFIL shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

#### *Deceased members*

49. The Force Commander shall have the right to take charge of and dispose of the body of a member of UNIFIL who dies in Lebanon, as well as that member's personal property located within Lebanon, in accordance with United Nations procedures.

## VII. SETTLEMENT OF DISPUTES

50. Except as provided in paragraph 52, any dispute or claim of a private law character to which the UNIFIL or any member thereof is a party and over which the courts of Lebanon do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of 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 52. The awards of the commission shall be notified to the parties and, if against a member of the UN forces and operations, the Special Representative or the Secretary-General of the United Nations shall use his best endeavors to ensure compliance.

51. 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 Force Commander.

52. Any other dispute between the UNIFIL and the Government and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 50 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 tribunal. The decisions of the tribunal shall be final and binding on both parties.

53. All differences between the United Nations and the Government of Lebanon arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

## VIII. SUPPLEMENTAL ARRANGEMENTS

54. The Force Commander and the Government may conclude supplemental arrangements to the present Agreement.

## IX. LIAISON

55. The Force Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

## X. MISCELLANEOUS PROVISIONS

56. Wherever the present Agreement refers to the privileges, immunities and rights of the UNIFIL and to the facilities Government undertakes to provide to the UN forces and operations, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Lebanese authorities.

57. The present Agreement shall apply provisionally upon signature by the United Nations and the Government and shall enter into force upon its ratification by the Government in accordance with Lebanese constitutional requirements.

58. The present Agreement shall remain in force until the departure of the final element of UNIFIL from Lebanon except that:

(a) The provisions of paragraphs 46, 52 and 53 shall remain in force;

(b) The provisions of paragraph 50 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

## 3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND

Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of Gambia. Signed at Banjul on 27 February 1995<sup>27</sup>

### PREAMBLE

*Whereas* the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations by resolution 57 (I) of 11 December 1946 as an organ of the United Nations and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view of strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF cooperates, and

*Whereas* UNICEF and the Government of The Gambia wish to establish the terms and conditions under which UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperation in programmes in The Gambia.

*Now, therefore*, UNICEF and the Government, in a spirit of friendly cooperation, have entered into the present Agreement.

## *Article 1*

### DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

- (a) "Appropriate authorities" means central, local and other competent authorities under the law of the country;
- (b) "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;
- (c) "Experts on mission" means experts coming within the scope of articles VI and VII of the Convention;
- (d) "Government" means the Government of The Gambia;
- (e) "Greeting Card Operation" means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products;
- (f) "Head of the office" means the official in charge of the UNICEF office;
- (g) "Country" means the country where a UNICEF office is located or which receives programme support from a UNICEF office located elsewhere;
- (h) "Parties" means UNICEF and the Government;
- (i) "Persons performing services for UNICEF" means individual contractors, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;
- (j) "Programmes of cooperation" means the programmes of the country in which UNICEF cooperates, as provided in article III below;
- (k) "UNICEF" means the United Nation's Children's Fund;
- (l) "UNICEF office" means any organizational unit through which UNICEF cooperates in programmes; it may include the field offices established in the country;
- (m) "UNICEF officials" means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (I) of 7 December 1946.

## *Article II*

### SCOPE OF THE AGREEMENT

1. The present Agreement embodies the general terms and conditions under which UNICEF shall cooperate in programmes in the country.
2. UNICEF cooperation in programmes in the country shall be provided consistent with the relevant resolutions, decision, regulations and rules and policies of the competent organs of the United Nations, including the Executive Board of UNICEF.

### *Article III*

#### PROGRAMMES OF COOPERATION AND MASTER PLAN OF OPERATION

1. The programmes of cooperation agreed to between the Government and UNICEF shall be contained in a master plan of operations to be concluded between UNICEF, the Government and, as the case may be, other participating organizations.

2. The master plan of operations shall define the particulars of the programmes of cooperation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating organizations and the estimated financial resources required to carry out the programmes of cooperation.

3. The Government shall permit UNICEF officials, experts on mission and persons performing services of UNICEF to observe and monitor all phases and aspects of the programmes of cooperation.

4. The Government shall keep such statistical records concerning the execution of the master plan of operations as the Parties may consider necessary and shall supply any of such records to UNICEF at its request.

5. The Government shall cooperate with UNICEF in providing the appropriate means necessary for adequately informing the public about the programmes of cooperation carried out under the present Agreement.

### *Article IV*

#### UNICEF OFFICE

1. UNICEF may establish and maintain a UNICEF office in the country as the Parties may consider necessary to facilitate the implementation of the programmes of cooperation.

2. UNICEF may, with the agreement of the Government, establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event that UNICEF does not maintain a UNICEF office in the country, it may, with the agreement of the Government, provide support for the programmes of cooperation agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

### *Article V*

#### ASSIGNMENT TO UNICEF OFFICE

1. UNICEF may assign to its office in the country officials, experts on mission and persons performing services for UNICEF, as is deemed necessary by UNICEF to provide support to the programmes of cooperation in connection with:

(a) The preparation, review, monitoring and evaluation of the programmes of cooperation;

(b) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(c) Advising the Government regarding the progress of the programmes of cooperation;

(d) Any other matters relating to the application of the present Agreement.

UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services for UNICEF; UNICEF shall also notify the Government of any changes in their status.

#### *Article VI*

##### GOVERNMENT CONTRIBUTION

1. The Government shall provide to UNICEF as mutually agreed upon and to the extent possible:

(a) Appropriate office premises for the UNICEF office, alone or in conjunction with the United Nations system organization;

(b) Costs of postage and telecommunications for official purposes;

(c) Costs of local services such as equipment, fixtures and maintenance of office premises

(d) Transportation for UNICEF officials, experts on mission and persons performing services for UNICEF in the performance of their official functions in the country.

2. The Government shall also assist UNICEF:

(a) In the location and/or in the provision of suitable housing accommodation for internationally recruited UNICEF officials, experts on mission and persons performing services for UNICEF;

(b) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNICEF office premises.

3. In the event that UNICEF does not maintain a UNICEF office in the country, the Government undertakes to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which support is provided to the programmes of cooperation in the country, up to a mutually agreed amount, taking into account contributions in kind, if any.

#### *Article VII*

##### UNICEF SUPPLIES, EQUIPMENT AND OTHER ASSISTANCE

1. UNICEF's contribution to programmes of cooperation may be made in the form of financial and other assistance. Supplies, equipment and other assistance intended for the programmes of cooperation under the present Agreement shall be transferred to the Government upon arrival in the country, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF.

3. The Government shall grant UNICEF all necessary permits and licences for the importation of the supplies, equipment and other materials under the present Agreement. It shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transpiration and distribution of such supplies, equipment and other materials after their arrival in the country.

4. While paying due respect to the principles of international competitive bidding, UNICEF will, to the extent possible, attach high priority to the local procurement of supplies, equipment and other materials which meet UNICEF requirements in quality, price and delivery terms.

5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for programmes of cooperation, are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials that have not been used in the programmes of cooperation.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under this Agreement. The form and content of the accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNICEF shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing government rules and procedures.

### *Article VIII*

#### INTELLECTUAL PROPERTY RIGHTS

1. The Parties agree to cooperate and exchange information on any discoveries, inventions or works, resulting from programme activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by the Government and UNICEF under applicable law.

2. Patent rights, copyrights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this article resulting from programmes in which UNICEF cooperates may be made available by UNICEF free of royalties to other Governments with which UNICEF cooperates for their use and exploitation in programmes.

### *Article IX*

#### APPLICABILITY OF THE CONVENTION

The Convention shall be applicable *mutatis mutandis* to UNICEF, its office, property, funds and assets and to its officials and experts on mission in the country.

### *Article X*

#### LEGAL STATUS OF UNICEF OFFICE

1. UNICEF, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. (a) The premises of the UNICEF office shall be inviolable. The property and assets of UNICEF, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

(b) The appropriate authorities shall not enter the office premises to perform any official duties, except with the express consent of the head of the office and under conditions agreed to by him or her.

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquility of the office is not disturbed by the unauthorized entry of persons or group of persons from outside or by disturbances in its immediate vicinity.

4. The archives of UNICEF, and in general all documents belonging to it, wherever located by whomsoever held, shall be inviolable.

## *Article XI*

### UNICEF FUNDS, ASSETS AND OTHER PROPERTY

1. Without being restricted by financial controls, regulations or moratoria of any kind:

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

(b) UNICEF shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations or agencies of the United Nations system;

(c) UNICEF shall be accorded the most favourable, legally available rate of exchange for its financial activities.

2. UNICEF, its assets, income and other property shall:

(a) Be exempt from all direction taxes, value-added tax, fees, tolls or duties; it is understood however, that UNICEF will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized;

(b) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNICEF for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

(c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

## *Articles XII*

### GREETING CARDS AND OTHER UNICEF PRODUCTS

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

## *Article XIII*

### UNICEF OFFICIALS

1. Officials of UNICEF shall:

(a) 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 to be accorded after termination of employment with UNICEF;

(b) Be exempt from taxation on salaries and emoluments paid to them by UNICEF;

(c) Be immune from national service obligations;

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

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

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

(g) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country.

2. The head of the UNICEF office and other senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the UNICEF office may be incorporated in the diplomatic list.

3. UNICEF officials shall also be entitled to the following facilities applicable to members of diplomatic missions of comparable ranks:

(a) To import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing government regulation;

(b) To import a motor vehicle free of customs and excise duties including value-added tax, in accordance with existing government regulation.

#### *Article XIV*

##### EXPERTS ON MISSION

1. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

2. Experts on mission may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

#### *Article XV*

##### PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

(a) 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 to be accorded after termination of employment with UNICEF;

(b) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNICEF may be accorded such other privileges, immunities and facilities as specified in article XIII above, as may be agreed upon between the Parties.

#### *Article XVI*

##### ACCESS FACILITIES

1. UNICEF officials, experts on mission and persons performing services for UNICEF shall be entitled:

(a) To prompt clearance and issuance, free of charge, of visa, licences or permits, where required;

(b) To unimpeded access to or from the country, and within the country to all sites and cooperation activities, to the extent necessary for the implementation of programmes of cooperation.

#### *Article XVII*

##### LOCALLY RECRUITED PERSONNEL ASSIGNED TO HOURLY RATES

The term and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNICEF. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNICEF.

#### *Article XVIII*

##### FACILITIES IN RESPECT OF COMMUNICATIONS

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission (or intergovernmental organization) in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches all of which shall be inviolable and not subject to censorship.

3. UNICEF shall have the right to operate radio and other telecommunication equipment on United Nations registered frequencies and those allocated by the Government between its offices, within and outside the country, and in particular with UNICEF headquarters in New York.

4. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunications Convention (Nairobi, 1982) and the regulations annexed thereto.

*Article XIX*

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

The Government shall grant UNICEF necessary permits or licence for, and shall not impose undue restrictions on, the acquisition or use the maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement.

*Article XX*

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

*Article XXI*

CLAIMS AGAINST UNICEF

1. UNICEF cooperation in programmes under the present Agreement is provided for the benefit of the Government and people of the country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services on behalf of UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where the Government and UNICEF agree that the particular claim or liability was caused by gross negligence or willful misconduct.

*Article XXII*

SETTLEMENT OF DISPUTES

Any dispute between UNICEF and the Government relating to the interpretation and application of the present 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 (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of 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 expense of 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.

### *Article XXIII*

#### ENTRY INTO FORCE

1. This Agreement shall enter into force immediately upon signature by the Parties.
2. The present Agreement supersedes and replaces all previous Basic Agreements, including addenda thereto, between UNICEF and the Government.

### *Article XXIV*

#### AMENDMENTS

The present Agreement may be modified or amended only by written agreement between the Parties hereto.

### *Article XXV*

#### TERMINATION

The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of UNICEF activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized plenipotentiary of the Government and duly appointed representative of UNICEF, have on behalf of the Parties signed the present Agreement, in the English language. For purposes of interpretation and in case of conflict, the English text shall prevail.

*Done* at Banjim, this 27th day of February, nineteen hundred and ninety five.

For the United Nations  
Children's Fund:  
  
(Signed) Samir SOBHY  
Area Representative  
for the Gambia, Senegal  
and Cape Verde

For the Government:  
  
(Signed) Bolong Landing SONKO  
Minister of External Affairs

Similar agreements were concluded with Gambia on 27 February 1995, Guinea Bissau on 3 March 1995, Swaziland on 8 March 1995, Uruguay on 25 October 1995, Niger on 8 December 1995 and Cameroon on 19 December 1995.

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

Basic Agreement between the United Nations (United Nations Development Programme) and the Government of Honduras concerning assistance by the United Nations Development Programme to the Government of Honduras. Signed at Tegucigalpa on 17 January 1995<sup>28</sup>

...

##### *Article II*

##### FORMS OF ASSISTANCE

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

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

(b) The services of operational experts proposed by the Executing Agency and selected by the Government, to perform functions of an operational, executive or administrative character (OPAS) as civil servants of the Government or as employees of such entities as the Government may designate under article 1, paragraph 2, hereof:

(c) The Services of members of the United Nations Volunteers (hereinafter called volunteers);

(d) Equipment and supplies not readily available in Honduras (hereinafter called the country);

(e) Seminars, training programmes, demonstration projects 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 the UNDP.

2. Requests for assistance shall be presented by the Government, through SECPLAN [Ministry of Coordination, Planning and Budget] to UNDP through the UNDP representative in the country (referred to in paragraph 4(a) of this article), and in the form and in accordance with procedures established by the UNDP for such requests. The Government shall provide the UNDP with all appropriate facilities and relevant information to appraise the request, including when feasible, 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 the 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 in the country, headed by a resident representative, 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 with SECPLAN and other competent entities of the Government and shall inform the Government of the policies, criteria and procedures of the 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 the UNDP through various Executing Agencies or its own consultants, assist to Government, as maybe 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 Executing Agency.

(b) The UNDP mission in the country shall have such other staff as the 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 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 each other and the Executing Agency with a view to 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 the UNDP and United Nations subsidiary organs within the UNDP mission, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

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 of 21 November 1947, including any annex to the Convention applicable to such specialized agency.

3. The Government shall grant to the resident representative the same privileges, immunities, exemptions and facilities accorded to heads of diplomatic missions, in accordance with international law. The Government shall also grant to the representatives of other United Nations subsidiary organs within the UNDP mission additional privileges and immunities for the effective exercise of their functions, in accordance with international law, as are granted by the Government to members of diplomatic missions of comparable ranks. Such additional privileges and immunities shall be specified in an exchange of letters between the Government and UNDP.

4. (a) Except as the Parties may otherwise agree in project documents relating to specific projects, the Government shall grant all persons performing services on behalf of UNDP or a specialized agency who are not covered by paragraphs 1 and 2 above the facilities provided for in sections 18 or 19 respectively of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies. Such facilities shall not be granted to Government nationals employed locally on behalf of the UNDP or specialized agency.

(b) For purposes of the instrument 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 subparagraph 2(a) above shall be deemed to be documents belonging to the United Nations or the specialized agency concerned;
- (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 or the specialized agency concerned, as the case may be.

5. The expression "persons" performing services" as used in articles IX, X and XIII of this Agreement covers operational experts, volunteers, consultants, and juridical as well as natural persons and their employees. It includes governmental or nongovernmental 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 signed by the Government.

*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 sub-paragraphs (f) and (g) above.

2. Assistance under this Agreement being provided for the benefit of the Government and people of Honduras, 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 willful misconduct of the above-mentioned individuals.

Similar agreements were concluded with Bosnia and Herzegovina on 7 December 1995, with former Yugoslav Republic of Macedonia on 18 \_\_\_\_\_ 1995 and with Armenia on 8 March 1995.

## 5. AGREEMENTS RELATING TO THE UNITED NATIONS ENVIRONMENT PROGRAMME

- (a) Host Government Agreement between the United Nations (United Nations Environment Programme) and the Government of Iceland regarding the arrangements for the Meeting of Experts on the Protection of the Marine Environment from Land-based Activities, Reykjavik, 6-10 March 1995. Signed at Nairobi and at Reykjavik on 13 January 1995<sup>29</sup>

I have the honour to refer to the arrangements for the Meeting of Experts on the Protection of the Marine Environment from Land-Based Activities that the United Nations Environment Programme (UNEP) is planning to convene at Reykjavik. With the present letter I wish to obtain your Government's acceptance of the following arrangements:

1. The participants in the meeting shall be invited by the Executive Director of the United Nations Environment Programme and will include:

- (a) Representatives of State.
- (b) Organizations that have received standing invitations from UNEP to participate in the meeting in the capacity of observers;
- (c) Specialized and related agencies of the United Nations;
- (d) Other intergovernmental organizations;
- (e) Intergovernmental organs of the United Nations;
- (f) Non-governmental organizations;
- (g) The UNEP secretariat;
- (h) Other persons invited by UNEP.

2. The Executive Director of UNEP shall designate the officials of UNEP and the United Nations assigned to attend the meeting for the purpose of servicing it.

3. The meeting will be open to representatives of information media accredited by UNEP at its discretion after consultation with the Government.

4. The Government shall provide, for the duration of the meeting, the necessary premises, including office space, working areas and other related facilities, as specified in Annex A hereto.

The Government shall ensure reliable electronic mail connections by Internet, modem and high speed telefax for the transmission of meeting documentation for remote translation at UNEP Headquarters in Nairobi. The Government shall at its expense furnish, equip and maintain in good repair all these premises and facilities in a manner that UNEP considers adequate for the effective conduct of the meeting. The meeting rooms shall be equipped for reciprocal simultaneous interpretation between three languages, and for sound recording from the floor to the extent required by UNEP. The premises shall remain at the disposal of UNEP 24 hours a day from three days prior to the meeting until a maximum of two days after its closure.

5. The Government shall provide, if possible within the conference area, a bank, post office, telephone, telefax and telex facilities, as well as appropriate eating facilities sufficient for the number of delegates and conference staff, a travel agency and a first aid center.

6. The Government shall bear the cost of all necessary utility services, incurred as a result of meeting including local telephone communications, of the secretariat of the meeting and its communications by telex, telefax, telephone or electronic mail with UNEP headquarters in Nairobi when such communications are authorized by or on behalf of the secretary of the meeting.

7. The Government shall bear the cost of transport and insurance charges, from the United Nations Environment Programme Headquarters in Nairobi to the site of the meeting and return, of UNEP equipment and supplies required for the adequate functioning of the meeting. UNEP will determine the mode of shipment of such equipment and supplies having regard to the need for economy but with first regard to the needs of the meeting.

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

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

10. The Government shall provide transport between the local airport and the conference area and principal hotels for members of UNEP secretariat servicing the meeting upon their arrival and departure.

11. The Government shall ensure the availability of transport for all participants and those attending the meeting between the local airport, the principal hotels and the conference area.

12. In the event of the Executive Director, UNEP, attending the meeting the Government shall provide a car with driver for her official use. The Government shall also ensure the availability of other local transportation as required by the secretariat in connection with the meeting.

13. The Government shall furnish such police protection as may be required to ensure the effective functioning of the meeting in an atmosphere of security and tranquility free from interference of any kind.

14. The Government shall appoint a liaison officer who shall be responsible, in consultation with UNEP, for making and carrying out the administrative and personnel arrangements for the meeting.

15. The Government shall recruit and provide an adequate number of local support personnel necessary for the proper functioning of the meeting. The exact requirements in this respect are specified in Annex B hereto. UNEP will provide the staff specified in Annex C hereto.

#### *Financial arrangements*

16. The Government, in addition to the financial obligations provided for elsewhere in this Agreement and its attached annexes, shall, in accordance with General Assembly resolution 31/140, section I, paragraph 5, bear the actual ad-

ditional costs directly or indirectly involved in holding the meeting in Reykjavik, rather than at Geneva in which the nearest established headquarters of the United Nations is located. Such costs, which are provisionally estimated at approximately US\$ 110,249 shall include, but not be restricted to, the actual additional costs of travel and staff entitlements of the UNEP officials assigned to plan for, attend or service the meeting, as well as the costs of shipping any necessary equipment and supplies. Arrangements for the travel of UNEP officials required to plan for or service the meeting and for the shipment of any necessary equipment and supplies shall be made by the secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standards, baggage allowances, subsistence payments and terminal expenses.

17. The Government shall, not later than 31 January 1994, deposit with UNEP the sum of US\$ 110,249 representing the estimated costs referred to the paragraph 16 above. This deposit should be paid wholly in United States dollars, to the credit of the UNEP Bank Account, Chemical Bank, United Nations Office, New York, NY 10017, USA, Trust Fund Account No. 015-002756, indicating the purpose for which the deposit is made.

18. The deposit required by paragraph 17 above, shall be used only to pay the obligations of UNEP in respect of the meeting.

19. After the meeting and no later than 30 April 1996 UNEP shall give the Government a detailed set of certified accounts showing the actual additional costs incurred by UNEP and to be borne by the Government as set out in annex D to this Agreement. These costs will be expressed in United States dollars, using the United Nations official rate of exchange at the time the payments are made. UNEP, on the basis of this detailed set of accounts, will refund to the Government, any funds unspent out of the deposit required by paragraph 17 above. A final set of accounts certified by UNEP will be submitted no later than 31 December 1996 and 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 in 1996 by the United Nations Boards of Auditors, whose determination shall be accepted as final by both the Government of Iceland and UNEP.

20. The Government shall be responsible for dealing with any action, claims 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 that are provided by or are under the control of the Government;

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

(c) The employment for the meeting of personnel provided by the Government.

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

22. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 19 February 1946 to which Iceland

is apart shall be applicable to the meeting. The representatives of States referred to in paragraph 1(a) above, shall enjoy the privileges and immunities under article IV of the Convention. All other participants invited by UNEP shall be considered expert on mission for the United Nations and as such shall be granted the privileges and immunities under articles V and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the United Nations specialized agencies participating in the meeting shall be accorded the privileges and immunities provided under articles VI and VII of the Convention on Privileges and Immunities of the Specialized Agencies.

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

24. The representatives of the United Nations specialized or related agencies shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

25. All persons referred to in paragraph 1 above shall have the right of entry into and exit from Iceland, and no impediment shall be imposed on their transit to and from the conference area. 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 meeting, provided the application for the visa is made at least three weeks before the opening of the meeting, if the application is made later, the visa shall be granted no later than three working days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the meeting are delivered at specified points of entry 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 working days before the closing of the meeting.

26. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the meeting premises specified in paragraph 4, 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 meeting, including the preparatory stage and the winding up.

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

28. 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 decisions 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.

29. I further propose that this letter and your affirmative answer will place on record the understanding between the Government of Iceland and the United Nations Environment Programme regarding the provision of host facilities by your Government for the meeting.

For the United Nations

Jan W. HUISMAN  
Assistant Executive  
Director UNEP

For the Government of Iceland

Magnús JÓHANNESSEN  
Secretary-General

(b) Agreement between the United Nations (United Nations Environment Programme) and the Government of Indonesia regarding the second meeting of the Conference of the Parties to the Convention on Biological Diversity.<sup>30</sup> Signed at Geneva on 17 July 1995<sup>31</sup>

Pursuant to the kind acceptance by the Government of Indonesia of the invitation from the Conference of the Parties to the Convention on Biological Diversity in its first meeting, held in Nassau, Bahamas, in 1994, the second meeting of the Conference of the Parties to the Convention on Biological Diversity will take place in Jakarta, Indonesia.

#### *Article I*

##### PLACE AND VENUE

The second meeting of the Conference of the Parties will take place at the Jakarta Convention Center in Jakarta, Indonesia from 6 to 17 November 1995.

#### *Article II*

##### NATURE AND SCOPE OF THE MEETING

Article 23 of the Convention on Biological Diversity established the Conference of the Parties to keep under review the implementation of the Convention. The Conference of the Parties decided at its first meeting that its second meeting will consider among others items which have not been completed by its first meeting, and the implementation of the Medium-term programme of work of the Conference of the Parties. Subject to the final decision of the Bureau of the Conference of the Parties, the Ministerial Segment of the Meeting will be held from 15 to 17 November 1995. The opening ceremony of the Ministerial Segment will take place on 14 November 1995.

### *Article III*

#### PARTICIPANTS

1. In accordance with the relevant provisions of the Rules of Procedure for the Conference of the Parties, the Conference shall be open to participation by representatives or observers of:

- (a) Parties and observer States;
- (b) Organizations that have received standing invitations from the United Nations General Assembly to participate in the meeting in the capacity of observers;
- (c) Specialized and related agencies of the United Nations;
- (d) Other intergovernmental organizations;
- (e) Non-governmental organizations accredited to the Convention;
- (f) Officials of the United Nations Secretariat;
- (g) Other persons invited by the Secretariat to the Convention and the Executive Director of UNEP.

2. The public meeting of the conference shall be open to representatives of information media accredited by the United Nations Organization and the Secretariat to the Convention.

### *Article IV*

#### PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government of Indonesia shall provide the necessary premises including:

- (a) One main conference room, for the meeting of the plenary, with working tables, headphones for participants, microphones for simultaneous interpretation in the six United Nations official languages and booths for interpreters and interpretation equipment. The main conference room shall also have facilities for sound recording;
- (b) Five additional rooms for informal consultations and coordination among different regional groups;
- (c) An additional room for meetings of the non-governmental organizations;
- (d) An exhibition area;
- (e) Offices for the secretariat.

2. The equipment and supplies required for the conduct of the meeting, as listed in annex I, will be made available to the Secretariat, in principle from 4 to 18 November 1995.

3. The required premises shall be made available to the Secretariat, in principle from 4 to 18 November 1995.

4. The Government of Indonesia shall provide, if possible within the Conference area: Bank, post office, telephone and telecopy facilities for the use of the delegates on a commercial basis.

5. The Government of Indonesia shall bear the cost of all necessary utility services, including local telephone communications of the Secretariat and its international communications by telephone and telecopy when such communications are authorized by the Executive Secretary.

#### *Article V*

##### ACCOMMODATION

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

#### *Article VI*

##### MEDICAL SERVICE

1. Medical facilities adequate for first aid in emergencies will be provided by the Government within the conference area.

2. For serious emergencies, the Government of Indonesia shall ensure immediate transportation and admission to hospital. The expenses incurred will not be the responsibility of the Government of Indonesia.

#### *Article VII*

##### TRANSPORTATION

1. The Government of Indonesia shall ensure the availability of transport for all participants and those attending the meeting between the airport, the principal hotels and the meeting area.

2. The Government of Indonesia shall provide three cars with drivers for official use by the Secretariat in connection with the meeting.

#### *Article VIII*

##### POLICE PROTECTION

The Government of Indonesia shall furnish such police protection as may be required to ensure the effective functioning of the meeting in an atmosphere of security and tranquility free from interference of any kind. While such police services shall be under direct supervision and control of a senior officer provided by the Government of Indonesia, this officer shall work in close cooperation with the designated senior official of the Secretariat.

### *Article IX*

#### LOCAL PERSONNEL

1. The Government of Indonesia shall appoint a liaison officer who shall be responsible, in consultation with the Secretariat, for making and carrying out the administrative and personnel arrangements for the meeting as required under this agreement.

2. The Government of Indonesia shall recruit and provide an adequate number of local support personnel necessary for the proper functioning of the meeting as reflected in annex I.

### *Article X*

#### FINANCIAL ARRANGEMENTS

1. The Government of Indonesia, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with paragraph 17 of section A of General Assembly resolution 47/202 of 22 December 1992, bear the actual additional costs directly or indirectly involved in holding the meeting in Indonesia, rather than at Geneva. Such costs, which are provisionally estimated at approximately US\$ 440,317.00 shall include, but not be restricted to, the actual additional costs of travel and staff entitlements of the Secretariat officials assigned to plan for or attend the meeting, as well as the costs of shipping any necessary equipment and supplies shall be made by the Secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standard, baggage allowances, subsistence payment and terminal expenses.

2. The Government shall immediately deposit, as soon as possible but in any case, no later than sixty days prior to the commencement of the second meeting of the Conference, with the Trust Fund for the Convention on Biological Diversity established by the United Nations Environment Programme, the sum of US\$440,317.00 representing the total estimated costs referred to in paragraph 1.

3. The deposit required by paragraph 2 above, shall be used only to pay the obligations of the Secretariat in respect of the meeting.

4. No later than 30 days after the meeting, the Secretariat shall give the Government of Indonesia a preliminary detailed set of accounts showing the costs incurred for the convening and functioning of the meeting. The Secretariat will provide the final account as soon as possible and refund to the Government of Indonesia any funds unspent out of the deposit referred to in paragraph 2.

### *Article XI*

#### LIABILITY

1. The Government of Indonesia shall be responsible for dealing with any action, claims 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 article IV that are provided by or are under the control of the Government;

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

(c) The employment for the meeting of personnel provided by the Government under article I.

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

3. The provisions stipulated in paragraph 1 and paragraph 2 of this article will not relieve any person from liability resulting from criminal, negligent, or fraudulent acts on the part of that person.

### *Article XII*

#### PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 to which Indonesia is a Party shall be applicable in respect of the Conference. In particular, the representatives of States and of the Intergovernmental organs referred to in article III, paragraph I, above who are not Indonesian nationals, shall enjoy the privileges and immunities under article IV of the Convention. The officials of the United Nations who are not Indonesian nationals performing functions in connection with the meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

2. The representatives of the specialized or related agencies referred to in article III, paragraph 1, above, who are not Indonesian nationals, shall enjoy the privileges and immunities provided under articles VI and VII of the Convention on Privileges and Immunities of the Specialized Agencies.

3. Without prejudice to the preceding paragraph of the present article, all persons performing functions in connection with the meeting who are not Indonesian nationals shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the meeting.

4. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the meeting premises specified in paragraph 4, 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 meeting, including the preparatory stage and the winding up.

5. The Government of Indonesia shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies and equipment necessary for the meeting, provided that such articles are notified at least seven days before arrival and re-exported from Indonesia at the end of the meeting or within such period thereafter as may be agreed upon by the Government of Indonesia. It shall issue without delay any necessary import and export permits for this purpose.

6. The Government of Indonesia will facilitate the delivery of visas of entry to Indonesia to all the persons invited to attend the meeting.

*Article XIII*

SETTLEMENT OF DISPUTES

The Secretariat and the Government of Indonesia will spare no effort to settle amicably any dispute arising from the interpretation or application of this agreement through negotiation. Any outstanding dispute will be settle, in consultation with the Government of Indonesia, in accordance with the established United Nations practices.

*Article XIV*

FINAL PROVISIONS

1. This Agreement may be modified by written agreement between the Secretariat and the Government of Indonesia.

2. This agreement shall enter into force upon signature by the parties and shall remain in force for the duration of the meeting and for such period thereafter as is necessary for all matters relating to any of its provisions to be settled.

3. The annex forms an integral part of this Agreement.

6. AGREEMENT RELATING TO THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of China on the upgrading of the UNHCR mission in China to a UNHCR branch office in China. Signed at Geneva on 1 December 1995<sup>32</sup>

*Article I*

DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

1. "Host country" or "country" means the People's Republic of China;
2. "Government" means the Government of the People's Republic of China;
3. "UNHCR" means the Office of the United Nations High Commissioner of Refugees;
4. "High Commissioner" means the United Nations High Commissioner for Refugees or the Acting High Commissioner;
5. "Parties" means the Government and UNHCR;

6. "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;

7. "UNHCR office" means all the offices and premises, installations and facilities occupied or maintained by the UNHCR branch office in the country;

8. "UNHCR representative" means the chief UNHCR official of the UNHCR office in the country;

9. "UNHCR officials" means all the staff members of UNHCR employed under the Staff Regulations and Rules of the United Nations, except those who are recruited locally and paid by the hour as provided for in General Assembly resolution of 7 December 1946.

10. "Experts on mission" means individuals undertaking missions for UNHCR other than UNHCR officials;

11. "UNHCR personnel" means UNHCR officials and experts on mission.

## *Article II*

### PURPOSE OF THIS AGREEMENT

This Agreement provides for the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, upgrade its mission in the country to a branch office and perform the function of international protection and humanitarian assistance in the interest of refugees in the host country.

## *Article III*

### COOPERATION BETWEEN THE GOVERNMENT AND UNHCR

1. Cooperation between the Government and UNHCR in the field of international protection of and humanitarian assistance to refugees shall be carried out on the basis of the statute of UNHCR, other relevant decisions and resolutions adopted by United Nations, article 35 of the Convention Relating to the Status of Refugees of 1951 and article 2 of the Protocol Relating to the Status of Refugees of 1967.

2. Full respect for the state sovereignty of the People's Republic of China is the essential basic principle of all stipulations in this Agreement.

3. UNHCR office shall maintain consultations and cooperation with the Government with respect to the preparation and review of projects for refugees.

4. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitments made by the Government and the High Commissioner to the furnishing of funds, daily necessities, equipment and services or other assistance to refugees, shall be set forth in project agreement to be signed by the Government and UNHCR.

5. In consultation and cooperation with the Government, UNHCR personnel may at times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation.

*Article IV*

UNHCR OFFICE

1. The Government welcomes the fact that UNHCR upgrades its mission in Beijing, capital of the country, to a branch office, for the purpose of providing international protection and humanitarian assistance to refugees in the host country.

2. The UNHCR Branch office shall fulfil its functions in accordance with UNHCR's mandate, and besides, it will continue to carry out the mandate of the former UNHCR mission, namely, to assist the Government in the settlement of the Indo-Chinese refugees in the country, and where possible, assist and promote their voluntary repatriation.

3. UNHCR may designate, with the consent of the Government, the UNHCR office in the country to serve as a regional office and the Government shall be notified in writing of the number and level of the officials assigned to it.

4. The UNHCR office will exercise functions as assigned by the High Commissioner, in relation to her mandate for refugees, including the establishment of relations between UNHCR and non-governmental organizations legally registered in the country relevant to its work with the permission of the Government.

5. The UNHCR office shall establish contacts with the relevant departments of the Government, and notify the latter of relevant UNHCR policies, guidelines and procedures as well as other United Nations humanitarian actions and programmes.

*Article V*

UNHCR PERSONNEL

1. UNHCR may, with the consent of the Government, increase UNHCR officials or experts on mission assigned to the UNHCR office in the country as UNHCR deems it necessary for carrying out its functions of international protection and humanitarian assistance more effectively.

2. UNHCR may dispatch officials to visit the country for the purpose of consulting and cooperating with the corresponding officials of the Government or other parties involved in the refugee work in connection with: (a) the review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes; (b) the shipment, receipt, distribution or use of the daily necessities, equipment, and other materials supplied by UNHCR; (c) seeking permanent solutions to the problem of refugees; and (d) any other matters relating to the application of this Agreement.

*Article VI*

FACILITIES FOR IMPLEMENTATION OF UNHCR HUMANITARIAN PROGRAMMES

1. The Government, in agreement with UNHCR, shall grant UNHCR officials and experts on mission facilities necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country.

2. The Government, in agreement with UNHCR, shall assist the UNHCR officials in finding appropriate office premises.

3. The Government shall ensure that the UNHCR office is at all times supplied with the necessary utilities services, and that such services are supplied on equitable terms.

4. The Government shall take the necessary measures to ensure the security and protection of the premises of the UNHCR office and its personnel.

5. The Government shall provide facilities to UNHCR personnel recruited internationally in their efforts to find suitable housing accommodation.

### *Article VII*

#### PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to which the Government became party on 11 September 1979.

2. Without prejudice to paragraph 1 of this article and without contravening the law and regulations of the host country, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided for in Articles VII to XIV of this Agreement.

### *Article VIII*

#### PROPERTIES AND FUNDS OF UNHCR OFFICE

1. UNHCR, its properties and fund, wherever they are located and whoever holds them, shall be immune from legal process of whatever form, except in special cases for which it has expressly waived its immunity.

2. The premises of UNHCR office shall be inviolable. Its properties and funds, wherever they are located and whoever keeps them, shall be immune from search, requisition, confiscation, and any other form of interference, whether by executive, judicial or legislative action.

3. The archives of UNHCR, and the documents belonging to or held by it, shall be inviolable.

4. For the funds, assets, income and other properties of UNHCR:

(a) The articles imported by UNHCR for its direct official use shall be exempt from customs duties and other taxation in accordance with the relevant regulations of the Government;

(b) The import and export of formal UNHCR publications shall be exempt from customs duties and other related import taxation, and shall not be prohibited or restricted.

5. Any materials imported or exported by UNHCR, by national or international bodies duly entrusted by UNHCR to act on its behalf in connection with humanitarian assistance for refugees, shall not be prohibited or restricted and shall be exempt from all customs duties and other related import taxation.

6. UNHCR shall enjoy the most favourable legal rate of exchange.

## *Article IX*

### COMMUNICATION FACILITIES

1. UNHCR shall enjoy, in respect of its official communications, the same favorable treatment as that has been accorded by the Government to other intergovernmental and international organizations.

2. The Government shall ensure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence.

3. UNHCR shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags which shall have the same privileges and immunities as diplomatic couriers and bags.

4. UNHCR shall have the right to operate radio and other communications equipment, on United Nations registered frequencies, and those allocated by the Government, between its offices, within and outside the country, and in particular with UNHCR headquarters in Geneva.

## *Article X*

### UNHCR OFFICIALS

1. All UNHCR Professionals above the grade P2 who are not citizens of the country shall enjoy, while in the country, the following facilities, privileges and immunities:

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

(b) Immunity from inspection and seizure of their official;

(c) Immunity from military service any other obligations;

(d) Exemption from taxation in respect of the salaries and all other remunerations paid to them by UNHCR;

(e) Processing issuance, free of charge, of visas to or from the country, and of licences or work permits, if required, and free movement to or within the cities and regions of the country open to foreigners, to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;

(f) Freedom to hold or keep within the country, foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with UNHCR to take out the host country their lawful possessions with good reasons;

(g) The same protection and repatriation facilities with respect to themselves, their spouses and their minor children in time of international crises as are accorded to diplomatic envoys;

(h) The right to import duty-free articles and household necessities for their personal use within the quantity of direct needs, including motor vehicles in keeping with the relevant regulations of the country.

2. UNHCR administrative and technical staff members shall enjoy the privileges and immunities provided for in the above-mentioned X. 1.(h), when importing household necessities, including motor vehicles in keeping with relevant regulations of the host country within six months of their arrival.

### *Article XI*

#### EXPERTS ON MISSION

Experts above the grade of P2, who are not citizens of the country, performing mission for UNHCR shall be accorded such facilities, privileges and immunities as are necessary for the independent exercise of their functions. In particular they shall be accorded.

1. Immunity from personal arrest or detention;
2. Immunity from legal process of words spoken or written and acts done by them in the course of performance of their mission;
3. The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
4. The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

### *Article XII*

#### NOTIFICATION

1. UNHCR shall notify the Government in advance or in time, of the names and positions of members of the UNHCR office in the host country and their dependents, of the names and positions of the experts on mission, and of changes in, i.e. the status of, such individuals.
2. The Government shall provide a special identity card to UNHCR officials and experts on mission and their dependents to certify their status pursuant to this Agreement.

### *Article XIII*

#### WAIVER OF IMMUNITY

Privileges and immunities are granted to UNHCR personnel in the interests of the UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and its waiver would not prejudice the interests of UNHCR.

### *Article XIV*

#### ABUSE OF PRIVILEGES AND IMMUNITIES

UNHCR shall take measures to ensure that the privileges and immunities provided for in this Agreement not to be abused, and shall conduct immediate consultations with the Government in case of abuse.

### *Article XV*

#### OBSERVANCE OF LAWS OF THE HOST COUNTRY

UNHCR personnel enjoying privileges and immunities shall have the duty to observe the laws and regulations of the host country, and the duty not to interfere in the internal affairs of the host country. The premises, funds, properties, etc. of the UNHCR office shall not be used for purposes other than those provided by UNHCR mandate.

### *Article XVI*

#### SETTLEMENT OF DISPUTES

Any disputes between the Government and UNHCR arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement. If this fails, such a dispute shall be submitted to arbitration at the request of either Party. In that case, 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 neither Party has appointed an arbitrator or if within fifteen days of 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. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses 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.

### *Article XVII*

#### GENERAL PROVISIONS

1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue to be effective until the date of termination under paragraph 4 of this Article.

2. Any other matters not covered by 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. Consultation with a view to amending this Agreement may be held at the request of the Government or UNHCR. Amendments shall be made in the form of a written agreement by the two Parties.

4. This Agreement shall cease to be in force six months after either of the contracting Parties gives notice in writing to the other of its decision to terminate the Agreement.

Similar agreements were concluded with Togo on 26 October 1995, with Sierra Leone on 19 January 1995 and with Slovenia on 4 October 1995.

**B. Treaty provisions concerning the legal status of inter-governmental organizations related to the United Nations**

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES,<sup>33</sup> APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1995, no State acceded to the Convention.

There are 102 States parties to the Convention.<sup>34</sup>

2. INTERNATIONAL LABOUR ORGANIZATION

- (a) Agreement between the Government of the Republic of South Africa and the International Labour Organization concerning the status of Organization, its officials and its area office in South Africa. Signed at Geneva on 5 June 1995.

...

*Article 3*

1. The Government shall assist ILO, to the extent possible, in obtaining appropriate office space. In considering any offer that the Government may make to it in this respect, ILO shall, without prejudice to its independence and tripartite character, give due consideration to the Government's plans that all United Nations programmes and agencies should be accommodated in the same premises.

2. At the request of ILO, the Government shall use its good offices with a view to removing any impediment that may have arisen with respect to the supply to the Area Office, on terms that are available to other public entities in South Africa, of the necessary public utilities and services, such as fire protection, electricity, water, sewerage and communications facilities.

3. The appropriate authorities shall exercise due diligence to ensure that the tranquility of the Area Office is not disturbed by any person or persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the office. If so requested by an authorized official of ILO, they shall assist in the preservation of law and order in the Area office.

*Article 4*

1. The Government undertakes to apply the provisions of the Convention<sup>35</sup> in respect of ILO except in so far as may otherwise be indicated in this Agreement.

2. Accordingly, the premises, property and official documents and correspondence of ILO shall be inviolable, and ILO and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process or any other form of interference by any authority, except

in so far 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. ILO shall make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private character to which it is a party.

3. For the purposes of article VI, section 18 of the Convention, the term “official” shall mean an official as defined in article 1.

#### *Article 5*

It is agreed that the articles that are exempt from customs duties and prohibitions and restrictions on imports and exports, in accordance with article III, section 9 of the Convention, shall include telecommunication equipment imported for the official use of ILO, provided that such equipment conforms to technical specifications that are acceptable to the Government.

#### *Article 6*

1. The Director and Deputy Director of the Area Office, and any other ILO official of the same rank who may subsequently be assigned to South Africa to perform functions at the request of or in agreement with the Government, and who are not South African nationals or permanently resident in South Africa, shall together with their dependants enjoy the same privileges, immunities and exemptions as those that are accorded by the Government to diplomatic envoys of comparable rank.

2. All ILO officials shall, irrespective of their nationality or place of permanent residence, enjoy in the territory of the Republic of South Africa:

(a) Immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity, such immunity to continue even after termination of their appointments with ILO, as well as immunity of seizure of their official baggage;

(b) Exemption from any form of taxation on their salaries and other remuneration paid to them by ILO, and from any form of personal tax, except to the extent that such tax represents payment for services rendered.

3. In addition, all officials referred to in paragraph 2, excluding those who are South African nationals or permanent residents in South Africa, shall enjoy the following immunities, exemptions and privileges:

(a) Immunity from personal arrest or detention;

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

(c) Exemption, together with their dependants, from all immigration restrictions and alien registration;

(d) The same privileges in respect of exchange facilities as are accorded by the Government to members of diplomatic missions of comparable rank;

(e) Exemption from any form of direct taxation on income derived from sources other than ILO, outside South Africa; the freedom to maintain within South Africa foreign currency accounts; such freedom to own in South Africa foreign securities and other property as is accorded to officials of diplomatic missions of comparable rank; and the right to transfer out of South Africa, with-

out any restriction or limitation, such funds in foreign currency or securities or other property as was lawfully brought into or acquired in South Africa.

(f) The same right to import, free of duty, their furniture and effects, including vehicles and spare parts thereof, on first taking up their posts in the Area Office and thereafter the same privileges and immunities as regards goods, including motor fuel, purchased in South Africa as are accorded in South Africa to other resident members of diplomatic missions of comparable rank: provided, however, that articles imported under this exemption may not be sold in South Africa except under conditions agreed to by the Government;

(g) The same repatriation facilities for themselves and their dependents, and the same right to protection by the Government authorities in times of international crisis or national emergency, as for members of diplomatic missions; and

(h) Such other privileges, immunities and exemptions which may in future be accorded by the Government to officials of comparable rank of other intergovernmental organizations in South Africa.

4. ILO officials in the Professional and higher categories shall, irrespective of their nationality, be exempt from national service obligations: provided, however, that in the case of nationals or persons permanently resident in South Africa, such exemption shall be confined to those officials whose names have been placed upon a list compiled by the Director of the ILO Area Office and approved by the Government.

5. To the extent compatible with municipal law and national policy, spouses of ILO officials who are residing with them shall be allowed to obtain work permits.

#### *Article 7*

Officials of ILO who will serve at the Area Office continuously for at least six months shall be provided by the Department of Foreign Affairs of South Africa with an identity card certifying that they are officials of ILO and that they are entitled to the immunities, exemptions and privileges provided for in this Agreement.

#### *Article 8*

The Director-General of the International Labour Office shall waive the immunity of officials and their dependents in any case where, in his or her opinion, such immunity would impede the course of justice and can be waived without prejudice to the overriding interests of ILO.

#### *Article 9*

1. Without prejudice to the provisions of this Agreement, it is the duty of ILO officials operating in South Africa in accordance with this Agreement, to respect the laws and regulations in South Africa.

2. The Director and other officials referred to in article 6 above shall cooperate at all times with the Government to facilitate the proper administration of justice, secure the observance of police regulations and prevent the oc-

currence of any abuse in connection with the immunities, exemptions and privileges accorded in this Agreement. Should the Government consider that an abuse has occurred, the Director shall with the consent of the Director-General of the International Labour Office consult with the appropriate South African authorities without delay.

*Article 10*

1. No impediment shall be placed on the free movement of ILO officials within or to or from South Africa in the performance of their functions. The Government shall also facilitate the entry into, and stay in, South Africa of persons invited to the Area Office for official purposes, and their departure from the country.

2. Any necessary visas shall be granted promptly and without any charge to the officials, and their dependants, and to the other persons referred to in sub-article 1 above.

(b) Agreement between the Government of the Arab Republic of Egypt and the International Labour Organization to facilitate the expansion of the ILO office in Cairo so as to include a multidisciplinary team in pursuance of ILO's active partnership policy. Signed at Geneva on 25 July 1995 by the Director-General of the ILO and the Permanent Representative of the Arab Republic of Egypt in Geneva.

...

*Article 2*

The Government shall take all measure within its power to facilitate the expansion of the office so as to include a multidisciplinary team in pursuance of ILO's active partnership policy.

*Article 3*

The Government recognizes the right of ILO to convene meetings at the seat of the office.

*Article 4*

The appropriate Egyptian authorities shall exercise due diligence to ensure that the tranquility of the Office is not disturbed by any person or persons attempting unauthorized entry or creating disturbances in the immediate vicinity; if so requested by an authorized official of ILO, they shall assist in the preservation of law and order in the Office.

*Article 5*

To the extent requested by an authorized official of ILO, the appropriate Egyptian authorities shall take all measures within their powers to ensure that the office is supplied with the necessary public services, such as fire protection, electricity, water, sewerage, and communication facilities, on terms no less favourable than those that are or may be granted to any similar organization in the Arab Republic of Egypt.

*Article 6*

No impediment shall be imposed to transit to or from the Office, or to sojourn in Egypt, of persons working in or visiting the Office on the official business of ILO.

*Article 7*

In addition to the privileges and immunities conferred by the above-mentioned Convention of 1947,<sup>36</sup> the Office and its staff shall enjoy treatment not less favourable than that accorded to intergovernmental organizations having an office in the Arab Republic of Egypt and to their staff.

*Article 8*

1. Professional officials of the office who are not of Egyptian nationality and have been designated by ILO, including the Director and Deputy Director of the Office and the professional members of the multidisciplinary team, as well as their spouses and minor children, shall be given the privileges and immunities enjoy by corresponding categories of officials in United Nations bodies, other specialized agencies or other intergovernmental organizations in the Arab Republic of Egypt.

2. The Director-General shall communicate to the Government sufficiently in advance the names and functions of the professional officials referred to in paragraph 1.

3. Such officials and their families shall be provided with a special identity card certifying the fact that they are officials of ILO covered by this Agreement.

4. Professional ILO officials of Egyptian nationality shall enjoy:

(a) Immunity from legal process of any kind in respect of words spoken or written and of acts performed by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of ILO;

(b) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by ILO or by the United Nations Pension Fund.

5. The present article is without prejudice to the provisions of the above mentioned Convention of 1947.

- (c) Exchange of letters between the Minister for Foreign Affairs of the Russian Federation and the Director-General of the International Labour Office concerning the new status of the ILO office in Moscow. Concluded on 13 December 1995.

I

LETTER FROM THE DIRECTOR-GENERAL OF ILO

Geneva, 14 September 1995

Dear Sir,

With a view to bringing ILO closer to its constituents and making available to them strengthened technical advisory services,

I have decided, subject to the Russian Federation's agreement, to transform the Moscow branch office to cover not only the Russian Federation, but also Armenia, Belarus, Georgia and any other country which I, as Director-General, may designate, and to extend the responsibilities attached to this office. The importance of this enlarged office in Moscow as regards ILO activities in the region would, of course, be considerably increased by this measure.

Since the Russian Federation is already a party to the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 and its annex of 10 July 1948 relating to the International Labour Organization, I understand that the provisions of that Convention will apply to the enlarged office and to staff assigned to it, including experts and consultants appointed by me. I would, in addition, appreciate confirmation that the competent authorities of the Russian Federation will exercise due diligence to ensure that the tranquility of the Moscow office is not disturbed by any person or group of persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the office.

I would be grateful to know whether the above proposals are acceptable to your Government.

An Official translation of the present letter into Russian is attached hereto.

Yours faithfully,

*(Signed)* Michel HANSENNE

II

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF  
THE RUSSIAN FEDERATION

Moscow, 10 October 1995

Dear Sir,

I acknowledge with thanks receipt of your letter dated 14 September concerning the transformation of the Moscow branch office into an enlarged office with extended responsibilities to cover not only the Russian Federation, but also Belarus, Georgia, Armenia and any other country which, as Director-General, you may designate.

The Russian Federation welcomes the increased presence and responsibilities of ILO in the region with a view to supporting national efforts to promote social and economic development, and to create an effective system of social partnership, and agrees to proposed transformation of the Moscow Office.

The Russian Federation will accord to the enlarged office in Moscow and to staff assigned to it, including experts and consultants appointed by you, the privileges and immunities provide for by the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 as well as its annex of 10 July 1948 relating to the International Labour Organization. In addition, the competent authorities of the Russian Federation will exercise due diligence to ensure that the tranquility of the Moscow Office is not disturbed by any person or group of persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the office.

However, locally recruited staff of the Moscow office who are paid by the hour shall only enjoy, under the above-mentioned Convention, immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded to them after termination of their employment with the International Labour Organization.

Yours faithfully,

(Signed) A. KOZYREV

### III

#### LETTER FROM THE DIRECTOR-GENERAL OF ILO

By a letter dated 13 December 1995, the Director-General of the International Labour Office informed the Minister for Foreign Affairs of the Russian Federation that the terms of his letter of 10 October 1995 were acceptable to the International Labour Organization.

#### 3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

- (a) Agreement between the Food and Agriculture Organization of the United Nations and the Government of the Republic of Zimbabwe, regarding the establishment of the FAO Sub-Regional Office for Southern and Eastern Africa. Signed on 17 August 1995.

#### THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE AND THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Desiring to conclude an agreement pursuant to the recommendations made by the Council of the Food and Agriculture Organization of the United Nations at its 106<sup>th</sup> (One Hundred and Sixth) Session regarding the establishment of Sub-regional Office of the Organization, have agreed as follows:

#### *Article I*

#### DEFINITIONS

#### *Section 1*

#### IN THIS AGREEMENT:

- (a) the expression "FAO" means the Food and Agriculture Organization of the United Nations;
- (b) The expression "Sub-regional Office" means the FAO Sub-regional Office for Southern and Eastern Africa established in Zimbabwe.
- (c) The expression "The Government" means the Government of the Republic of Zimbabwe;
- (d) The expression "Director-General" means the Director-General of FAO, and during his absence from duty the Deputy Director-General, or any other officer designated by him to act on his behalf;
- (e) The expression "Sub-regional Representative" means the Sub-regional Representative for the Office of the Director-General of FAO, and in his absence, his duly authorized Deputy;

(f) The expression “appropriate Zimbabwean Authorities” means such national or other authorities in the Republic of Zimbabwe as may be appropriate in the context and in accordance with the laws and customs applicable in Zimbabwe.

(g) The expression “laws of Zimbabwe” includes legislative acts, regulations or orders issued by or under authority of the Government or appropriate Zimbabwean authorities”;

(h) The expression “Member” means a Member of FAO;

(i) The expression “Representatives of Members” includes all representatives, alternates, advisers and technical experts and secretaries of delegations;

(j) The expression “meetings convened by FAO” means meetings of the Conference of FAO, the Council of FAO, any international conference or other gathering convened by FAO, and any commission, committee or subsidiary body of any of these bodies;

(k) The expression “Sub-regional Office Seat” means the premises occupied by the Sub-regional Office;

(l) The expression “archives of FAO” includes records and correspondence, documents, manuscripts, still and moving pictures and films, sound recordings belonging to or held by FAO;

(m) The expression “Officers of FAO” means all members of the Staff of FAO appointed by the Director-General or on his behalf, other than manual workers locally recruited on an hourly basis;

(n) The expression “property” as used in Article VIII, means all property, including funds, income and other assets, belonging to FAO or held or administered by FAO in furtherance of its constitutional functions.

## *Article II*

### JURIDICAL PERSONALITY AND FREEDOM OF ASSEMBLY

#### *Section 2*

The government recognizes the juridical personality of FAO and its capacity:

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

#### *Section 3*

The Government recognizes the right of FAO to convene meetings within the Sub-regional Office Seat, or with the concurrence of the appropriate Zimbabwean authorities elsewhere in the Republic of Zimbabwe. At Meetings convened by FAO, the Government shall take all proper steps to ensure that no impediment is placed in the way of full freedom of discussion and decision.

### *Article III*

#### THE SUB-REGIONAL OFFICE SEAT

##### *Section 4*

The Government shall grant free of charge to FAO and FAO shall accept, as from the date of entry into force and during the life of this Agreement, the use and occupancy of premises and the use of installations and office furniture suitable for the operation of the Sub-regional Office, as indicated in Annexes I and II to this Agreement.

##### *Section 5*

The Government shall provide, free of charges, all repairs, whether major or minor, and internal services required to maintain the Sub-regional Office, such services to include, among others, cleaning, protection, messenger services, of a quality not inferior to those provided for comparable offices of the Government.

### *Article IV*

#### INVIOABILITY OF THE SUB-REGIONAL OFFICE SEAT

##### *Section 6*

(a) The Government recognizes the inviolability of the Sub-regional Office Seat which shall be under the control and authority of FAO, as provided in this Agreement.

(b) No officer or official of the Government, whether administrative, judicial, military or police or other person exercising any public authority within Zimbabwe, shall enter the Sub-regional Office Seat to perform any official duties therein except with the consent of and under conditions agreed to by the Director-General or the Sub-regional Representative.

(c) Without prejudice to the provisions of Article X, FAO shall prevent the Sub-regional Office Seat from being used as a refuge by persons who are avoiding arrest under any law of Zimbabwe, or who are required by the Government for extradition to another country or who are endeavoring to avoid service of legal process or judicial proceedings.

### *Article V*

#### PROTECTION OF THE SUB-REGIONAL OFFICE SEAT

##### *Section 7*

(a) The appropriate Zimbabwe authorities shall exercise due diligence to ensure that the security and tranquility of the Sub-regional Office Seat is not disturbed by any person or group of persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the Sub-regional Office Seat.

(b) If so requested by the Sub-regional Representative, the appropriate Zimbabwean authorities shall provide a sufficient number of police for the removal therefrom of offenders.

#### *Article VI*

#### PUBLIC SERVICES

##### *Section 8*

(a) The appropriate Zimbabwean authorities shall exercise, to the extent requested by the Director-General or the Sub-regional Representative, their respective powers to ensure that the Sub-regional Office seat shall be supplied with the necessary public services, including, without limitation by reason of this enumeration, fire protection, electricity, water, sewerage, collecting refuse, gas, post, telephone, telex and telegraph, and that such public services shall be supplied on terms not less favourable than those supplied to Zimbabwe governmental administrations. In case of any interruption or threatened interruption of any such services, the appropriate Zimbabwean authorities shall consider the needs of FAO as being of equal importance with those of essential agencies of the Government and shall take steps accordingly to ensure that the work of FAO is not prejudice.

(b) Where gas, electricity or water are supplied by appropriate Zimbabwean authorities or bodies under their control, FAO shall be supplied at special tariffs which shall not exceed the lowest rates accorded to Zimbabwe governmental administrations.

#### *Article VII*

#### COMMUNICATIONS

##### *Section 9*

FAO shall enjoy for its official communications treatment not less favourable than that accorded by the Government to any organization or government, including the diplomatic mission of any such other government, in the matter of priorities and rates on mails, cables, telegrams, telex, radiograms, telephotos, telephone and other communications; and press rates for information to press and radio.

##### *Section 10*

FAO shall be entitled, for its official purposes to use the transport facilities of the Government under the same condition as those granted to resident diplomatic missions.

##### *Section 11*

(a) No censorship shall be applied to the official correspondence or other communications of FAO and to all correspondence or other communications directed to FAO or to any officer of FAO. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos and films and sound recordings.

(b) FAO shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, with the same privileges and immunities extended in respect of diplomatic couriers and bags.

(c) Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by supplementary agreement between FAO and the Government.

### *Article VIII*

#### PROPERTY OF FAO AND TAXATION

##### *Section 12*

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

##### *Section 13*

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

##### *Section 14*

The archives of FAO, and in general all documents belonging to FAO or held by it, shall be inviolable wherever located.

##### *Section 15*

FAO and its assets, income and other property shall be exempt:

(a) from any form of direct taxation. FAO, however, will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) From customs duties and from prohibitions and restrictions on imports and exports in respect of articles imported or exported by FAO for its official use, on the understanding that articles imported under such exemption, if necessary would be sold within the country.

(c) From customs duties and prohibitions and restriction in respect of the import and export of its publications, still moving pictures, videos and films and such recordings.

##### *Section 16*

(a) FAO shall be exempt from levies and duties on operations and transactions, and from excise duties, sales, luxury and value added taxes and all other taxes when it is making important purchases for official use by FAO of

property on which such duties or taxes are normally chargeable. For the purposes of this Agreement, important purchases shall be interpreted as the purchase of goods or the provision of services of a value exceeding US\$ 500.

(b) The Government shall grant allotments of gasoline or other required fuels and lubricating oils for vehicles required for the official use of FAO in quantities and at rates prevailing for diplomatic missions in Zimbabwe.

#### *Article IX*

##### *Section 17*

(a) Without being subject to any financial controls, regulations or moratoria of any kind, FAO:

- (i) may hold funds, gold or currency of any kind and operation foreign currency accounts in any currency;
- (ii) shall be free to transfer its funds, securities, gold or currency from a foreign country to Zimbabwe and vice versa and also within Zimbabwe and to convert any currency held by it into any other currency.

(b) FAO shall, in exercising its rights under this section, pay due regard to any representation made by the Government insofar as effect can be given to such representations without detriment to the interest of FAO.

(c) The Government shall assist FAO in obtaining the most favourable conditions as regards exchange rates.

#### *Article X*

##### TRANSIT AND SOJOURN

##### *Section 18*

(a) The appropriate Zimbabwean authorities shall take all necessary measures to facilitate the entry into, sojourn in and departure from Zimbabwe of the persons listed below, irrespective of their nationalities, when on official FAO business, shall impose no impediment to their transit to or from the Sub-regional Office Seat, shall afford them every necessary protection:

- (i) the Independent Chairman of the Council of FAO, representative of FAO Members, the United Nations, or any Specialization Agency of the United Nations, and their spouses;
- (ii) officers of FAO and their families;
- (iii) Officers of the Sub-regional Office, their families and other members of their households;
- (iv) persons other than officers of FAO, performing missions for FAO, and their spouses;
- (v) other persons invited to the Sub-regional Office Seat on official business.

The Director-General or the Sub-regional Representative shall communicate the names of such persons to the Government within a reasonable time.

(b) This section shall not apply to general interruptions in transportation, which shall be dealt with as provided in Section 8(a) and shall not impair the effectiveness of generally applicable laws as to the operation of means of transportation.

(c) Visas which may be required for persons referred to in this section shall be granted without charge and as promptly as possible.

(d) No activity performed by any such persons in his official capacity as described in sub-section (a) shall constitute a reason for preventing his entry into Zimbabwe or for requiring him to leave Zimbabwe.

(e) No persons referred to in sub-section (a) above shall be required to leave Zimbabwe except in the case of an abuse of the right to sojourn arising out of activities unconnected with his official functions as recognized by the Sub-regional Representative and in accordance with the following conditions:

- (i) no proceeding shall be instituted under such laws to require any such person to leave Zimbabwe except with the prior approval of the Minister of Foreign Affairs of Zimbabwe;
- (ii) in the case of the representative of a Member, such approval shall be given only after consultation with the authorities of the appropriate Member;
- (iii) in the case of any other person mentioned in sub-section (a), such approval shall be given only after consultation with the Sub-regional Representative or the Director-General, the Secretary-General of the United Nations or the principal executive officer of the appropriate Specialized Agency, as the case may be;
- (iv) a representative of the Member concerned, the Sub-regional Representative or the Director-General, the Secretary-General of the United Nations, or the principal executive officer of the appropriate Specialized Agency, as the case may be, shall have the right to appear and be heard in any such proceedings on behalf of the person against whom they shall have been instituted;
- (v) persons who are entitled to diplomatic privileges and immunities shall not be required to leave Zimbabwe otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to Zimbabwe.

(f) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the classes described in subsection (a), or the reasonable application of quarantine and health regulations.

*Article XI*

INDEPENDENT CHAIRMAN OF THE COUNCIL AND  
REPRESENTATIVES AT MEETINGS

*Section 19*

The Independent Chairman of the Council of FAO, representatives of Members representatives or observers of Nations, and representatives of the United Nations and its Specialized Agencies at meetings convened by FAO shall be entitled, in the territory of Zimbabwe while exercising their functions and during their journeys to and from the Sub-regional Office Seat and other places of meetings, to the same privileges and immunities as provided for under Article V (Sections 13 to 17 inclusive) of the Convention on the Privileges and Immunities of the Specialized Agencies, and in paragraph 1 of Annex 2 to that Convention.

*Article XII*

OFFICERS OF FAO  
MEMBERS OF FAO MISSIONS

PERSONS INVITED TO THE SUB-REGIONAL OFFICE SEAT  
ON OFFICIAL BUSINESS

*Section 20*

Officers of FAO shall enjoy within and with respect to Zimbabwe the following privileges and immunities:

- (a) immunity from personal arrest or detention;
- (b) immunity from the inspection and immunity from seizure of their official baggage and immunity from seizure of their personal baggage;
- (c) for the Sub-regional Representative and senior officers of the Sub-regional Office, immunity from inspection of their personal baggage;
- (d) immunity from legal process of any kind with respect to words spoken and all acts performed by them in their official capacity, such immunity to continue notwithstanding the fact that the persons concerned might have ceased to be officers of FAO;
- (e) exemption from any form of direct taxation on salaries and emoluments paid to them by FAO;
- (f) exemption for officers of other than Zimbabwean citizenship from any form of direct taxation on income derived from sources outside Zimbabwe;

(g) exemption, with respect to themselves, their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(h) exemption from national service obligations for officers of FAO provided that, with respect to nationals of the host country, such exemption shall be confined to officials whose names have, by reasons of their duties, been placed on a list compiled by the Sub-regional Representatives and approved by the Government; provided further that officials, other than those listed, who are nationals of Zimbabwe, are called up for national service, the Government shall, upon request of the Sub-regional Representative, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of essential work;

(i) for officers who are not Zimbabwe citizens, freedom to maintain within Zimbabwe or elsewhere foreign securities and other movable and immovable property; whilst employed by the FAO and at the time of termination of such employment, the right to take out of Zimbabwe funds in foreign currencies without any restrictions or limitation provided that the said officers can show good cause for their lawful possession of such funds. In particular, they shall have the right to take out of Zimbabwe their funds in the same currencies and up to the same amounts as they brought into Zimbabwe through the authorized channels;

(j) The same protection and repatriation facilities with respect to themselves, their families and other members of their households as are accorded to diplomatic envoys in time of crisis;

(k) The right to import, free of duty and other levies, prohibitions and restrictions on import, their furniture and effects within six months after first taking up their posts in Zimbabwe, or in the case of officers, who have not completed their probationary periods, within six months after confirmation of their employment with FAO; the same regulations shall apply in the case of importation, transfer and replacement of automobiles as are in force for resident members of diplomatic missions of comparable rank.

#### *Section 21*

The names of the officers of FAO shall be communicated to the appropriate Zimbabwean authorities from time to time.

#### *Section 22*

(a) The Government shall accord to the Sub-regional Representative and Senior Officers of the Sub-regional Office designated by the Director-General, diplomatic privileges and immunities. The Sub-regional Representative and his Deputy during his absence from duty, will have the status of Head of Diplomatic Mission.

(b) For this purpose, the Sub-regional Representative and senior officers of the Sub-regional Office shall be incorporated by the Ministry of Foreign Affairs, in consultation with the Director-General, into the appropriate diplomatic categories and shall enjoy the customs exemptions granted to such diplomatic categories in the Republic of Zimbabwe.

(c) All officers of FAO shall be provided with a special identity card certifying the fact that they are officers of FAO enjoying the privileges and immunities specified in this Agreement.

*Section 23*

Persons other than FAO officers, who are members of FAO missions, or who are invited to the Sub-regional Office Seat by FAO on official business, shall be accorded the privileges and immunities specified in Section 20, except those specified in sub-section (i).

*Section 24*

(a) The privileges and immunities accorded by this Article are conferred in the interests of FAO and not for the personal benefit of the individuals themselves. The Director-General shall waive the immunity of any officer in any case where in his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of FAO.

(b) FAO and its officers shall cooperate at all times with the appropriate Zimbabwean authorities to facilitate the proper administration of justice, to secure the observance of police regulations to prevent the occurrence of any abuses in connection with the privileges and immunities accorded by this Article.

*Article XIII*

LAISSEZ-PASSER

*Section 25*

The Government shall recognize and accept the United Nations Laissez-Passer issued to officers of FAO, and to Independent Chairman of the Council, as a valid travel document equivalent to a passport, applications for visas from holders of United Nations Laissez-Passer shall be dealt with as speedily as possible.

*Section 26*

Similar facilities to those specified in Section 25 shall be accorded to persons who, through not the holders of United Nations Laissez-Passer, have a certificate that they are traveling on business of the FAO.

*Article XIV*

GENERAL PROVISIONS

*Section 27*

(a) The Director-General and the Sub-regional Representative shall take every precaution to ensure that no abuse of privilege or immunity conferred by this Agreement shall occur and for this purpose shall establish such rules and regulations as they may deem necessary and expedient for officers of FAO and persons performing missions for FAO.

(b) Should the Government consider that an abuse of privilege or immunity conferred by this Agreement has occurred, the Director-General or the Sub-regional Representative, shall, upon request, consult with the appropriate Zimbabwean authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Director-General and the Government the matter shall be determined in accordance with the procedure set out in Article XV.

(c) The Sub-regional Representative shall also represent FAO in the Republic of Zimbabwe and shall be responsible, within the limits of the authority delegated to him, for all aspects of FAO's activities in the country. In the effective performance of his functions, the Sub-regional Representative shall have direct access to appropriate policy and planning levels of Government in the agriculture, fishery and forestry sectors of the economy, as well as to central planning authorities. Any technical assistance provided by FAO from its own budgetary resources shall be covered by specific agreements between the Government and FAO.

#### *Article XV*

#### SUPPLEMENTARY AGREEMENTS AND SETTLEMENT OF DISPUTES

##### *Section 28*

(a) The Government and FAO may enter into such supplementary agreements as may be necessary within the scope of this Agreement.

(b) Upon accession by Zimbabwe to the Convention on the Privileges and Immunities of the Specialized Agencies, such Convention and this Agreement shall, where they relate to the same subject matter, be treated as complementary.

##### *Section 29*

Any dispute between FAO and the Government concerning the interpretation or application of this Agreement or any supplementary agreements, or any questions affecting the Sub-regional Office Seat or the relationships between FAO 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 Director-General, one to be chosen by the Minister of Foreign Affairs of Zimbabwe, 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, such third arbitrator shall be chosen by the President of the International Court of Justice.

*Article XVI*

ENTRY INTO FORCE, OPERATION, AND DENUNCIATION

*Section 30*

(a) This Agreement shall enter into force upon notification by both Parties that their respective internal requirements have been complied with.

(b) Consultations with respect to modification of this Agreement shall be entered into at the request of the Government or FAO. Any such modification shall be by mutual consent.

(c) This Agreement shall be construed in the light of its primary purpose to enable the Sub-regional Office fully and efficiently to discharge its responsibilities and fulfil its purpose.

(d) Where this Agreement imposes obligations on the appropriate Zimbabwean authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

(e) This Agreement and any supplementary agreement entered into by the Government and FAO pursuant to this Agreement shall cease to be in force six months after either the Government or FAO shall have given notice in writing to the other of its decision to terminate this Agreement except for such provisions as may be applicable in connection with the orderly termination of the operations of FAO at its Sub-regional Office in the Republic of Zimbabwe and the disposition of its property therein.

*Section 31*

The Agreement between the Government and FAO regarding the arrangements to be made to appoint an FAO Representative in the Republic of Zimbabwe and for the establishment of his office, constituted by the exchange of letters between the Government and FAO dated 27 June 1984, is terminated with effect from the date of entry into force of the present Agreement.

*In Witness Whereof* the Government and FAO have signed this agreement in duplicate in the English language.

For the Food and Agriculture  
Organization of the United Nations  
Rome

For the Government of the  
Republic of Zimbabwe

(Signed) The Director General  
17/8/95

17/8/95

(b) Sub-Regional Office for Central and Eastern Europe

On 19 October 1995, similar agreement was concluded between FAO and the Government of the Republic of Hungary regarding the establishment of the FAO Sub-Regional Office for Central and Eastern Europe.

(c) Agreement 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 (published in *Juridical Yearbook*, 1972, p. 32), were concluded in 1995 with the Governments of the following countries acting as hosts to such sessions: Brazil, Canada,\* Cyprus, Dominica, France,\* Germany,\* Honduras, Indonesia, Morocco, Oman, Pakistan, Philippines, Romania, Samoa, Senegal, Slovenia, South Africa, Spain,\* Tunisia, Turkey and Venezuela.\*

*Non-member nation:* Russian Federation

(d) 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 (published in *Juridical Yearbook*, 1972, p. 33), were concluded in 1995 with the Governments of the following countries acting as hosts to such training activities: Brazil, Kenya, Slovenia, Syria, and Arab Republic.

#### 4. WORLD HEALTH ORGANIZATION

Basic Agreement between the World Health Organization and the Government of Latvia regarding the establishment of technical advisory cooperation relations. Signed at Riga on 27 July 1995<sup>34</sup>

*The World Health Organization* (hereinafter referred to as “the Organization”); and

*The Government of Latvia* (hereinafter referred to as “the Government”),

Desiring to give effect to the resolutions and decisions of the United Nations and of the Organization relating to technical advisory cooperation, and to obtain mutual agreement concerning its purpose and scope as well as the responsibilities which shall be assumed the services which shall be provided by the Government and the Organization;

Declaring that their mutual responsibilities shall be fulfilled in a spirit of friendly cooperation,

*Have agreed as follows:*

\*Certain departures from the standard texts or amendments thereto were introduced at the request of the host governments.

## *Article I*

### ESTABLISHMENT OF TECHNICAL ADVISORY COOPERATION

1. The Organization shall establish technical advisory cooperation with the Government subject to budgetary limitation or the availability of the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall be established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

3. Such technical advisory cooperation may consist of:

(a) Making available the services of advisers in order to render advice and cooperate with the Government or with other parties;

(b) Organizing and conducting seminars, training programmes, demonstration projects, expert working groups and related activities in such places as may be mutually agreed;

(c) Awarding scholarships and fellowships or making other arrangements under which candidates nominated by the Government and approved by the Organization shall study or receive training outside the country;

(d) Preparing and executing pilot projects, tests, experiments or research in such places as may be mutually agreed upon;

(e) Carrying out any other form of technical advisory cooperation which may be agreed upon by the Organization and the Government.

4. (a) Advisers who are to render advice to and cooperate with the Government or with other parties shall be selected by the Organization in consultation with the Government. They shall be responsible to the Organization.

(b) In the performance of their duties, the advisers shall act in close consultation with the Government and with persons or bodies so authorized by the Government, and shall comply with instructions from the Government as may be appropriate to the nature of their duties and the cooperation in view and as may be mutually agreed upon between the Organization and the Government.

(c) The advisers shall, in the course of their advisory work, make every effort to instruct any technical staff the Government may associate with them, in their professional methods, techniques and practices, and in the principles on which these are based.

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents

and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or willful misconduct of such advisers, agents or employees.

### *Article II*

#### PARTICIPATION OF THE GOVERNMENT IN TECHNICAL ADVISORY COOPERATION

1. The Government shall do everything in its power to ensure the effective development of the technical advisory cooperation.
2. The Government and the Organization shall consult together regarding the publication, as appropriate, of any findings and reports of advisers that may prove of benefit to other countries and to the Organization.
3. The Government shall actively collaborate with the Organization in the furnishing and compilation of findings, data, statistics, and other such information as will enable the Organization to analyze and evaluate the results of the programmes of technical advisory cooperation.

### *Article III*

#### ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE ORGANIZATION

1. The Organization shall defray, in full or in part as may be mutually agreed upon, the costs necessary to the technical advisory cooperation which are payable outside the country as follows:
  - (a) The salaries and subsistence (including duty travel per diem) of the advisers;
  - (b) The costs of transportation of the advisers during their travel to and from the point of entry into the country;
  - (c) The cost of any other travel outside the country;
  - (d) Insurance of the advisers;
  - (e) Purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;
  - (f) Any other expenses outside the country approved by the Organization.
2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to article IV, paragraph 1, of this Agreement.

### *Article IV*

#### ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the cost of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

- (a) Local personnel services, technical and administrative, including the necessary local secretarial help, interpreter-translators and related assistance;
- (b) The necessary office space or other premises;
- (c) Equipment and supplies produced within the country;
- (d) Transportation of personnel, supplies and equipment for official purposes within the country;
- (e) Postage and telecommunications for official purposes;
- (f) Facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of the expenses to be paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In appropriate cases the Government shall put at the disposal of the Organization such labour, equipment, supplies and other services or property as may be needed for the execution of its work and as may be mutually agreed upon.

#### *Article V*

##### FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. The WHO Programme Coordinator/Representative appointed to Latvia shall be afforded the treatment provided for under section 21 of the said Convention.

#### *Article VI*

1. This Basic Agreement shall enter into force when both contracting parties have notified each other in writing that the legal requirements for entry into force have been completed.

2. This Basic Agreement may be modified by agreement between the Organization and the Government, each of which shall give full and sympathetic consideration to any request by the other for such modification.

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

Similar agreements were concluded with Cambodia on 10 February 1995, with the Marshall Island on 8 August 1995 and with Nauru on 31 July 1995.

## 5. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Agreement between the United Nations and the United Nations Industrial Development Organization regarding a unified conference service at the Vienna International Centre. Signed at Vienna on 4 October 1995<sup>38</sup>

*Whereas* the General Assembly by its resolutions 39/68 of 13 December 1984, 39/242 of 18 December 1984, 44/201 of 21 December 1989, and 45/248 A of 21 December 1990 requested the Secretary-General to engage in negotiations with the United Nations Industrial Development Organization (hereinafter referred to as UNIDO) and the International Atomic Energy Agency (hereinafter referred to as IAEA) with a view to establishing unified conference services at the Vienna International Centre under the administration of the United Nations;

*Whereas* the Industrial Development Board of UNIDO by its decision IDB.11/Dec. 27 of 2 July 1993 and the General Conference of UNIDO by its decision GC.5/Dec. of 9 December 1993, concerning the establishment of a unified conference service under the United Nations administration, urged the Director-General to finalize with the United Nations the arrangements for the transfer of administrative responsibility for the conference services from UNIDO to the United Nations Office at Vienna, effective 1 January 1995;

*Whereas* with effect from January 1986 the United Nations has been managing an Interpretation and Meeting Service for UNIDO and the United Nations meetings and outside Vienna, and with effect from January 1992 the United Nations has been managing a Common Interpretation Service including IAEA;

*Therefore*, the United Nations Industrial Development Organization and the United Nations hereby agree to establish a Unified Conference Service with effect from 1 April 1995 on the following terms:

1. The Unified Conference Service, consisting of the services listed below, hitherto separately managed by the United Nations and UNIDO, shall henceforth be operated and managed by United Nations Office at Vienna:

- (a) Programme direction management;
- (b) Translation;
- (c) Text processing;
- (d) Reference and terminology;
- (e) Editorial control;
- (f) Documents control;
- (g) Printing and copy preparation;
- (h) Correspondence;
- (i) Reproduction;
- (j) Documents distribution;
- (k) Meetings planning, coordination and serving;
- (l) Interpretation.

2. The level of reimbursement to be paid by UNIDO to the United Nations for services provided under this Agreement shall be determined in accordance with the cost-sharing arrangements described in annex A to this Agreement.

3. UNIDO agrees to make a contribution in the amount of US\$ 200,000 towards the cost of acquisition and installation of the hardware and software in 1995 necessary for the upgrading of the text-processing capability of the Unified Conference Service. In addition, the Parties shall equally share the costs of the software material in respect of the equipment transferred by UNIDO to the United Nations. Subsequent acquisition, replacement, maintenance of equipment and software for the services listed in paragraph 1(a) to (l), as agreed by the Parties, shall be cost-shared as described in annex A.

4. The equipment and furniture (as listed in annex C) and space (as listed in annex D) hitherto used by UNIDO for the purpose of providing conference services shall be transferred to the control of the United Nations.

5. Supplies and materials for the services listed in paragraph 1(a) to (l) shall be cost-shared by the Parties as indicated in annex A.

6. The United Nations is responsible for those customized mainframe applications related to reference and terminology, documents control, documents distribution and mailing lists that support the Unified Conference Service. However, until such time as the United Nations rewrites or finds a suitable replacement, UNIDO agrees to provide the United Nations with services related to the maintenance and production runs for such customized mainframe applications, subject to reimbursement of all associated costs.

7. In order to ensure the continuous operation of the customized mainframe applications referred to in paragraph 6 above, UNIDO guarantees, until the end of 1997, the availability of a mainframe computer environment that is quantitatively and qualitatively equivalent to the one now provided under the present UNIDO/IAEA Facilities Management Agreement. The United Nations in turn agrees to reimburse UNIDO, under the current cost-sharing formulae, for computer processing of those customized mainframe applications referred to in paragraph 6 above.

8. To enable the United Nations to support the payroll processing of daily short-term staff for the Unified Conference Service, UNIDO agrees to provide the United Nations with a copy of the newly developed mainframe-based payroll system for daily short-term staff. This copy is provided by UNIDO on an "as is" basis.

9. United Nations Office at Vienna shall seek to keep costs to a minimum by recruiting suitably qualified short-term staff and by contracting out work whenever feasible.

10. The staff of the Unified Conference Service shall be administered by the United Nations in accordance with its rules and regulations.

11. All United Nations staff members hitherto assigned to the Languages and Documentation Service administered by UNIDO, including those on loan to the Common Printing Service of IAEA (listed in annex B to this Agreement), shall retain their acquired rights and contractual status upon transfer of the administrative responsibility for the Service from UNIDO to the United Nations office at Vienna.

12. The Director of the UNIDO Languages and Documentation Service shall be transferred to the United Nations upon transfer of the administrative responsibility for the Service from UNIDO to the United Nations office at Vienna, and the provisions contained in paragraphs 10 and 11 above shall be applicable.

13. There shall be established a Joint Working Group which shall review annually the operation of this Agreement. The Joint Working Group may make proposals to the signatories of this Agreement concerning any aspect of the activities carried out under this Agreement, including amendments to this Agreement.

14. This Agreement shall enter into force with retroactive effect from 1 April 1995 and shall be reviewed by the Parties in accordance with paragraph 13 above.

15. Either Party may terminate this Agreement by giving notice to the other Party at least 18 months prior to the end of the biennium. The effective date of such termination will be the first day of the following budgetary biennium.

## 6. INTERNATIONAL ATOMIC ENERGY AGENCY

- (a) Agreement between the International Atomic Energy Agency and the Government of Chile regarding the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean.<sup>39</sup> Signed at Vienna on 5 April 1995<sup>40</sup>

*Whereas* the Republic of Chile (hereinafter referred to as “Chile”) is a party to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (hereinafter referred to as “the Tlatelolco Treaty”) opened for signature at Mexico City on 14 February 1967;

*Whereas* paragraph 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.A.5 of its Statute hereinafter referred to as the “the Statute”), to conclude such agreements;

*Now therefore* Chile and the Agency have agreed as follows:

### **Part I**

#### BASIC UNDERTAKINGS

##### *Article 1*

Chile undertakes to accept safeguards, in accordance with the terms of this Agreement, on all nuclear materials in all nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

*Article 2*

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 nuclear material in all nuclear activities within the territory of Chile, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

*Article 3*

Chile and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

IMPLEMENTATION OF SAFEGUARDS

*Article 4*

The safeguards provided for in this Agreement shall be implemented in a manner designed:

(a) To avoid hampering the economic and technological development of Chile or international cooperation in the field of nuclear activities, including international exchange of nuclear material;

(b) To avoid undue interference in Chile's nuclear activities, 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; and

(d) To enable the Agency to fulfil its obligations under this Agreement taking into account the requirement for the Agency to preserve technological secrets.

*Article 5*

(a) The Agency shall take every precaution to protect any 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 states 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) Chile shall establish a system for accounting for and control of all nuclear material subject to safeguards under this Agreement.

(b) The Agency shall apply its safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of nuclear material to nuclear weapons or other nuclear explosive devices, findings of Chile's system. The Agency's verification shall include, *inter alia*, the independent measurements and observations conducted by the Agency, in accordance with the procedures specified in this Agreement. The Agency, in its verification, shall take due account of the technical effectiveness of Chile's system.

#### *Article 8*

(a) In order to ensure the effective implementation of safeguards under this Agreement, Chile shall, in accordance with the provisions set out in 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 Chile so requests, the Agency shall be prepared to examine directly on the premises of Chile design information which Chile 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 the premises of Chile.

#### AGENCY INSPECTORS

##### *Article 9*

- (a)
  - (i) The Agency shall secure the consent of Chile to the designation of Agency inspectors to Chile.
  - (ii) If Chile, 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 an alternative designation or designations.
  - (iii) If, as a result of the repeated refusal of Chile 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) Chile 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 inconvenience and disturbance to Chile and to the nuclear activities inspected;
  - (ii) To ensure protection of any confidential information coming to the knowledge of Agency inspectors.

#### STARTING POINT OF SAFEGUARDS

##### *Article 10*

(a) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in paragraph (b) is imported, Chile shall inform the Agency of its quantity and composition, unless the material is imported for specifically non-nuclear purposes; and

(b) When any nuclear material of a composition and purity suitable for fuel fabrication or for isotopic enrichment leaves the plant or the process stage in which it has been produced, or when such nuclear material, or any other nuclear material produced at a later stage in the nuclear fuel cycle, is imported into Chile, the nuclear material shall become subject to the other safeguards procedures specified in this Agreement.

## TERMINATION OF SAFEGUARDS

### *Article 11*

(a) 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 practicably irrecoverable.

(b) Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities, such as the production of alloys and ceramics, Chile shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards under this Agreement on such material may be terminated.

## EXEMPTION FROM SAFEGUARDS

### *Article 12*

(a) Nuclear material shall be exempted from safeguards in accordance with the provisions specified in Article 35 of this Agreement.

(b) Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities which, in the opinion of either Chile or the Agency, will not render the material practicably irrecoverable, Chile shall agree with the Agency, before the material is so used, on the circumstances under which such material may be exempted from safeguards.

## TRANSFER OF NUCLEAR MATERIAL OUT OF CHILE

### *Article 13*

(a) Chile shall give the Agency notification of transfers of nuclear material subject to safeguards under this Agreement out of Chile, in accordance with the provisions set out in this Agreement. The Agency shall terminate safeguards under this Agreement when the recipient State has assumed responsibility therefor, as provided for in Part II of this Agreement. The Agency shall maintain records indicating each transfer and re-application of safeguards to the transferred nuclear material.

(b) When any material containing uranium or thorium which has not reached the stage of the nuclear fuel cycle described in article 10(b) is directly or indirectly exported by Chile, Chile shall inform the Agency of its quantity, composition and destination, unless the material is exported for specifically non-nuclear purposes.

## SPECIAL PROCEDURES

### *Article 14*

If Chile intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement for nuclear propulsion or operation of any vehicle, including submarines and prototypes, or in such other non-proscribed nuclear activity as agreed between Chile and the Agency, the following procedures shall apply:

(a) Chile shall inform the agency of the activity, and shall make it clear:

- (i) That the use of the nuclear material in such an activity will not be in conflict with any undertaking of Chile under agreements concluded with the Agency in connection with article XI of the Statute of the Agency or any other agreement concluded with the Agency in connection with INFCIRC/26 (and Add.1) or INFCIRC/66 (and Rev.1 or 2), as applicable;
- (ii) That during the period of application of the special procedures the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;

(b) Chile and the Agency shall make an arrangement so that, these special procedures shall apply only while the nuclear material is used for nuclear propulsion or in the operation of any vehicle, including submarines and prototypes, or in such other non-proscribed nuclear activity as agreed between Chile and the Agency. The arrangement shall identify, to the extent possible, the period or circumstances during which the special procedures shall be applied. In any event, the other procedures provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a nuclear activity other than the above. The Agency shall be kept informed of the total quantity and composition of such material in Chile and of any export of such material;

(c) Each arrangement shall be concluded between Chile and the Agency as promptly as possible and shall relate only to such matters as temporal and procedural provisions and reporting arrangements, but shall not involve any approval or classified knowledge of such activity or relate to the use of the nuclear material therein.

## MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

### *Article 15*

If the Board, upon report of the Director General, decides that an action by Chile is essential and urgent in order to ensure verification that nuclear material subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon Chile to take the required action without delay, irrespective of whether procedures have been invoked pursuant to article 23 of this Agreement for the settlement of a dispute.

#### *Article 16*

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 required to be subject to safeguards 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 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 Chile every reasonable opportunity to furnish the Board with any necessary reassurance.

#### PRIVILEGES AND IMMUNITIES

#### *Article 17*

Chile shall apply to the Agency, including its property, funds and assets, and to its inspectors and other officials performing functions under this Agreement, the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.<sup>41</sup>

#### FINANCE

#### *Article 18*

Chile and the Agency will bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, if Chile, or persons under this 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 Agency inspectors may request.

#### THIRD PARTY LIABILITY FOR NUCLEAR DAMAGE

#### *Article 19*

Chile shall ensure that any protection against third party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of Chile.

#### INTERNATIONAL RESPONSIBILITY

#### *Article 20*

Any claims by Chile against the Agency or by the Agency against Chile 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.

INTERPRETATION AND APPLICATION OF THE AGREEMENT  
AND SETTLEMENT OF DISPUTES

*Article 21*

Chile and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

*Article 22*

Chile 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 Chile to participate in the discussion of any such question by the Board.

*Article 23*

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 16 or an action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by Chile and the Agency shall, at the request of either, be submitted to an arbitral tribunal composed as follows: Chile 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 Chile or the Agency has not designated an arbitrator, either Chile 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 Chile and the Agency.

SUSPENSION OF APPLICATION OF AGENCY SAFEGUARDS  
UNDER OTHER AGREEMENTS

*Article 24*

The application of Agency safeguards in Chile under other safeguards agreements with the Agency shall be suspended while this Agreement is in force. Chile's undertaking in such agreements, and in connection with assistance from the Agency under Project Agreements, not to use items which are subject thereto in such a way as to further any military purpose shall continue to apply.

AMENDMENT OF THE AGREEMENT

*Article 25*

(a) Chile 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 Chile and the Agency.
- (c) Amendments to this Agreement shall enter into force in the same conditions as the entry into force of the Agreement itself.
- (d) The Director General shall promptly inform all Member States of the Agency of any amendment to this Agreement.

#### ENTRY INTO FORCE AND DURATION

##### *Article 26*

This Agreement shall enter into force upon signature by the representatives of Chile and the Agency. The Director General shall promptly inform all Member States of the Agency of the entry into force of this Agreement.

##### *Article 27*

This Agreement shall remain in force as long as Chile is Party to the Tlateloco Treaty.

## **Part II**

#### INTRODUCTION

##### *Article 28*

The purpose of this part of the Agreement is to specify the procedures to be applied in the implementation of the safeguards provisions of a Part I.

#### OBJECTIVE OF SAFEGUARDS

##### *Article 29*

The objective of the safeguards procedures set forth in this Agreement is the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection.

##### *Article 30*

For the purpose of achieving the objective set forth in article 29, nuclear material accountancy shall be used as a safeguards measure of fundamental importance, with containment and surveillance as important complementary measures.

*Article 31*

The technical conclusion of the Agency's verification activities shall be a statement, in respect of each material balance area, of the amount of material unaccounted for over a specific period, and giving the limits of accuracy of the amounts stated.

NATIONAL SYSTEM OF ACCOUNTING FOR AND CONTROL  
OF NUCLEAR MATERIAL

*Article 32*

Pursuant to article 7, the Agency, in carrying out its verification activities, shall make full use of Chile's system of accounting for and control of all nuclear material subject to safeguards under this Agreement and shall avoid unnecessary duplication of Chile's accounting and control activities.

*Article 33*

Chile's system of accounting for and control of nuclear material under this Agreement shall be based on a structure of material balance areas, and shall make provision, as appropriate and specified in the Subsidiary Arrangements, for the establishment of such measures as:

- (a) A measurement system for the determination of the quantities of nuclear material received, produced, shipped, lost or otherwise removed from inventory, and the quantities on inventory;
- (b) The evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty;
- (c) Procedures for identifying, reviewing and evaluating differences in shipper/receiver measurements;
- (d) Procedures for taking a physical inventory;
- (e) Procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses;
- (f) A system of records and reports showing, for each material balance area, the inventory of nuclear material and the changes in that inventory including receipts into and transfers out of the material balance area;
- (g) Provisions to ensure that the accounting procedures and arrangements are being operated correctly; and
- (h) Procedures for the provision of reports to the Agency in accordance with Articles 57 to 63 and 65 to 67.

## TERMINATION OF SAFEGUARDS

### *Article 34*

(a) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement under the conditions set forth in article 11(a). Where the conditions of article 11(a) are not met, but Chile considers that the recovery of safeguarded nuclear material from residues is not for the time being practicable or desirable, Chile and the Agency shall consult on the appropriate safeguards measures to be applied.

(b) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement under the conditions set forth in article 11(b) provided that Chile and the Agency agree that such nuclear material is practicably irrecoverable.

(c) Safeguards shall terminate on nuclear material subject to safeguards under this Agreement transferred out of Chile under the conditions set forth in article 13(a) and the procedures specified in articles 89 to 92.

## EXEMPTIONS FROM SAFEGUARDS

### *Article 35*

At the request of Chile, the Agency shall exempt nuclear material from safeguards as follows:

(a) Special fissionable material, when it is used in gram quantities or less as a sensing component in instruments;

(b) Nuclear material, when it is used in non-nuclear activities in accordance with article 12(b).

(c) If the total quantity of nuclear material which has been exempted in Chile in accordance with this sub-article does not at any time exceed:

(i) one kilogram in total of special fissionable material, which may consist of one or more of the following:

(1) plutonium;

(2) uranium with an enrichment of 0.2 (20 per cent) and above, taken account of by multiplying its weight by its enrichment;

(3) uranium with an enrichment below 0.2 (20 per cent) and above that of natural uranium, taken account of by multiplying its weight by five times the square of its enrichment;

(ii) ten metric tons in total of natural uranium and depleted uranium with an enrichment above 0.005 (0.5 per cent);

(iii) twenty metric tons of depleted uranium with an enrichment of 0.005 (0.5 per cent) or below;

(iv) twenty metric tons of thorium; or

(d) plutonium with an isotopic concentration of plutonium-238 exceeding 80 per cent.

*Article 36*

If exempted nuclear material is to be processed or stored together with nuclear material subject to safeguards under this Agreement, provision shall be made for the re-application of safeguards thereto.

SUBSIDIARY ARRANGEMENTS

*Article 37*

Chile and the Agency shall make Subsidiary Arrangements which shall specify in detail, to the extent necessary to permit the Agency to fulfil its responsibilities under this Agreement in an effective and efficient manner, how the procedures laid down in this Agreement are to be applied. By agreement between Chile and the Agency, the Subsidiary Arrangements may, without amendment of this Agreement, be extended or changed or, in respect of a particular facility, terminated.

*Article 38*

The Subsidiary Arrangements shall enter into force at the same time as, or as soon as possible after the entry into force of this Agreement. Chile and the Agency shall make every effort to achieve their entry into force within ninety days of the entry into force of this Agreement; an extension of that period shall require the agreement of both Parties. Chile shall provide the Agency promptly with the information required for completing the Subsidiary Arrangements. Upon the entry into force of this Agreement, the Agency shall have the right to apply the procedures laid down therein respect of the nuclear material listed in the inventory provided for in Article 39 even if the Subsidiary Arrangements have not yet entered into force.

INVENTORY

*Article 39*

On the basis of the initial report referred to the article 60, the Agency shall establish a unified inventory of all nuclear material in Chile subject to safeguards under this Agreement, irrespective of its origin, and shall maintain this inventory on the basis of subsequent reports and of the results of its verification activities. Copies of the inventory shall be made available to Chile at intervals to be agreed.

Similar agreements were concluded with Barbados on 10 July 1995 and 14 August 1996, with Dominica on 10 July 1995 and 3 May 1996, with Saint Kitts and Nevis on 10 July 1995 and 7 May 1996 and with Zimbabwe on 26 June 1995.

- (b) Agreement between the International Atomic Energy Agency and the Government of Myanmar on the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (with protocol).<sup>42</sup> Signed at Vienna on 20 April 1995<sup>43</sup>

*Whereas* the Union of Myanmar (hereinafter referred to as “Myanmar”) is party to the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as “the Treaty”) opened for signature at London, Moscow and Washington on 1 July 1968 which entered into force on 5 March 1970.

*Whereas* paragraph 1 of Article III of the Treaty reads as follows:

“Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency’s safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere”.

*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;

*Now therefore* Myanmar and the Agency have agreed as follows:

## **Part I**

### **BASIC UNDERTAKING**

#### *Article 1*

Myanmar undertakes, pursuant to paragraph 1 of article III of the Treaty, to accept safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

### **APPLICATION OF SAFEGUARDS**

#### *Article 2*

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

the territory of Myanmar, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

#### COOPERATION BETWEEN MYANMAR AND THE AGENCY

##### *Article 3*

Myanmar and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

#### IMPLEMENTATION OF SAFEGUARDS

##### *Article 4*

The safeguards provided for in this Agreement shall be implemented in a manner designed:

(a) To avoid hampering the economic and technological development of Myanmar or international cooperation in the field of peaceful nuclear activities, including international exchange of nuclear material;

(b) To avoid undue interference in Myanmar's peaceful nuclear activities, 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 required 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 fields of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the appli-

cation 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) Myanmar 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 its safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of nuclear material to nuclear weapons or other nuclear explosive devices, findings of Myanmar's 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 Myanmar's system.

#### PROVISION OF INFORMATION TO THE AGENCY

##### *Article 8*

(a) In order to ensure the effective implementation of safeguards under this Agreement, Myanmar 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 Myanmar so requests, the Agency shall be prepared to examine on the premises of Myanmar design information which Myanmar 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 the premises of Myanmar.

#### AGENCY INSPECTORS

##### *Article 9*

- (a)
  - (i) The Agency shall secure the consent of Myanmar to the designation of Agency inspectors to Myanmar.
  - (ii) If Myanmar, 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 Myanmar an alternative designation or designations.
  - (iii) If, as a result of the repeated refusal of Myanmar 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) Myanmar 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 inconvenience and disturbance to Myanmar and to the nuclear activities inspected; and
  - (ii) To ensure protection of any confidential information coming to the knowledge of Agency inspectors.

#### PRIVILEGES AND IMMUNITIES

##### *Article 10*

Myanmar shall apply to the Agency (including its property, funds and assets) and to its inspectors and other officials, performing functions under this Agreement, the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

#### TERMINATION OF SAFEGUARDS

##### *Article 11*

###### *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 practicably irrecoverable.

## *Article 12*

### *Transfer of nuclear material out of Myanmar*

Myanmar shall give the Agency notification of transfers of nuclear material subject to safeguards under this Agreement out of Myanmar, in accordance with the provisions set out in part II this Agreement. The Agency shall terminate safeguards on nuclear material under this Agreement when the recipients State has assumed responsibility therefor, as provided for in Part II of this Agreement. 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, Myanmar shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards under this Agreement on such material may be terminated.

Non-Application of safeguards to nuclear material to be used in non-peaceful activities

## *Article 14*

If Myanmar intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement for nuclear activity which does not require the application of safeguards under this Agreement, the following procedures shall apply:

(a) Myanmar shall inform the Agency of the Activity, and shall make it clear:

- (i) That the use of the nuclear material in a non-proscribed military activity will not be in conflict with any undertaking Myanmar may have given and in respect of which Agency safeguards apply, that the material will be used only in a peaceful nuclear activity;
- (ii) That during the period of non-application of safeguards, the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;

(b) Myanmar and the Agency shall make an arrangement so that, only while the nuclear material is in such an activity, the safeguards provided for in this Agreement will not be applied. The arrangement shall identify, to the extent possible, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a peaceful nuclear activity. The Agency shall be kept informed of the total quantity and composition of such material in Myanmar and of any export of such material;

(c) Each arrangement shall be in agreement with the Agency. Such agreement shall be given as promptly as possible and shall relate only to such matters as *inter alia*, temporal and procedural provisions and reporting arrangements, but shall not involve any approval or classified knowledge of such activity or related to the use of the nuclear material therein.

#### FINANCE

##### *Article 15*

Myanmar and the Agency will bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, if Myanmar 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.

#### THIRD-PARTY LIABILITY FOR NUCLEAR DAMAGE

##### *Article 16*

Myanmar shall ensure that any protection against third party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of Myanmar.

#### INTERNATIONAL RESPONSIBILITY

##### *Article 17*

Any claims by Myanmar against the Agency or by the Agency against Myanmar 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.

#### MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

##### *Article 18*

If the Board, upon report of the Director General, decides that an action by Myanmar is essential and urgent in order to ensure verification that nuclear material subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon Myanmar to take the required action without delay, irrespective of whether procedures have been invoked pursuant to article 22 of this agreement for the settlement of a dispute.

*Article 19*

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 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 Myanmar every reasonable opportunity to furnish the Board with any necessary reassurance.

INTERPRETATION AND APPLICATION OF THE AGREEMENT  
AND SETTLEMENT OF DISPUTES

*Article 20*

Myanmar and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

*Article 21*

Myanmar shall have the right to request that by question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite Myanmar to participate in the discussion of any such question by the Board.

7. MULTIPLE INTERGOVERNMENTAL  
ORGANIZATIONS

Memorandum of Understanding concerning the establishment of the Inter-Organization Programme for the Sound Management of Chemicals. Concluded at Stockholm on 11, 17, 31 January and 13 March 1995<sup>44</sup>

*The parties to this Memorandum,*

*Noting* the endorsement by the United Nations General Assembly, in its resolution 47/190 of 22 December 1992, of Agenda 21 as adopted by the United Nations Conference on Environment and Development at Rio de Janeiro on 14 June 1992, and in particular its chapter 19, and

*Taking into account* the resolutions adopted at the International Conference on Chemical Safety at Stockholm on 29 April 1994,

*Have agreed* as follows:

## 1. PARTIES

1.1 This Memorandum of Understanding shall be open to signature by the following Organizations:

- United Nations Environment Programme;
- International Labour Organization;
- Food and Agriculture Organization of the United Nations
- World Health Organization;
- United Nations Industrial Development Organization
- Organization for Economic Cooperation and Development.

1.2 The organizations listed in paragraph 1.1 which have become parties to this Memorandum of Understanding shall be known as Participating Organizations.

1.3 Other intergovernmental organizations may also become Participating Organizations upon the unanimous consent of the Participating Organizations and after fulfilment of the provisions of paragraph 10.2.

## 2. ESTABLISHMENT AND PURPOSE OF PROGRAMME

2.1 The Inter-Organization Programme for the Sound Management of Chemicals is hereby established.

2.2 The purpose of the Programme is to promote coordination of the policies and activities pursued by the Participating Organizations, jointly and separately, to achieve the sound management of chemicals in relation to human health and environment.

2.3 The areas in which coordination shall be sought are the following:

- (a) International assessment of chemical risks;
- (b) Harmonization of classification and labelling of chemicals;
- (c) Information exchange on chemicals and chemicals risks;
- (d) Establishment of risk reduction programmes;
- (e) Strengthening of national capabilities and capacities for management of chemicals;
- (f) Prevention of illegal international traffic in toxic and dangerous products;
- (g) Other areas as agreed by all Participating Organizations.

## 3. INTER-ORGANIZATION COORDINATING COMMITTEE

3.1 There shall be an Inter-Organization Coordinating Committee (IOCC), composed of one representative of each Participating Organization, which shall perform the functions identified in paragraph 5 below.

3.2 These representatives may be assisted by advisors, as appropriate.

- 3.3 IOCC may agree to invite observers to attend its meetings.
- 3.4 IOCC may agree to set up advisory bodies, if necessary.
- 3.5 IOCC shall adopt its rules of procedure.
- 3.6 IOCC shall elect its Chairperson and as necessary, Vice Chairpersons, serving on a rotational basis unless otherwise agreed by IOCC.

#### 4. MEETINGS

4.1 IOCC shall normally hold two regular sessions every year. IOCC shall determine the date, time and place of each regular session.

4.2 An extraordinary session of IOCC may be called at the request of at least two of the Participating Organizations. The date, time and place of an extraordinary session shall be determined by the Chairperson in consultation with the Secretariat and the Participating Organizations.

4.3 Each Participating Organization shall make its own arrangements for bearing the cost of attending meetings of IOCC.

4.4 IOCC may agree to meet from time to time with the representatives of other organizations, programmes and intergovernmental meetings and arrangements.

#### 5. FUNCTIONS

5.1 The functions of IOCC shall be the following:

(a) To consult on the planning, programming, funding, implementation and monitoring of activities undertaken jointly or individually by the Participating Organization with regard to the sound management of chemicals;

(b) To identify gaps and areas of overlap in such activities and recommend ways to reduce or eliminate them;

(c) To make recommendations on the distribution of work among the Participating Organizations with regard to the sound management of chemicals;

(d) To recommend common policies to be pursued by the Participating Organizations;

(e) To encourage the Participating Organizations to undertake joint programmes for the sound management of chemicals;

(f) To endorse specific activities planned or undertaken by one or more of the Participating Organizations as being within the framework of the Programme;

(g) To exchange information about the activities undertaken and planned to be undertaken jointly or separately, by the Participating Organizations with regard to the sound management of chemicals;

(h) To review actions taken, and to consider recommendations made by other organizations, programmes and intergovernmental meetings and arrangements (such as the Intergovernmental Forum on Chemical Safety) concerning matters within the scope of the Programme, as well as to consider possible follow-up which might be given by the Participating Organizations;

- (i) To make recommendations to such organizations, programmes and intergovernmental meetings and arrangements;
  - (j) To consider and approve the budget of the secretariat
  - (k) To determine the work to be carried out by the Secretariat.
- 5.2 IOCC may be given additional functions as agreed by all the Participating Organizations.

## 6. RECOMMENDATIONS AND DECISION-MAKING

Except as otherwise provided in this Memorandum of Understanding, and subject to advance notice of the provisional agenda of the meeting, recommendations and decisions of IOCC shall be taken by consensus among the representatives of the Participating Organizations who are present at a meeting of IOCC.

## 7. SECRETARIAT

7.1 There shall be a secretariat providing IOCC with services, including the following:

- (a) Organize meeting of IOCC;
- (b) Collect and analyze information for the preparation of documents for such meetings;
- (c) Prepare and circulate the minutes of each meeting and the report referred to in paragraph 9.1;
- (d) Perform other inter-sessional work as necessary for such meetings;
- (e) Draw up a draft budget of the Secretariat for consideration by IOCC.

7.2 The secretariat shall carry out its work in accordance with the guidance of IOCC.

7.3 To the extent that corresponding resources are made available, the Secretariat of the Programme may also provide secretariat services for other intergovernmental meetings and arrangements if so decided by IOCC. For this purpose, that part of the Secretariat providing such services shall be functionally distinct from that part of the Secretariat under the direction of IOCC.

7.4 The secretariat shall be located at the administering organization.

7.5 Until agreed otherwise by the Participating Organizations, the administering organization for the Secretariat shall be the World Health Organization.

7.6 The Participating Organizations shall review the designation of the administering organization five years after the date on which this Memorandum of Understanding entered into force and periodically thereafter.

7.7 To the extent that resources are made available to so provide, the Secretariat shall be composed of such staff as deemed necessary by IOCC.

7.8 The loan or secondment of a staff member to perform work for the Secretariat shall be subject to agreement between the organization releasing the staff member and the administering organization of the Secretariat.

7.9 The Executive Head of the administering organization shall designate the head of the Secretariat upon the consensus recommendation of the IOCC attended by all the Participating Organizations.

## 8. BUDGET

8.1 The Participating Organizations shall share the costs of the Secretariat, taking into account resources provided under paragraph 8.3 and 8.4.

8.2 The budget of the Secretariat shall state the amount of its budgetary needs and the resources envisaged to meet them.

8.3 The resources of the Secretariat, as approved by the IOCC, may be provided as follows:

(a) Voluntary monetary and in kind contributions from the Participating Organizations and Governments;

(b) Voluntary monetary and in kind contributions from other intergovernmental sources;

(c) Secondment or loan of staff members from the Participating Organization as a contribution in kind.

8.4 Contributions from other sources may also be approved by IOCC attended by all the Participating Organization.

8.5 No Participating Organization shall be required to provide financial support for the Secretariat beyond what that Organization has pledged.

## 9. REPORTING

9.1 The secretariat shall submit a report of activities and the use of budgetary resources to IOCC for its adoption at least once a year.

9.2 The adopted report shall be sent to the executive heads of the Participating Organizations and be forwarded through the appropriate channel to the Inter-Agency Committee on Sustainable Development and to any other bodies IOCC may deem appropriate.

## 10. ENTRY INTO FORCE

10.1 This Memorandum of Understanding shall enter into force upon signature by four of the organizations mentioned in paragraph 1.1 above.

10.2 It shall enter into force for any other intergovernmental organization mentioned in paragraph 1.3 upon the date of the written acceptance by that organization of the Memorandum of Understanding, including any amendments thereto.

## 11. AMENDMENTS

This Memorandum of Understanding may be amended by consensus of all Participating Organizations. An amendment shall enter into force upon written acceptance by all the Participating Organizations.

## 12. WITHDRAWAL

12.1 Any Participating Organization may withdraw from this Memorandum of Understanding by written notification to the head of the Secretariat of IOCC, who shall immediately inform the Participating Organizations of such notification.

12.2 The withdrawal shall take effect upon the expiration of six months from the date on which the written notification has been received by the head of the Secretariat of IOCC or at any later date indicated in the notification.

### 13. DURATION AND TERMINATION

This Memorandum of Understanding may be terminated only by consensus of all Participating Organizations or whenever the number of the Participating Organizations is less than four, unless the remaining Participating organizations agree otherwise.

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#### NOTES

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

<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. 96. V.5

<sup>4</sup>*International Law Materials*, vol. XXXI, No.4, p. 849-813.

<sup>5</sup>Came into force on the date of signature.

<sup>6</sup>United Nations, *Treaty Series*, vol.33, p. 261.

<sup>7</sup>*Ibid.*, vol.374, p.147.

<sup>8</sup>Came into force on 10 February 1995.

<sup>9</sup>Came into force on the date of signature.

<sup>10</sup>United Nations, *Treaty Series*, vol. 75, p. 5.

<sup>11</sup>*Ibid.*, vol. 1125, pp. 3 to 609.

<sup>12</sup>*Ibid.*, vol. 249, p. 240.

<sup>13</sup>*Ibid.*, vol. 195, p. 2; vol. 1209, p. 32; vol. 1281, p. 297. See also "International Telecommunication Convention," concluded at Nairobi on 6 November 1982 (not yet published) and Constitution and Convention of the International Telecommunication Union, concluded at Geneva on 22 December 1992 (not yet published).

<sup>14</sup>Came into force on 12 April 1995.

<sup>15</sup>Came into force on the date of signature.

<sup>16</sup>Came into force on the date of signature.

<sup>17</sup> Came into force on 17 May 1995.

<sup>18</sup>Came into force on 19 May 1995.

<sup>19</sup>Came into force on 29 June 1995.

<sup>20</sup> Came into force on 6 July 1995.

<sup>21</sup> Came into effect with retroactive effect on 1 May 1995.

<sup>22</sup>Came into force provisionally on the date of signature.

<sup>23</sup>United Nations, *Treaty Series*, vol. 500, p.95.

<sup>24</sup>Came into force provisionally on the date of signature.

<sup>25</sup>Came into force on 14 December 1995.

<sup>26</sup>Came into force provisionally on the date of signature.

<sup>27</sup>Came into force on the date of signature.

<sup>28</sup>Came into force provisionally on the date of signature.

<sup>29</sup>Came into force on the date of signature.

<sup>30</sup>*International Legal Materials*, vol. XXXI, p.822.

<sup>31</sup> Came into force on the date of signature.

<sup>32</sup>Came into force on the date of signature.

<sup>33</sup> United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>34</sup> For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E. 96. V.5

<sup>35</sup>In accordance with article 1 of the Agreement, the term "the Convention" refers to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.

<sup>36</sup>The 1947 Convention, mentioned in the preamble to the Agreement, refers to the

Convention on the Privileges and Immunities of the Specialized Agencies.

<sup>37</sup>Came into force on the date of signature.

<sup>38</sup>Came into force with retroactive effect from 1 April 1995.

<sup>39</sup>United Nations, *Treaty Series*, vol. 634, p.281.

<sup>40</sup>Came into force on the date of signature.

<sup>41</sup>INFCIRC/9/Rev.2

<sup>42</sup>*International Legal Materials*, vol. XXXV, No.6, p.1439-1478.

<sup>43</sup>Came into force on the date of signature.

<sup>44</sup>Came into force on 13 March 1995.

**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) *The 1995 Review and Extension Conference of the Treaty on the Non-Proliferation of Nuclear Weapons*

With the entry into force of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons on 5 March 1970,<sup>2</sup> a global non-proliferation regime was established, supported by the safeguards system of the International Atomic Energy Agency, which operates to prevent the diversion of nuclear material to military or other prohibited activities. Article VIII of the Treaty provides for the periodic holding of conferences of States parties to the Treaty to review its operation. Such conferences were held in 1975, 1980, 1985 and 1990.

During the 1995 Review and Extension Conference, three important decisions were taken without a vote. The decision to extend the duration of the Treaty indefinitely was reinforced by the other two decisions, concerning the strengthening of the review process itself.

The General Assembly, by its resolution 50/70Q of 12 December 1995,<sup>3</sup> took note of the work and decisions of the 1995 Review and Extension Conference of Parties to the Non-Proliferation Treaty

###### (b) *Comprehensive test-ban treaty*

As of 1995, three treaties on nuclear testing were in effect—one multilateral (Partial Test-ban Treaty of 1963)<sup>4</sup> and two bilateral (treaties on limitation of yields of nuclear tests for military and peaceful purposes between the former USSR and the United States).<sup>5</sup> None is comprehensive.

Although the Geneva multilateral negotiating body, the Conference on Disarmament, has long been involved with the issue of a test ban, it was only in 1993, owing to unprecedented improvement in the relationship between the major military Powers, that the Conference agreed to establish an ad hoc committee, which then allowed for negotiations to begin in 1994. This resulted in the first “rolling text” of a comprehensive test-ban treaty, which formed the basis for further elaboration and development. While not all the issues having to do with the scope of the future ban were resolved during 1995, three nuclear-weapon Powers agreed to a zero-yield threshold (comprehensive) test ban. The overall treaty verification regime and the architecture of each of the technologies that it would be composed of were elaborated and many organizational aspects related to implementation of the future treaty were worked out.

The General Assembly adopted three resolutions on the topic on 12 December 1995: (1) resolution 50/65<sup>6</sup> on the negotiations on a comprehensive nuclear-test-ban treaty; (2) resolution 50/70A<sup>7</sup> on nuclear testing; and (3) resolution 50/64<sup>8</sup> on the amendment of the Partial Test-Ban Treaty.

*(c) Security assurances to non-nuclear-weapon States*

Security assurances to non-nuclear-weapon States is an issue that was not fully resolved when the Non-Proliferation Treaty was concluded in 1968. During 1995, discussion of security assurances was renewed in various contexts, but especially in the framework of the preparations for the Review and Extension Conference and at the Conference itself.

With the adoption, on 11 April, of Security Council resolution 984 (1995) and the unilateral declaration of the nuclear-weapon States providing negative and positive guarantees, the question of security assurances received a new impetus.

Recognizing that these measures did not, however, fully meet the hopes of those States that sought legally binding commitments, the parties to the Non-Proliferation Treaty agreed, in their decision on principles and objectives, to consider further steps that could take the form of a multilateral, legally binding instrument. To that end, the General Assembly adopted resolution 50/68 of 12 December 1995.<sup>9</sup>

*(d) Nuclear-weapon-free zones*

The concept of a nuclear-weapon-free zone was first developed in the late 1950s as a possible complementary measure to efforts to establish a global regime for the non-proliferation of nuclear weapons. When the Non-Proliferation Treaty was negotiated, it incorporated in article VII, on the initiative of non-aligned States, a provision pertaining to nuclear-weapon-free zones: "Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories". To date, there are two such zones, in Latin America and the Caribbean,<sup>10</sup> and in the South Pacific,<sup>11</sup> and one to be established in Africa with the conclusion in 1995 of the African Nuclear-Weapon-Free-Zone Treaty, known as the Pelindaba Treaty.

The General Assembly, on 12 December 1995, adopted a number of resolutions on this topic: resolution 50/78<sup>12</sup> relating to the Pelindaba Treaty; resolution 50/67<sup>13</sup> relating to the establishment of a nuclear-weapon-free zone in South Asia; resolution 50/77<sup>14</sup> concerning the consolidation of the regime established by the Treaty of Tlatelolco; and resolution 50/66<sup>13</sup> concerning the establishment of a nuclear-weapon-free zone in the region of the Middle East.

*(e) Other weapons of mass destruction*

In spite of its strong resolve in the early 1990s to put an end to two categories of weapons of mass destruction, by the end of 1995, the international community had not yet reached agreement on how to strengthen the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention)<sup>16</sup> so as to enable it to respond more fully to today's instabilities. Moreover, the Convention on the Prohibition of the Development, Pro-

duction, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention),<sup>17</sup> confronted with parliamentary delays and lengthy technical discussions, had not yet entered into force.

On 12 December 1995, the General Assembly adopted resolutions 50/79<sup>18</sup> on the Biological Weapons Convention, and 50/70E<sup>19</sup> on the prohibition of the dumping of radioactive wastes.

(f) *Conventional weapons*

In October 1995, the Secretary-General published the third annual report on the Register of Conventional Arms, containing data and information on arms transfers provided by Governments for the calendar year 1994.<sup>20</sup> The Register was established in 1992 as a confidence-building measure designed to improve security relations among States and thus aid in preventing excessive accumulations of arms.

In his “Supplement to an Agenda for Peace”, the Secretary-General coined the term “micro-disarmament” to describe disarmament in the context of weapons used in everyday conflicts.<sup>21</sup> The practical role the United Nations was already playing in United Nations-sponsored peacekeeping operations and post-conflict peace-building, in controlling and reducing the massive production, transfer and stockpiling of light weapons, including landmines, around the world.

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 (Convention on Certain Conventional Weapons (Inhuman Weapons Convention))<sup>22</sup> was concluded in 1980 and entered into force in 1983 as an “umbrella” treaty to which additional specific agreements might be attached in the form of protocols. Three such protocols exist: Protocol I on non-detectable fragments; Protocol II on mines and booby-traps; and Protocol III on incendiary weapons. During the Review Conference of the Convention in 1995, negotiations were undertaken to strengthen Protocol II, and consensus was achieved on an additional protocol on blinding laser weapons (Protocol IV), which was adopted on 13 October 1995.

A number of General Assembly resolutions in this area were adopted on 12 December 1995: resolution 50/70D<sup>23</sup> on transparency in armaments; resolution 50/70B<sup>24</sup> on small arms; resolution 50/70<sup>25</sup> on measures to curb the illicit transfer and use of conventional arms; resolution 50/70<sup>26</sup> on the Convention on Certain Conventional Weapons; and resolution 50/70O<sup>27</sup> on a moratorium on the export of anti-personnel land-mines.

(g) *Other disarmament issues*

With its resolution 50/60 of 12 December 1995,<sup>28</sup> the General Assembly urged all States parties to arms limitation and disarmament agreements to implement and comply with the entirety of the spirit and all provisions of such agreements; and called upon all Member States to support efforts aimed at the resolution of compliance questions by means consistent with such agreements and international law, with a view to encouraging strict observance by all parties of the provisions of arms limitation and disarmament agreements and maintaining or restoring the integrity of such agreements. Also adopted on 12 December 1995 was General Assembly resolution 50/70M,<sup>29</sup> on the observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control.

In its resolution 50/69 of 12 December 1995,<sup>30</sup> the General Assembly, regretting the inability of the Conference on Disarmament to re-establish the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space in 1995, requested the Conference to do so in 1996 and to consider the question of preventing an arms race in outer space.

## 2. OTHER POLITICAL AND SECURITY QUESTIONS

### (a) *Membership in the United Nations*

As at the end of 1995, the number of Member States remained at 185.

### (b) *Legal aspects of the peaceful uses of outer space*

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-fourth session at the United Nations Office at Vienna from 27 March to 7 April 1995.<sup>31</sup>

Regarding the agenda item on the “Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space”, the Subcommittee had decided not to re-establish its Working Group on the topic at the current session, pending the results of the work in the Scientific and Technical Subcommittee.

The Legal Subcommittee re-established its Working Group on the agenda item “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”. At the current session of the Legal Subcommittee, the Working Group finalized the text of the questionnaire on possible legal issues with regard to aerospace objects.<sup>32</sup> The Subcommittee agreed that the purpose of the questionnaire was to seek the preliminary views of States members of Committee on the Peaceful Uses of Outer Space on various issues relating to aerospace objects, so as to provide a basis for the Legal Subcommittee to decide how it might continue its consideration of the agenda item.

The Legal Subcommittee also re-established its Working Group on the item “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; and had before it two working papers containing respectively views of the delegations of Brazil, Chile, Colombia, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela and the views of the delegations of France and Germany.<sup>33</sup>

The Committee on the Peaceful Uses of Outer Space, at its thirty-eighth session, held at the United Nations Office at Vienna from 12 to 22 June 1995, took note of the report of the Legal Subcommittee on the work of its thirty-fourth session and made recommendations concerning the agenda of the Subcommittee at its forthcoming thirty-fifth session.<sup>34</sup>

At its fiftieth session, by its resolution 50/27 of 6 December 1995,<sup>35</sup> adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee),<sup>36</sup> the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space;<sup>37</sup> noted that at its thirty-fourth session, the Legal Subcommittee, in its working groups, had continued its work as mandated by the General Assembly in its resolution 49/34;<sup>38</sup> and invited States that had not yet become parties to the international treaties governing the uses of outer space<sup>39</sup> to give consideration to ratifying or acceding to those treaties.

*(c) Comprehensive review of the whole question of peacekeeping operations in all their aspects*

The General Assembly, by its resolution 50/30 of 6 December,<sup>40</sup> adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee),<sup>41</sup> taking note of the section on peacekeeping of the position paper of the Secretary-General entitled "Supplement to an Agenda for Peace"<sup>42</sup> and of the statement by the President of the Security Council of 22 February 1995;<sup>43</sup> and welcoming the report of the Secretary-General on the command and control of United Nations peacekeeping operations,<sup>44</sup> also welcomed the report of the Special Committee on Peacekeeping Operations;<sup>45</sup> and endorsed the proposals, recommendations and conclusions of the Special Committee contained in paragraphs 35 to 93 of its report.

### 3. ENVIRONMENTAL, ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

*(a) Environmental questions*

#### Eighteenth Session of the Governing Council of the United Nations Environment Programme<sup>46</sup>

The eighteenth session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 15 to 26 May 1995.

Regarding the international conventions and protocols in the field of the environment, the Governing Council in its decision 18/25 May 1995<sup>47</sup> authorized the Executive Director to transmit her report on the topic,<sup>48</sup> together with the comments of the Governing Council thereon, to the General Assembly at its fiftieth session, in accordance with Assembly resolution 3436 (XXX) of 9 December 1975.

By its decision 18/12 of 26 May 1995, the Governing Council requested the Executive Director to invite relevant international organizations to participate in the negotiating process for the development of an internationally legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals in international trade, and to convene, together with the Director-General of the Food and Agriculture Organization, a diplomatic conference for the purpose of adopting and signing such an instrument, preferably not later than early 1997.

#### CONSIDERATION BY THE GENERAL ASSEMBLY

At its fiftieth session, the General Assembly, by its resolution 50/110 of 20 December 1995,<sup>49</sup> adopted on the recommendation of the Second Committee,<sup>50</sup> endorsed the report of the UNEP Governing Council. The General Assembly adopted a number of other resolutions connected to environmental issues. In its resolution 50/111, also of 20 December 1995,<sup>51</sup> adopted on the recommendation of the Second Committee,<sup>52</sup> the General Assembly welcomed the results of the first meeting of the Conference of the Parties to the Convention on Biological Diversity,<sup>53</sup> held at Nassau from 28 November to 9 December 1994, as reflected in the report of the Executive Secretary of the Convention,<sup>54</sup> submitted in accordance with paragraph 4 of General Assembly resolution 49/117. By its resolution 50/112 of the same date,<sup>55</sup> adopted on the recommendation of the Second Committee,<sup>56</sup> the General Assembly welcomed the signing of the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,<sup>57</sup> by a large number of States and the ratification of the Convention by a growing number of States; and decided that the Intergovernmental Negotiating Committee for the Elaboration of the Convention to Combat Desertification should continue to prepare for the first session of the Conference of the Parties to the Convention as specified in the Convention. Furthermore, by its resolution 50/115, of 20 December 1995,<sup>58</sup> adopted on the recommendation of the Second Committee,<sup>59</sup> the General Assembly took note of (a) the report of the Intergovernmental Negotiating Committee on a Framework Convention on Climate Change of 1992 on its eleventh session;<sup>60</sup> (b) the final report prepared on behalf of the Committee, by its chairman, on the completion of the Committee's work;<sup>61</sup> and (c) the report of the Conference of the Parties to the Convention on its first session,<sup>62</sup> and its presentation on behalf of the President of the Conference.

#### *(b) International drug control*

##### STATUS OF INTERNATIONAL INSTRUMENTS

During the course of 1995, two more States became parties to the 1961 Single Convention on Narcotic Drugs,<sup>63</sup> bringing the total number of parties to 135; eight more States became parties to the 1971 Convention on Psychotropic Substances,<sup>64</sup> bringing the total to 140; three more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,<sup>65</sup> bringing the total to 102; five more States became parties to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961,<sup>66</sup> bringing the total to 134; and 17 more States became parties to the 1995 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>67</sup> bringing the total to 122.

#### CONSIDERATION BY THE GENERAL ASSEMBLY

By its resolution 50/148 of 21 December 1995,<sup>68</sup> adopted on the recommendation of the Third Committee,<sup>69</sup> called upon all States to adopt adequate national laws and regulations, to strengthen national judicial systems and to carry out effective drug control activities in cooperation with other States in accordance with those international instruments; and requested the United Nations International Drug Control Programme to continue to provide legal assistance to Mem-

ber States which requested it in adjusting their national laws, policies and infrastructures to implement the international drug control convention, as well as assistance in training personnel responsible for applying the new laws. By the same resolution, the General Assembly reaffirmed the importance of the Global Programme of Action<sup>70</sup> as a comprehensive framework for national, regional and international action to combat illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances; and supported the United Nations System-wide Action Plan on Drug Abuse Control<sup>71</sup> as a vital tool for the coordination and enhancement of drug abuse control activities within the United Nations system, and requested that it be updated and reviewed on a biennial basis.

(c) *Crime prevention and criminal justice*

In this area, the General Assembly adopted, on the recommendation of the Third Committee, three resolutions on 21 December 1995.<sup>72</sup> By its resolution 50/145, the General Assembly took note of the report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>73</sup> held at Cairo from 29 April to 8 May 1995; and endorsed the resolutions adopted by the Ninth Congress, as approved by the Commission on Crime Prevention and Criminal Justice, and also endorsed the recommendations made by the Commission, at its fourth session, and by the Economic and Social Council, at its substantive session in 1995, on the implementation of the resolutions and recommendations of the Ninth Congress, as contained in Council resolution 1995/27 of 24 July 1995. By its resolution 50/146, the General Assembly took note of the reports of the Secretary-General on the progress made in the implementation of General Assembly resolution 49/158 on strengthening the United Nations Crime Prevention and Criminal Justice Programme, particularly its technical cooperation capacity, on the implementation of resolution 49/159 on the Naples Political Declaration and Global Action Plan against Organized Transnational Crime.<sup>75</sup> Finally, by its resolution 50/147, the General Assembly, having considered the report of the Secretary-General,<sup>76</sup> commended the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders for the activities it had undertaken, despite its difficulties in fulfilling its mandate, as reflected in the progress report of the Secretary-General on the activities of the United Nations Interregional Crime and Justice Research Institute and other institutes.<sup>77</sup>

(d) *Human rights questions*

(1) Status and implementation of international instruments

(i) *International Covenants on Human Rights*

In 1995, one more State became a party to the International Covenant on Economic, Social and Cultural Rights of 1966,<sup>78</sup> bringing the total number of States parties to 133; two more States became parties to the International Covenant on Civil and Political Rights of 1966,<sup>79</sup> bringing the total to 1333; six more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,<sup>80</sup> bringing the total to 87; and three more States became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty of 1989,<sup>81</sup> bringing the total to 29.

By its resolution 50/171 of 22 December 1995,<sup>82</sup> adopted on the recommendation of the Third Committee,<sup>83</sup> the General Assembly took note of the annual reports of the Human Rights Committee submitted to the General Assembly at its forty-ninth<sup>84</sup> and fiftieth sessions,<sup>85</sup> and of the report of the Committee on Economic, Social and Cultural Rights on its tenth and eleventh sessions.<sup>86</sup>

(ii) *International Convention on the Elimination of all Forms of Racial Discrimination of 1966*<sup>87</sup>

In 1995, four more States became parties to the International Convention, bringing the total number of States parties to 146.

By its resolution 50/137 of 21 December 1995,<sup>88</sup> adopted on the recommendation of the Third Committee,<sup>89</sup> the General Assembly encouraged the use of innovatory procedures by the Committee on the Elimination of Racial Discrimination for reviewing the implementation of the Convention in States whose reports are overdue and the formulating of concluding observations on reports of States parties to the Convention; expressed its profound concern at the fact that a number of States parties still have not fulfilled their financial obligations, shown in the report of the Secretary-General;<sup>90</sup> urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee; and took note of the report of the Committee on the work of its forty-sixth and forty-seventh sessions.<sup>91</sup>

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*<sup>92</sup>

In 1995, no State became a party to the International Convention. The number of States parties remained at 99.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*<sup>93</sup>

In 1995, 13 more States became parties to the Convention, bringing the total number of States parties to 151.

By its resolution 50/202 of 22 December 1995,<sup>94</sup> adopted on the recommendation of the Third Committee,<sup>95</sup> the General Assembly, recalling its resolution 49/164 of 23 December 1994 and its decision 49/448 also of 23 December 1994, took note of the resolution regarding the amendment to article 20, paragraph 1, of the Convention, adopted by the States parties to the Convention on 22 May 1995; and urged States parties to take appropriate measures so that acceptance by a two-thirds majority of States parties can be reached as soon as possible in order for the amendment to enter into force.

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*<sup>96</sup>

In 1995, seven more States became parties to the Convention, bringing the total of States parties to 185.

(vi) *Convention of the Rights of the Child*<sup>97</sup>

By its resolution 50/153 of 21 December 1995,<sup>98</sup> adopted on the recommendation of the Third Committee,<sup>99</sup> the General Assembly urged States parties to the Convention which had made reservations to review the compatibility of their reservations with article 51 of the Convention and other relevant rules of international law, with the aim of withdrawing them; and took note with appreciation of the report of the Committee on the Rights of the Child on its eighth session<sup>100</sup> and the recommendations contained therein concerning the situation of children affected by armed conflict; and urged Governments to take all necessary measures to eliminate all extreme forms of child labour, such as forced labour, bonded labour and other forms of slavery. By the same resolution, the Assembly took note of the establishment by the Economic and Social Council in its resolution 1994/9 of 22 July 1994 of an open-ended inter-sessional working group of the Commission on Human Rights responsible for elaborating, as a matter of priority and in close cooperation with the Special Rapporteur and the Committee on the Rights of the Child, guidelines for a possible draft optional protocol to the Convention on the Rights of the Child related to the sale of children, child prostitution and child pornography, as well as the basic measures needed for the prevention and eradication of those abnormal practices.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*<sup>101</sup>

In 1995, three more States became parties to the International Convention, bringing the total number of States parties to six.

By its resolution 50/169 of 22 December 1995,<sup>102</sup> adopted on the recommendation of the Third Committee,<sup>103</sup> the General Assembly took note of the report of the Secretary-General<sup>104</sup> and requested him to submit to it at its fifty-first session an updated report on the status of the 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 50/170 of 22 December 1995,<sup>105</sup> adopted on the recommendation of the Third Committee,<sup>106</sup> welcomed the report of the persons chairing the human rights treaty bodies on their sixth meeting, held at Geneva from 18 to 22 September 1995,<sup>107</sup> and took note of their conclusions and recommendations. By the same resolution, the Assembly encouraged the United Nations High Commissioner for Human Rights, in accordance with his mandate, to request the independent expert to finalize his interim report on possible long-term approaches to enhancing the effective operation of the human rights treaty system;<sup>108</sup> and requested the High Commissioner to ensure, from within existing resources, that the revision of the United Nations *Manual on Human Rights Reporting* was completed as soon as possible.

(3) Strengthening of the rule of law

The General Assembly, by its resolution 50/179 of 22 December 1995,<sup>109</sup> adopted on the recommendation of the Third Committee,<sup>110</sup> took note of the report of the Secretary-General,<sup>111</sup> and of the proposals contained therein for

strengthening the programme of advisory services and technical assistance of the Center for Human Rights of the Secretariat in order to comply fully with the recommendations of the World Conference on Human Rights concerning assistance to States in strengthening their institutions in the rule of law; and affirmed that the United Nations High Commissioner for Human Rights, with the assistance of the Center, remained the focal point for coordinating system-wide attention for human rights, democracy and the rule of law.

#### (4) Human rights in the administration of justice

By its resolution 50/181 of 22 December 1995,<sup>112</sup> adopted on the recommendation of the Third Committee,<sup>113</sup> the General Assembly acknowledged that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, were essential to the full and non-discriminatory realization of human rights and indispensable to democratization processes and sustainable development; and appealed to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal-aid services with a view to the promotion and protection of human rights. By the same resolution, the Assembly invited Governments to provide training in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors, social workers and other professionals concerned, including police and immigration officers;

and encouraged States to make use of technical assistance offered by the United Nations programmes of advisory services and technical assistance, in order to strengthen national capacities and infrastructures in the field of the administration of justice.

#### (5) Human rights and the electoral process

The General Assembly, by its resolution 50/172 of December 1995,<sup>114</sup> adopted on the recommendation of the Third Committee,<sup>115</sup> welcoming the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993,<sup>116</sup> in which the Conference had reaffirmed that the processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter, reaffirmed that it was the concern solely of people to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation, and that, consequently, States should establish the necessary mechanisms and means to guarantee full and effective popular participation in those processes; and further reaffirmed that electoral assistance to Member States should be provided by the United Nations only at the request and with the consent of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States, or in special circumstances such as cases of decolonization, or in the context of regional or international peace processes. Moreover, by its resolution 50/185, also of 22 December 1995,<sup>117</sup> adopted on the recommendation of the Third Committee,<sup>118</sup> the General Assem-

bly, recalling the Vienna Declaration and Programme of Action, especially the recognition therein that assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections of particular importance in the strengthening and building of institutions relating to human rights and the strengthening of a pluralistic civil society, and that special emphasis should be given to measures that assisted in achieving those goals,<sup>119</sup> took note of the report of the Secretary General on United Nations activities aimed at enhancing the effectiveness of the principle of periodic and genuine elections;<sup>120</sup> and commended the electoral assistance provided to Member States at their request by the United Nations, requested that such assistance continue on a case-by-case basis in accordance with the guidelines on electoral assistance, recognizing that the fundamental responsibility of organizing free and fair elections lay with Government, and also requested the Electoral Assistance Division of the Department of Political Affairs of the Secretariat to continue to inform Member States on a regular basis about the requests received. Responses given to those requests and the nature of the assistance provided.

*(e) Office of the United Nations High Commissioner for Refugees*

STATUS OF INTERNATIONAL INSTRUMENTS

During 1995, three more States became parties to the Convention Relating to the Status of Refugees of 1951,<sup>121</sup> bringing the total number of States parties to 125; and two more States became parties to the Protocol Relating to the Status of Refugees of 1967,<sup>122</sup> bringing the Total to 126. The States parties to the Convention Relating to the Status of Stateless Persons of 1954<sup>123</sup> remained at 41; and at 16 for the Convention on the Reduction of Statelessness of 1961.<sup>124</sup>

CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly, by its resolution 50/152 of 21 December 1995,<sup>125</sup> adopted on the recommendation of the Third Committee,<sup>126</sup> having considered the report of the Executive Committee of the Programme of the High Commissioner on the work of its forty-sixth session,<sup>128</sup> called upon all States to uphold asylum as an indispensable instrument for the protection of refugees, to ensure respect for the principles of refugee protection, including the fundamental principle of non-refoulement, as well as the humane treatment of asylum-seekers and refugees in accordance with internationally recognized human rights and humanitarian norms; also called for a more concerted response by the international community to the needs of internally displaced persons and, in accordance with its resolution 49/169, reaffirmed its support for the High Commissioner's efforts, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the State concerned, and taking into account the complementarities of the mandates and expertise of other relevant organizations, to provide humanitarian assistance and protection to such persons, emphasizing that activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and enjoy in other countries asylum from persecution. By the same resolution, the Assembly welcomed the Platform for Action adopted at the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995,<sup>129</sup> particularly the strong commitment made by States

in the Platform to refugee women and other displaced women in need of international protection, and called upon the United Nations High Commissioner to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution, including persecution through sexual violence or other gender-related persecution, specifically aimed at women for reasons enumerated in the 1951 Convention and 1967 Protocol relating to the status of refugees, by sharing information on States' initiatives to develop such criteria and guidelines and by monitoring to ensure their fair and consistent application by the States concerned. Furthermore, the Assembly requested the Office of the High Commissioner, in view of the limited number of States parties, actively to promote accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States; and called upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions that permit the renunciation of at nationality without the prior possession or acquisition of another nationality, while at the same time recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality.

(f) *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*

The General Assembly, by its decision 50/408 of 7 November 1995, adopted without a vote, took note of the second annual report of the International Tribunal for the Former Yugoslavia.<sup>130</sup>

(g) *Return or restitution of cultural property to the countries of origin*

The General Assembly, by its resolution 50/56 of 11 December 1995,<sup>131</sup> adopted without reference to a Main Committee,<sup>132</sup> commended the United Nations Educational, Scientific and Cultural Organization and the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation on the work they had accomplished, in particular through the promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property, the reduction of illicit traffic in cultural property and the dissemination of information to the public; and reaffirmed that the restitution to a country of its objets d'art, monuments, museum pieces, archives, manuscripts, documents and any other cultural or artistic treasures contributed to the strengthening of international cooperation and to the preservation and flowering of universal cultural values through fruitful cooperation between developed and developing countries.

#### 4. LAW OF THE SEA<sup>133</sup>

##### *Status of the United Nations Convention on the Law of the Sea of 1982<sup>134</sup>*

During 1995, 13 more States became parties to the Law of the Sea Convention, bringing the total number of States parties to 84.

##### *International Tribunal for the Law of the Sea*

The establishment of the Tribunal, as set out in its statute, is to commence with the election of members within six months of the date of entry into force of the Convention on the Law of the Sea. That date, however, has been deferred by a decision of the Meeting of States Parties.<sup>135</sup> That meeting also established several criteria relevant to the establishment and organization of the Tribunal. In accordance with the decision of the Meeting of States parties, nominations for the members of the Tribunal was opened on 16 May 1995 and all States were invited to submit nominations with the proviso that nominations by a State not party to the Convention shall not be included in the list of candidates to be circulated by the Secretary-General on 5 July 1996 unless the State concerned had deposited its instrument of ratification or accession before 1 July 1996. The nominations would close on 17 June 1996.

##### *National legislation requirement under the Convention on the Law of the Sea*

Following the previous reporting year, the trend in State practice to adopt or modify legislation in order to comply with the provisions of the Convention on the Law of the Sea had continued to slow down during 1995. Four States transmitted to the United Nations Secretariat their new legislation on maritime areas under their jurisdiction: Croatia, Finland, Germany and Ukraine.<sup>136</sup>

##### *Consideration by the General Assembly*

By its resolution 50/23 of 5 December 1995,<sup>137</sup> adopted without reference to a Main Committee,<sup>138</sup> the General Assembly called upon States that had not done so to become parties to the United Nations Convention on the Law of the Sea and to ratify, confirm formally or accede to the Agreement relating to the implementation of Part X of the Convention in order to achieve the goal of universal participation; and also called upon States to harmonize their national legislation with the provisions of the Convention and to ensure the consistent application of those provisions.

## 5. INTERNATIONAL COURT OF JUSTICE<sup>139, 140</sup>

### Cases before the Court<sup>141</sup>

#### (A) CONTENTIOUS CASES BEFORE THE FULL COURT

##### 1. *East Timor (Portugal v. Australia)*

Oral proceedings were held from 30 January to 16 February 1995. During 15 public sittings, the Court heard statements made on behalf of Portugal and of Australia.

At a public sitting held on 30 June 1995, the Court delivered its judgement,<sup>142</sup> a summary of which is given below, followed by the text of the operative paragraph.

#### *Procedural history*

In its judgement the Court recalled that on 22 February 1991 Portugal had instituted proceedings against Australia concerning “certain activities of Australia with respect to East Timor”. According to the Application Australia had, by its conduct,

“failed to observed...the obligation to respect the duties and powers of [Portugal as] the administering Power of East Timor...and ...the right of the people of East Timor to self-determination and the related rights”.

In consequence, according to the Application, Australia had “incurred international responsibility vis-à-vis both the people of East Timor and Portugal”. As the basis for the jurisdiction of the Court, the Application referred to the declarations by which the two states had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute. In its Counter-Memorial, Australia had raised questions concerning the jurisdiction of the Court and the admissibility of the application. In the course of a meeting held by the President of the Court the Parties had agreed that those questions were inextricably linked to the merits and that they should therefore be heard and determined within the framework of the merits. The written proceedings having been completed in July 1993, hearings had been held between 30 January and 16 February 1995. The judgement then set out the final submissions which had been presented by both Parties in the course of the oral proceedings.

#### *Historical background*

The Court then gave a short description of the history of the involvement of Portugal and Indonesia in the Territory of East Timor and of a number of Security Council and General Assembly resolutions concerning the question of East Timor. It further described the negotiations between Australia and Indonesia leading to the Treaty of 11 December 1989, which created a “Zone of Cooperation...in an area between the Indonesian Province of East Timor and Northern Australia”.

### *Summary of the contentions of the Parties*

The court then summarized the contentions of both Parties.

#### *Australia's objection that there existed in reality no dispute between the Parties*

The court went on to consider Australia's objection that there was in reality no dispute between itself and Portugal. Australia contended that the case as presented by Portugal was artificially limited to the question of the lawfulness of Australia's conduct, and that the true respondent was Indonesia, not Australia. Australia maintained that it was being sued in place of Indonesia. In that connection, it pointed out that Portugal and Australia had accepted the compulsory jurisdiction of the Court under Article 36 paragraph 2, of its Statute, but that Indonesia had not.

The court found in the respect that for the purpose of verifying the existence of a legal dispute in the present case, it was not relevant whether the real dispute was between Portugal and Indonesia rather than Portugal and Australia. Portugal had, rightly or wrongly, formulated complaints of fact and law against Australia which the latter had denied. By virtue of that denial there was a legal dispute.

#### *Australia's objection that the Court was required to determine the rights and obligations of Indonesia*

The Court then considered Australia's principal objection, to the effect that Portugal's Application would require the Court to determine the rights and obligations of Indonesia. Australia contended that the jurisdiction conferred upon the Court by the Parties' declarations under Article 36, paragraph 2, of the Statute would not enable the Court to act if, in order to do so, the Court were required to rule on the lawfulness of Indonesia's entry into and continuing presence in East Timor, on the validity of the 1989 Treaty between Australia and Indonesia, or on the rights and obligations of Indonesia under that Treaty, even if the Court did not have to determine its validity. In support of its argument, it referred to the Court's judgement in the case of *the Monetary Gold Removed from Rome in 1943*<sup>143</sup>. Portugal agreed that if its Application required the Court to decide any of these questions, the Court could not entertain it. The parties disagreed, however, as to whether the Court was required to decide any of these questions in order to resolve the dispute referred to it.

Portugal contended first that its Application was concerned exclusively with the objective conduct of Australia, which consisted in having negotiated, concluded and initiated performance of the 1989 Treaty with Indonesia, and this question was perfectly separable from any question relating to the lawfulness of the conduct of Indonesia.

Having carefully considered the Argument advanced by Portugal which sought to separate Australia's behaviour from that of Indonesia, the Court concluded that Australia's behaviour could not be assessed without first entering into the question of why it was that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so; The very subject matter of the Court's decision would necessarily be a determination

whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of its continental shelf. The Court was not able to make such determination in the absence of the consent of Indonesia.

The Court rejected Portugal's additional argument that the rights which Australia had allegedly breached were rights *erga omnes* and that accordingly Portugal could require it, individually, to respect them regardless of whether or not another State had conducted itself in a similarly unlawful manner.

In the Court's view, Portugal's assertion that the rights of peoples to self-determination, as it evolved from the Charter and from United Nations practice, had an *erga omnes* character, was irreproachable. The principle of self-determination of peoples had been recognized by the United Nations Charter and in the jurisprudence of the Court; it was one of the essential principles of contemporary international law. However, the Court considered that the *erga omnes* character of a norm and the rule of consent to jurisdiction were two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgement would imply an evaluation of the lawfulness of the conduct of another State which was not a party to the case.

The Court went on to consider another argument of Portugal which, the Court observed, rested on the premise that the United Nations resolutions, and in particular those of the Security Council, could be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over East Timor and, where the latter was concerned, to deal only with Portugal. Portugal maintained that those resolutions would constitute "givens" on the content of which the Court would not have to decide *de novo*.

The Court took note of the fact, for the two Parties, the Territory of East Timor remained a Non-Self-Governing Territory and its people had the right to self-determination, and that the express reference to Portugal as the "administering Power" in a number of the above-mentioned resolutions was not at issue between them. The Court found, however, that it could not be inferred from the sole fact that a number of resolutions of the General Assembly and the Security Council referred to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States to treat exclusively with Portugal as regards the continental shelf of East Timor. Without prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considered as a result that they could not be regarded as "givens" which constituted a sufficient basis for determining the dispute between the parties.

It followed from this that the Court would necessarily have had to rule upon the lawfulness of Indonesia's conduct as a prerequisite for deciding on Portugal's contention that Australia had violated its obligation to respect Portugal's status as administering Power, East Timor's status as a Non-Self-Governing Territory and the right of the people of the Territory to self-determination and to permanent sovereignty over its wealth and natural resources. Indonesia's rights and obligations would thus have constituted the very subject matter of such a judgement made in the absence of that State's consent. Such a judgement would have run directly counter to the

“well-established principle of international law embodied in the Court’s Statute, namely, that the Court can only exercise jurisdiction over a State with its consent’ (*Monetary Gold Removed from Rome in 1943, Judgment, I.C.J. Reports 1954*, p.32)”.

### *Conclusions*

The Court accordingly found that it was not required to consider Australia’s other objections and that it could not rule on Portugal’s claims on the merits, whatever the importance of the questions raised by those claims and of the rules of international law which they brought into play.

The Court recalled in any event that it had taken note in the judgement that, for the two Parties, the Territory of East Timor remained a Non-Self-Governing Territory and its people had the right to self-determination.

#### Operative paragraph

“THE COURT,

By fourteen votes to two,

*Finds* that it cannot in the present case exercise the jurisdiction conferred upon it by the declarations made by the Parties under Article 36, paragraph 2, of its Statute to adjudicate upon the dispute referred to it by the Application of the Portuguese Republic.

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Sir Robert Jennings, Guillaume, Shahabuddeen, Aguilar-Mawdsley, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereschetin; *Judge ad hoc* Sir Ninian Stephen;

AGAINST: *Judge* Weeramantry; *Judge ad hoc* Skubiszewski.”

Judges Oda, Shahabuddeen, Ranjeva and Vereschetin appended separate opinions to the Judgement of the Court; Judge Weeramantry and Judge ad hoc Skubiszewski appended dissenting opinions.<sup>145</sup>

## 2. *Maritime Delimitation between Guinea-Bissau and Senegal* (*Guinea-Bissau v. Senegal*)

In letters dated 16 March 1994, addressed to the Presidents of both States, the President of the Court expressed his satisfaction and informed them that the case would be removed from the list, in accordance with the terms of the Rules of Court, as soon as the Parties had notified him of their decision to discontinue the proceedings.

At a meeting held by the President with the representatives of the Parties on 1 November 1995, the latter furnished him with an additional copy of the above-mentioned agreement as well as the text of a “Protocole d’accord avant trait à l’organisation et au fonctionnement de l’agence de gestion et de coopération entre la République de Sénégal et la République de Guinée-Bissau instituée apres l’accord du 14 October 1993”, done at Bissau on 12 June 1995 and signed by the two Heads of State; the representatives at the same time notified him of the decisions of their Governments to discontinue the proceedings and the President asked them to confirm that decision in writing to the Court in whatever manner they deemed most appropriate.

By a letter of 2 November 1995, the Agent of Guinea-Bissau confirmed that his Government, by virtue of the agreement reached by the two Parties on the disputed zone, had decided to discontinue the proceedings instituted by its Application dated 12 March 1991; after the Agent of Senegal, by a letter dated 6 November 1995, had confirmed that his Government “agreed to the discontinuance of proceedings”, the Court, by an Order of 8 November 1995,<sup>146</sup> placed on record the discontinuance and directed that the case be removed from the list.

### 3. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

At the public sitting held on 15 February 1995, the Court delivered its *Judgement on Jurisdiction and Admissibility*<sup>147</sup> a summary of which is given below, followed by the text of the operative paragraph.

#### *History of the case and submissions*

In its judgement the Court recalled that on 8 July 1991 Qatar had filed an Application instituting proceedings against Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit’at Jaradah, and the delimitation of the maritime areas of the two States.

The court then recited the history of the case. It recalled that in its Application Qatar had founded the jurisdiction of the Court upon two agreements between the parties stated to have been concluded in December 1987 and December 1990 respectively, the subject and scope of the commitment to jurisdiction being determined by a formula proposed by Bahrain to Qatar on 26 October 1998 and accepted by Qatar in December 1990 (the “Bahraini formula”). Bahrain had contested the basis of jurisdiction invoked by Qatar.

By its judgment of 1 July 1994, the Court had found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987 between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed “Minutes” and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State’s specific claims in connection with that formula, the Court had decided to afford the Parties the opportunity to submit to it the whole of the dispute. It had fixed 30 November 1994 as the time limit within which the Parties were jointly or separately to take action to that end; and had reserved any other matters for subsequent decision.

On 30 November 1994, the Agent of Qatar had filed in the Registry a document entitled “Act to comply with paragraphs (3) and (4) of operative paragraph 41 of the Judgement of the Court dated 1 July 1994”. In the document, the Agent had referred to “the absence of an agreement between the parties to act jointly” and had declared that he was thereby submitting to the Court “the whole of the dispute between Qatar and Bahrain, as circumscribe by the text...referred to in the 1990 Doha Minutes as the ‘Bahraini formula’”.

He had enumerated the subjects which, in Qatar's view, fell within the Court's jurisdiction:

- “1. The Hawar Islands, including the island of Janan;
2. Fasht al Dibal and Qit'at Jaradah;
3. The archipelagic baselines;
4. Zubarah;
5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries.

It is understood by Qatar that Bahrain defines its claim concerning Zubarah as a claim of sovereignty.

Further to its Application Qatar requests the Court to adjudge and declare that Bahrain has no sovereignty or other territorial right over the island of Janan or over Zubarah, and that any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case.”

On 30 November 1994, the Registry had also received from the Agent of Bahrain a document entitled “Report of the State of Bahrain to the International Court of Justice on the attempt by the parties to implement the Court's Judgement of 1<sup>st</sup> July 1994”. In that “Report”, the Agent had stated that his Government had welcomed the judgement of 1 July 1994 and had understood it as confirming that the submission to the Court of the whole of the dispute” must be “consensual in character, that is a matter of agreement between Parties”. Yet, he had observed, Qatar's proposals had “taken the form of documents that could only be read as designed to fall within the framework of the maintenance of the case commenced by Qatar's Application of 8<sup>th</sup> July, 1991”; and further, Qatar had denied Bahrain “the right to describe, define or identify, in words of its own choosing, the matters which it wishes specifically to place in issue”, and had opposed “Bahrain's right to include in the list of matter in dispute the item of ‘sovereignty over Zubarah’”.

Bahrain had submitted observations on Qatar's Act to the Court on 5 December 1994. It had said that

“the Court did not declare it in its Judgement of 1<sup>st</sup> July, 1994 that it had jurisdiction in the Case brought before it by virtue of Qatar's unilateral application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30<sup>th</sup> November, even when considered in the light of the Judgement, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent.”

A copy of each of the documents produced by Qatar and Bahrain had been duly transmitted to the other Party.

#### *Jurisdiction of the Court*

The Court began by referring to the negotiation held between the Parties following the Court's Judgement of 1 July 1994, to the “Act” addressed by Qatar to the Court on 30 November 1994, and to the comments made thereon by Bahrain on 5 December 1994.

The court then recalled that, in its Judgement of 1 July 1994, it had reserved for subsequent decision all such matters as had not been decided in that judgement. Accordingly, it was bound to rule on the objections of Bahrain in its decision on its jurisdiction to adjudicate upon the dispute submitted to it and on the admissibility of the Application.

*Interpretation of paragraph 1 of the Doha Minutes*

Paragraph 1 of the Doha Minutes placed on record the agreement of the Parties to “reaffirm what was agreed previously between [them]”.

The Court proceeded, first of all to define the precise scope of the commitments which the Parties had entered into in 1987 and agreed to reaffirm in the Doha Minutes of 1990. In this regard, the essential texts concerning the jurisdiction of the Court were points 1 and 3 of the letters of 19 December 1987. By accepting those points, Qatar and Bahrain had agreed, on the one hand, that:

“All the disputed matters shall be referred to the International Court of Justice, at The Hague, for a final ruling binding upon both parties, who shall have to execute its terms”

and, on the other, that a Tripartite Committee be formed

“for the purpose of approaching the International Court of Justice, and satisfying the necessary requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling, binding upon both parties, be issued”.

Qatar maintained that, by that undertaking, the Parties had clearly and unconditionally conferred upon the Court jurisdiction to deal with the disputed matters between them. The work of the Tripartite Committee had been directed solely to considering the procedures to be followed to implement the commitment thus made to seise the Court. Bahrain on the contrary maintained that the texts in question expressed only the Parties consent in principle to a seisin of the Court, but that such consent had clearly been subject to the conclusion of a Special Agreement marking the end of the work of the Tripartite Committee.

The Court could not agree with Bahrain in this respect. Neither in point 1 nor in point 3 of the letters of 19 December 1987 could it find the conditions alleged by Bahrain to exist. It was indeed apparent from point 3 that the Parties did not envisage seising the Court without prior discussion, in the Tripartite Committee, of the formalities required to do so. But the two States had nonetheless agreed to submit to the Court all the disputed matters between them, and the Committee’s only function had been to ensure that this commitment was given effect, by assisting the Parties to approach the Court and to seise it in the manner laid down by its Rules. By the terms of point 3, neither of the particular modalities of seisin contemplated by the Rules of Court had either been favoured or rejected.

The Tripartite Committee had met for the last time in December 1988, without the Parties having reached agreement either as to the “disputed matters” or as to the “necessary requirements to have the dispute submitted to the Court”. It had ceased its activities at the instance of Saudi Arabia and without

opposition from the Parties. As the Parties had not, at the time of signing the Doha Minutes in December 1990, asked to have the Committee re-established, the Court considered that paragraph 1 of those Minutes could only be understood as contemplating the acceptance by the Parties of point 1 in the letters from the King of Saudi Arabia dated 19 December 1987 (the commitment to submit to the Court “all the disputed matters” and to comply with the judgment to be handed down by the court), to the exclusion of point 3 in those same letters.

#### *Interpretation of paragraph 2 of the Doha Minutes*

The Doha Minutes had not only confirmed the agreement reached by the Parties to submit their dispute to the Court, but had also represented a decisive step along the way towards a peaceful solution of that dispute, by settling the controversial question of the definition of the “disputed matters”. This was one of the principal objects of paragraph 2 of the Minutes which, in the translation that the Court was to use for the purposes of the 1995 Judgment, read as follows:

“(2) The Good offices of the Custodian of the Two Holy Mosques, King Fahd Ben Abdul Aziz, shall continue between the two countries until the month of Shawwal 1411 A.H., corresponding to May 1991. Once that period has elapsed, the two parties may submit the matter to the International Court of Justice in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it. The good offices of the Kingdom of Saudi Arabia will continue during the period when the matter is under arbitration”.

Paragraph 2 of the Minutes, which had formally placed on record Qatar’s acceptance of the Bahraini formula, had put an end to the persistent disagreement of the Parties as to the subject of the dispute to be submitted to the Court. The agreement to adopt the Bahraini formula had shown that the Parties were at one on the extent of the Court’s jurisdiction. The formula had thus achieved its purpose: it set, in general but clear terms, the limits of the dispute the Court would henceforth have to entertain.

The Parties nonetheless continued to differ on the question of the method of seisin. For Qatar, paragraph 2 of the Minutes had authorized a unilateral seisin of the Court by means of an application filed by one or the other Party, whereas for Bahrain, on the contrary, that text had only authorized a joint seisin of the Court by means of a special agreement.

The parties had devoted considerable attention to the meaning which, according to them, should be given to the expression “*al-tarafan*” (Qatar: “the parties;” Bahrain: “the two parties”) as used in the second sentence of the original Arabic text of paragraph 2 of the Doha Minutes. The Court observed that the dual form in Arabic served simply to express the existence of two units (the parties or the two parties), so what had to be determined was whether the words, when used in the Minutes in the dual form, had an *alternative* or a *cumulative* meaning: in the first case, the text would have left each of the Parties with the option of acting unilaterally, and in the second, it would have implied that the question be submitted to the Court by both Parties acting in concert, either jointly or separately.

The court first analysed the meaning and scope of the phrase “Once that period has elapsed, the two parties may submit the matter to the International Court of Justice”. It noted that the use in the phrase of the verb “may” suggested in the first place, and in its most material sense, the option or right for the Parties to seise the Court. In fact, the Court had difficulty in seeing why the 1990 Minutes, the object and purpose of which were to advance the settlement of the dispute by giving effect to the formal commitment of the Parties to refer it to the Court, would have been confined to opening up for them a possibility of joint action which not only had always existed but, moreover, had proved to be ineffective. On the contrary, the text assumed its full meaning if it was taken to be aimed, for the purpose of accelerating the dispute settlement process, at opening the way to a possible unilateral seisin of the Court in the event that the mediation of Saudi Arabia had failed to yield a positive result by May 1991. The Court also looked into the possible implications, with respect to the latter interpretation, of the conditions in which the Saudi mediation was to go forward, according to the first and third sentences of paragraph 2 of the Minutes. The Court further noted that the second sentence could be read as affecting the continuation of the mediation. On that hypothesis, the process of mediation would have been suspended in May 1991 and could not have resumed prior to the seisin of the Court. For the Court, it could not have been the purpose of the Minutes to delay the resolution of the dispute or to make it more difficult. From that standpoint, the right of unilateral seisin was the necessary complement to the suspension of mediation.

The Court then applied itself to an analysis of the meaning and scope of the terms “in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it”, which concluded the second sentence of paragraph 2 of the Doha Minutes. The Court had to ascertain whether, as was maintained by Bahrain, that reference to the Bahraini formula and, in particular, to the “procedures consequent on it”, had the aim and effect of ruling out any unilateral seisin. The Court was aware that the Bahraini formula had originally been intended to be incorporated into the text of a special agreement. However it considered that the reference to that formula in the Doha Minutes had to be evaluated in the context of those Minutes rather than in the light of the circumstances in which that formula had originally been conceived. If the 1990 Minutes referred back to the Bahraini formula it was in order to determine the subject-matter of the dispute which the Court would have to entertain. But the formula was no longer an element in a special agreement, which moreover never saw the light of day; it henceforth became part of a binding international agreement which itself determined the conditions for seisin of the Court. The Court noted that the very essence of that formula was, as Bahrain had clearly stated to the Tripartite Committee, to circumscribe the dispute with which the Court would have to deal, while leaving it to each of the Parties to present its own claims within the framework thus fixed. Given the failure to negotiate a special agreement, the Court took the view that the only procedural implication of the Bahraini formula on which the Parties could have reached agreement in Doha was the possibility that each of them might submit distinct claims to the Court.

Consequently, it seemed to the Court that the text of paragraph 2 of the Doha Minutes interpreted in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the said Minutes, allowed the unilateral seisin of the Court.

In these circumstances, the Court did not consider it necessary to resort to supplementary means of interpretation in order to determine the meaning of the Doha Minutes but had recourse to them in order to seek a possible confirmation of its interpretation of the text. Neither the *travaux préparatoires* of the Minutes, however, nor the circumstances in which the Minutes had been signed, could, in the Court's view, provide it with conclusive supplementary elements for that interpretation.

#### *Links between jurisdiction and seisin*

The Court still had to examine one other argument. According to Bahrain, even if the Doha Minutes were to be interpreted as not ruling out unilateral seisin, that would still not authorize one of the Parties to seise the Court by way of an Application. Bahrain argued, in effect, that seisin was not merely a procedural matter but a question of jurisdiction; that consent to unilateral seisin was subject to the same conditions as consent to judicial settlement and must therefore be unequivocal and indisputable; and that, where the texts were silent, joint seisin had by default to be the only solution.

The Court considered that, as an act instituting proceedings, seisin was a procedural step independent of the basis of jurisdiction invoked. However, the Court was unable to entertain a case so long as the relevant basis of jurisdiction had not been supplemented by the necessary act of seisin: from that point of view, the question of whether the Court was validly seised appeared to be a question of jurisdiction. There was no doubt that the Court's jurisdiction could only be established on the basis of the will of the Parties, as evidenced by the relevant texts. However, in interpreting the text of the Doha Minutes, the Court had reached the conclusion that it allowed a unilateral seisin. Once the Court had been validly seised, both Parties were bound by the procedural consequences which the Statute and the Rules made applicable to the method of seising employed.

In its Judgement of 1 July 1994, the Court had found that the exchanges of letter of December 1987 and the Minutes of December 1990 were international agreements creating rights and obligations for the Parties, and that by the terms of those agreements the Parties had undertaken to submit to it the whole of the dispute between them. In the 1995 Judgment, the Court noted that, at Doha, the Parties had reaffirmed their consent to its jurisdiction and determined the subject matter of the dispute in accordance with the Bahraini formula; it had further noted that the Doha Minutes allowed unilateral seisin. The Court considered, consequently, that it had jurisdiction to adjudicate upon the dispute.

#### *Admissibility*

Having thus established its jurisdiction, the Court still had to deal with certain problems of admissibility, as Bahrain had reproached Qatar with having limited the scope of the dispute only to those questions set out in Qatar's Application.

In its Judgement of 1 July 1994, the Court had decided:

“to afford the Parties the opportunity to ensure the submission to the Court of the entire dispute as it is comprehended within the 1990 Minutes and the Bahraini formula, to which they have both agreed”.

Qatar, by a separate act of 30 November 1994, had submitted to the Court “the whole of the dispute between Qatar and Bahrain, as circumscribed” by the Bahraini formula (see above). The terms used by Qatar had been similar to those used by Bahrain in several draft texts except in so far as those texts related to *sovereignty* over the Hawar islands and *sovereignty* over Zaharah. It appeared to the Court that the form of words used by Qatar accurately described the subject of the dispute. In the circumstances, the Court, while regretting that no agreement could be reached between the Parties as to how it should be presented, concluded that it was now seised of the whole of the dispute, and that the Application of Qatar was admissible.

*Operative paragraph*

“THE COURT,

(1) By 10 votes to 5,

*Finds* that it has jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain;

IN FAVOUR: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, *Judge ad hoc* Torres Bernárdez;

AGAINST: *Vice-President* Schwebel; *Judges* Oda, Shanhabuddeen, Koroma; *Judge ad hoc* Valticos.

(2) By 10 votes to 5,

*Finds* that the Application of the State of Qatar as formulated on 30 November 1994 is admissible.

IN FAVOUR: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, *Judge ad hoc* Torres Bernárdez;

AGAINST: *Vice-President* Schwebel; *Judges* Oda, Shanhabuddeen, Koroma; *Judge ad hoc* Valticos.”

Vice-President Schwebel, Judges Oda, Shanhabuddeen and Koroma, Judge ad hoc Valticos appended dissenting opinions to the judgment.<sup>148</sup>

Judge ad hoc Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

By an Order of 28 April 1995,<sup>149</sup> the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996,<sup>150</sup> extended that time limit to 30 September 1996.

4. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and Questions of Interpretation and Application of the 19971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*

On 16 and 20 June 1995 respectively, the United Kingdom of Great Britain and Northern Ireland and the United States of America filed preliminary objections to the jurisdiction of the Court to entertain the Applications of the Libyan Arab Jamahiriya.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of the Article.

After a meeting had been held, on 9 September 1995, between the President of the Court and the Agents of the Parties to ascertain the latter's views, the Court, by Orders of 22 September 1995<sup>151</sup> fixed, in each case, 22 December 1995 as the time limit within which the Libyan Arab Jamahiriya might present a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States respectively. Libya filed such statements within the prescribed time limits.

5. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*

By an Order of 21 March 1995,<sup>152</sup> the President of the Court, upon a request of the Agent of Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, extended to 30 June 1995 the time limit for the filing of the Counter-Memorial of Yugoslavia.

On 26 June 1995, within the extended time limit for the filing of its Counter-Memorial, Yugoslavia filed certain preliminary objections. The objections related, firstly, to the admissibility of the Application and, secondly, to the jurisdiction of the Court to deal with the case.

By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

By an Order of 14 July 1995,<sup>153</sup> the President of the Court, taking into account the views expressed by the Parties, fixed 14 November 1995 as the time limit within which the Republic of Bosnia and Herzegovina might present a written statement of its observations and submissions on the preliminary objections raised by the Federal Republic of Yugoslavia. Bosnia and Herzegovina filed such a statement within the prescribed time limit.

#### 6. *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*

Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge *ad hoc*.

By an order of 20 December 1994,<sup>154</sup> the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time limit.

#### 7. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*

By an Order of 16 June 1994,<sup>155</sup> the Court, seeing no objection to the suggested procedure, fixed 16 March 1995 as the time limit for filing the Memorial of Cameroon, and 18 December 1995 as the time limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time limit.

On 13 December 1995, within the time limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

By virtue of article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

#### 8. *Fisheries Jurisdiction (Spain v. Canada)*

On 28 March 1995, the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the *Estai*, sailing under the Spanish flag.

The Application indicated, *inter alia*, that by the amended Act “an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO [Northwest Atlantic Fisheries Organization] Regulatory Area—that is, on the high seas, outside Canada’s exclusive economic zone”; that the Act “expressly permits (art.8) the use of force against foreign fishing boats in the zones that article 2.1 unambiguously terms the ‘high seas’”; that the rules of application of 25 May 1994 provided, in particular, for “the use of force by fishery protection officers against the foreign fishing boats covered by those regulations... which infringe their mandates in the zone of the high seas within the scope of those regulations”; and that the implementing regulations of 3 March 1995 “expressly permits [...] such conduct as regards Spanish and Portuguese ships on the high seas”.

The Application alleged the violation of various principles and norms of international law and stated that there was a dispute between the Kingdom of Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain.

As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

In that regard, the Application specified that:

“The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2(d), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act), does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (para.2 (c) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against the International law set forth above”.

While expressly reserving the right to modify and extend the terms of the Application, as well as the ground involved, and the right to request the appropriate provisional measure, the Kingdom of Spain requested:

(A) That the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;

(B) That the Court adjudge and declare that Canada is bound to refrain from any repetition of the acts complained of, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and

(C) That, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship *Estai* flying the flag of Spain, and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of international law”.

By a letter dated 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2(d) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court.

Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995,<sup>156</sup> decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time limits.

9. *Request for an examination of the situation in accordance with paragraph 63 of the Court's Judgement of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case*

On 21 August 1995, New Zealand submitted to the Court a Request for an Examination of the Situation "arising out of a proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the *Nuclear Tests (New Zealand v. France)* case". The Request referred to a media statement of 13 June 1995 by President Chirac "which said that France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995". New Zealand stated that the request was made "under the right granted to New Zealand in paragraph 63 of the Judgment of 20 December 1974".

Paragraph 63 reads as follows:

"Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle to the presentation of such a request".

New Zealand asserted that the rights for which it sought protection "all fall within the scope of the rights invoked by New Zealand in paragraph 28 of the 1973 Application" in the above-mentioned case, but that at the present time New Zealand sought

"recognition only of those rights that would be adversely affected by entry into the marine environment of radioactive material in consequence of the further tests to be carried out at Mururoa or Fangataufa Atolls, and of its entitlement to the protection and benefit of a properly conducted Environmental Impact Assessment".

New Zealand asked the Court to adjudge and declare:

- "(i) that the conduct of the proposed nuclear tests will constitute a violation of the rights under international law of New Zealand, as well as of other States;

further or in the alternative;

- (ii) that it is unlawful for France to conduct such nuclear tests before it has undertaken an Environmental Impact Assessment according to accepted international standards. Unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment the rights under international law of New Zealand, as well as the rights of other States, will be violated”.

On the same day, New Zealand, referring to the Court’s Order of 22 June 1973 indicating interim measures of protection and to the Court’s Judgment of 20 December 1974 in the above-mentioned case, requested the Court, in accordance with Article 33, paragraph 1, of the General Act for the Pacific Settlement of Disputes, 1928, and Article 41 of the Statute of the Court, to indicate the following further provisional measures:

- “(1) That France refrain from conducting any further nuclear tests at Mururoa and Fangataufa Atolls;
- (2) That France undertake an environmental impact assessment of the proposed nuclear tests according to accepted international standards and that, unless the assessment establishes that the tests will not give rise to radioactive contamination of the marine environment, France refrain from conducting tests;
- (3) That France and New Zealand ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other Party in respect of the carrying out of whatever decisions the Court may give in this case”.

New Zealand chose Sir Geoffrey Palmer to sit as judge *ad hoc*.

Applications for permission to intervene were submitted by Australia, Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia, while the last four States also made declarations on intervention.

At the invitation of the President of the Court, informal aides-mémoires regarding the legal nature of the New Zealand Requests and of their effects were presented by New Zealand and France. Public sittings to hear the oral arguments of the two States on the question, “Do the Requests submitted to the Court by the Government of New Zealand on 21 August 1995 fall within the provisions of paragraph 63 of the Judgment of the Court on 20 December 1974 in the case concerning *Nuclear Tests (New Zealand v. France)*”, were held on 11 and 12 September 1995.

At a public sitting held on 22 September 1995, the President of the Court read the Order,<sup>157</sup> a summary of which is given below, followed by the text of the operative paragraph:

In its Order the Court first recalled the history of the proceedings as set out here above. It observed that New Zealand’s “Request for an Examination of the Situation” submitted under paragraph 63 of the 1974 Judgment, even if it was disputed *in limine* whether it fulfilled the conditions set in that paragraph, should nonetheless be the object of entry in the General List of the Court for the sole purpose of enabling the latter to determine whether those conditions were fulfilled; and that it had accordingly instructed the Registrar.

The Court began its reasoning by citing paragraph 63 of the Judgment of 20 December 1974, which provides:

“ Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court’s function to contemplate that it will not comply with it. However, the Court observes that if the basis of this judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot constitute by itself an obstacle to the presentation of such a request”.

It then indicated that the following question had to be answered *in limine*: “Do the Requests submitted to the Court by the Government of New Zealand on 21 August 1995 fall within the provisions of paragraph 63 of the Judgment of the Court of 20 December 1974 in the case concerning *Nuclear Tests (New Zealand v. France)*”; and that the present proceedings had consequently been limited to that question. The question had two elements; one concerned the courses of procedure envisaged by the Court in paragraph 63 of its 1974 Judgment, when it stated that “the Application could request an examination of the situation *in accordance with the provisions of the Statute*”; the other concerned the question whether the “basis” of that judgment had been “affected” within the meaning of paragraph 63 thereof.

As to the first element of the question before it, the Court recalled that New Zealand expressed the following view:

“paragraph 63 is a mechanism enabling the continuation or the resumption of the proceedings of 1973 and 1974. They were not fully determined. The Court foresaw that the course of future events might in justice require that New Zealand should have that opportunity to continue its case, the progress of which was stopped in 1974. And to this end in paragraph 63 the Court authorized these derivative proceedings... the presentation of a Request for such an examination is to be part of the same case and not of a new one”.

New Zealand added that paragraph 63 could only refer to the procedure applicable to the examination of the situation once the request was admitted; it furthermore explicitly stated that it was not seeking an interpretation of the 1974 Judgment under Article 60 of the Statute, nor a revision of that judgement under Article 61.

France, for its part, stated as follows:

“As the court itself has expressly stated, the possible steps to which it alludes are subject to compliance with the ”provisions of the Statute”. ... The French Government incidentally further observes that, even had the Court not so specified, the principle would nevertheless apply: any activity of the Court is governed by the Statute, which circumscribes the powers of the Court and prescribes the conduct that States must observe without it being possible for them to depart therefrom, even by agreement ...; as a result and *a fortiori*, a State cannot act unilaterally before the Court in the absence of any basis in the Statute.”

“Now New Zealand does not invoke any provision of the Statute and could not invoke any that would be capable of justifying its procedure in law. It is not a request for interpretation or revision..., nor a new Application, whose entry in the General List would, for that matter be quite out of the question...”

The Court observed that in expressly laying down, in paragraph 63 of its Judgment of 20 December 1974, that, in the circumstances set out therein, “the Applicant could request an examination of the situation in accordance with the provisions of the Statute”, the Court could not have intended to limit the Applicant’s access to legal procedures such as the filing of a new application (Statute, Art. 40, para.1), a request for interpretation (Statute, Art. 60) or a request for revision (Statute, Art 61), which would have been open to it in any event; by inserting the above-mentioned words in paragraph 63 of its judgment, the Court did not exclude a special procedure, in the event that the circumstances defined in that paragraph were to arise, in other words, circumstances which “affected” the “basis” of the judgement. The Court went on to point out that such a procedure appeared to be indissociably linked, under that paragraph, to the existence of those circumstances; and that if the circumstances in question did not arise, that special procedure was not available.

The Court then considered that it should determine the second element of the question raised, namely whether the basis of its Judgment of 20 December 1974 had been affected by the facts to which New Zealand referred and whether the Court might consequently proceed to examine the situation as contemplated by paragraph 63 of that judgment; to that end, it first had to define the basis of that Judgment by an analysis of its text. The Court observed that, in 1974, it took as the point of departure of its reasoning the Application filed by New Zealand in 1973; that in its Judgment of 20 December 1974 it affirmed that:

“in the circumstances of the present case, as already mentioned, the Court must ascertain the true subject of the dispute, the object and purpose of the claim ... In doing so it must take into account not only the submission, but the Application as a whole, the arguments of the Applicant before the Court, and other documents referred to...”<sup>158</sup>

Referring, among other things, to a statement made by Prime Minister of New Zealand, the Court found that:

“for purposes of the Application, the New Zealand claim is to be interpreted as applying only to atmospheric tests, not to any other form of testing, and as applying only to atmospheric tests so conducted as to give rise to radioactive fallout on New Zealand territory”.<sup>159</sup>

In making, in 1974, this finding and the one in the *Nuclear Tests (Australia v. France)* case (for the Court, the two cases appeared identical as to their subject matter which concerned exclusively atmospheric tests), the Court had addressed the question whether New Zealand, when filing its 1973 Application might have had broader objectives than the cessation of atmospheric nuclear tests—the “primary concern” of the Government of New Zealand, as it now put it. The Court concluded that it could not now reopen this question since its current task was limited to an analysis of the Judgment of 1974.

The Court recalled that moreover it had taken note, at that time, of the communiqué issued by the Office of the President of the French Republic on 8 June 1974, stating that:

“in view of the stage reached in carrying out the French nuclear defence programme France will be in a position to pass on to the state of underground explosions as soon as the series of tests planned for this summer is completed”<sup>160</sup>

and to other official declaration of the French authorities on the same subject, made publicly outside the Court and *erga omnes*, and expressing the French Government’s intention to put an end to its atmospheric test; that, comparing the undertaking entered into by France with the claim asserted by New Zealand, it had found that it faced “a situation in which the objective of the Applicant [had] in effect been accomplished”<sup>161</sup> and accordingly had indicated that “the object of the claim having clearly disappeared, there is nothing on which to give judgment”.<sup>162</sup> The Court concluded that the basis of the 1974 judgment was consequently France’s undertaking not to conduct any further atmospheric nuclear tests; that it was only, therefore, in the event of a resumption of nuclear tests in the atmosphere that that basis of the judgment would have been affected; and that that hypothesis had not materialized.

The Court observed further that in analysing its Judgment of 1974, it had reached the conclusion that that judgment dealt exclusively with atmospheric nuclear tests; that consequently, it was not possible for the Court now to take into consideration questions relating to underground nuclear tests; and that the Court could not, therefore, take account of the arguments derived by New Zealand, on the one hand from the conditions in which France had conducted underground nuclear tests since 1974, and on the other from the development of international law in recent decades—and particularly the conclusion on 25 November 1986, of the Noumea Convention—any more than of the arguments derived by France from the conduct of the New Zealand Government since 1974. It finally observed that its Order was without prejudice to the obligation of States to respect and protect the natural environment, obligations to which both New Zealand and France had in the present instance reaffirmed their commitment.

The Court therefore found that basis of the 1974 Judgment had not been affected; that New Zealand’s request did not therefore fall within the provisions of paragraph 63 of that judgment; and that that Request had consequently to be dismissed. It also pointed out that following its Order, the Court had instructed the Registrar to remove that Request from the General List as of 22 September 1995.

Finally the Court indicated that it likewise had to dismiss New Zealand’s “Further Request for the Indication of Provisional Measures” as well as the applications for permission to intervene submitted by Australia, Solomon Islands, the Marshall Islands and the Federated States of Micronesia and the declarations of intervention made by the last four States—all of which were proceedings incidental to New Zealand’s main request..

*Operative paragraph*

“Accordingly,

THE COURT,

(1) By twelve votes to three,

*Finds* that the “Request for an Examination of the Situation’ in accordance with paragraph 63 of the Judgment of the Court of 20 December 1974 in the *Nuclear Tests (New Zealand v. France)* case, submitted by New Zealand on 21 August 1995, does not fall within the provisions of the said paragraph 63 and must consequently be dismissed;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guillaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge ad hoc* Sir Geoffrey Palmer;

(2) By twelve votes to three,

*Finds* that the “Further Request for the Indication of Provisional Measures’ submitted by New Zealand on the same date must be dismissed;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guillaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge ad hoc* Sir Geoffrey Palmer;

(3) By twelve votes to three,

*Finds* that the ‘Application for Permission to Intervene’ submitted by Australia on 23 August 1995, and the ‘Applications for Permission to Intervene’ and ‘Declarations of Intervention’ submitted by Samoa and Solomon Islands on 24 August 1995, and by the Marshal Islands and the Federated States of Micronesia on 25 August 1995, must likewise be dismissed.

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guillaume, Shanhabuddeen, Renjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Weeramantry, Koroma; *Judge ad hoc* Sir Geoffrey Palmer;

Vice-President Schwebel and Judges Oda and Ranjeva appended declarations to the Order of the Court.<sup>163</sup> Judge Shahbuddeen appended a separate opinion;<sup>164</sup> and Judges Weeramantry, Koroma and Judge ad hoc Sir Geoffrey Palmer appended dissenting opinions.<sup>165</sup>

(B) REQUESTS FOR ADVISORY OPINION

(i) *Legality of the Use by a State of Nuclear Weapons  
in Armed Conflict*

By the same Order, the President fixed 20 June 1995 as the time limit within which States and organization having presented written statements might submit written comments on the other written statements (Art. 66, para. 4, of the Statute of the Court).

Written statements were filed by Australia, Azerbaijan, Colombia, Costa Rica, the Democratic People's Republic of Korea, Finland, France, Germany, India, Ireland, the Islamic Republic of Iran, Italy, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, Nauru, the Netherlands, New Zealand, Norway, Papua New Guinea, the Philippines, the Republic of Moldova, the Russian Federation, Rwanda, Samoa, Saudi Arabia, the Solomon Islands, Sri Lanka, Sweden, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Written comments were filed by France, India, Malaysia, Nauru, the Russian Federation, the Solomon Islands, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The written proceedings in this case were thus concluded.

Public sittings to hear oral statements or comments on the request for advisory opinion made by the World Health Organization were held between 30 October 1995 and 15 November 1995. These oral proceedings also covered the request for an advisory opinion submitted by the General Assembly of the United Nations on the question of the *Legality of the Threat or Use of Nuclear Weapons*. During the hearings statements were made by WHO, Australia, Egypt, France, Germany, Indonesia, Mexico, the Islamic Republic of Iran, Italy, Japan, Malaysia, New Zealand, Philippines, the Russian Federation, Samoa, Marshall Islands, Solomon Islands, Costa Rica, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

#### (ii) *Legality of the Threat or Use of Nuclear Weapons*

The request was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 19 December 1994 and filed in the original on 6 January 1995.

By an Order of 1 February 1995,<sup>166</sup> the Court decided that States entitled to appear before the Court and the United Nations might furnish information on the questions submitted to the Court and fixed 20 June 1995 as the time limit within which written statements might be submitted (Art. 66 para. 2, of the Statute of the Court) and 20 September 1995 as the time limit within which States and organizations having presented written statements might present written comments on the other written statements (art. 66, para. 4, of the Statute).

Written statements were filed by Bosnia and Herzegovina, Burundi, the Democratic People's Republic of Korea, Ecuador, Egypt, Finland, France, Germany, India, Ireland, the Islamic Republic of Iran, Italy, Japan, Lesotho, Malaysia, the Marshall Islands, Mexico, Nauru, the Netherlands, New Zealand, Qatar, the Russian Federation, Samoa, San Marino, Solomon Islands, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Written comments were filed by Egypt, Nauru and Solomon Islands. Nauru subsequently withdrew its comments.

Public sittings to hear oral statements or comments on the request for advisory opinion submitted by the General Assembly were held between 30 October and 15 November 1995. These oral proceedings also covered the request for advisory opinion submitted by the World Health Organization on the question of *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*. During

the hearings statements were made by Australia, Costa Rica, Egypt, France, Germany, Indonesia, the Islamic Republic of Iran, Mexico, Italy, Japan, Malaysia, New Zealand, the Philippines, Qatar, the Russian Federation, San Marino, Samoa, Marshall Islands, Solomon Islands, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe.

#### CONSIDERATION BY THE GENERAL ASSEMBLY

By its decision 50/404 of 12 October 1995, the General Assembly took note of the report of the International Court of Justice.<sup>167</sup>

### 6. INTERNATIONAL LAW COMMISSION<sup>168</sup>

#### FORTY-SEVENTH SESSION OF THE COMMISSION<sup>169</sup>

The International Law Commission held its forty-seventh session at its permanent seat at the United Nations Office at Geneva from 2 May to 21 July 1995. The Commission considered all the items on its agenda.

Regarding the item on the draft Code of Crimes against the Peace and Security of Mankind, the Commission had before it the thirteenth report of the Special Rapporteur, containing articles on aggression, genocide, systematic or mass violations of human rights and exceptionally serious war crime,<sup>170</sup> which upon consideration it decided to refer to the Drafting Committee. The Commission further decided that consultations would continue on articles on illicit traffic in narcotic drugs and wilful and severe damage to the environment, establishing a working group on the latter. The Commission also considered the report of the Drafting Committee on articles adopted on second reading by the Committee,<sup>171</sup> and decided to defer the final adoption of the articles contained therein until after the completion of the remaining articles.

Concerning the question of State succession and its impact on the nationality of natural and legal persons, the Commission considered the Special Rapporteur's first report,<sup>172</sup> and decided to establish a working group which would, *inter alia*, identify issues arising out of the topic.

On the matter of State responsibility, the Commission considered the Special Rapporteur's seventh report<sup>173</sup> and referred the articles contained therein to the Drafting Committee. The Commission also adopted those provisions received from the Drafting Committee, on first reading, for inclusion in Part Three of the draft concerning the settlement of disputes.

Regarding the topic international liability for injurious consequences arising out of acts not prohibited by international law, the Commission provisionally adopted articles on freedom of action and the limits thereto, prevention, liability and compensation and cooperation, received from the Drafting Committee. The Commission also considered the Special Rapporteur's eleventh report,<sup>174</sup> which dealt with harm to the environment, together with the tenth report, which had been submitted in 1994. Also before the Commission was a study prepared by the United Nations Secretariat pursuant to General Assembly resolution 49/51 of 9 December 1994 entitled "Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of the acts not prohibited by international law".<sup>175</sup> A working group was also established by the Commission on the topic with a mandate of identifying the activities which fell within the scope of the topic.

Regarding the item on the law and practice relating to reservations to treaties, the Commission considered the Special Rapporteur's first report.<sup>176</sup> Furthermore, the Commission authorized the Special Rapporteur to prepare a detailed questionnaire, as regards reservations to treaties, to ascertain the practice of, and problems encountered by, States and international organizations, particularly those which were depositaries of multilateral conventions.

#### CONSIDERATION BY THE GENERAL ASSEMBLY

By its resolution 50/45 of 11 December 1995,<sup>177</sup> adopted on the recommendation of the Sixth Committee,<sup>178</sup> the General Assembly took note of the report of the International Law Commission on the work of its forty-seventh session;<sup>179</sup> invited States and international organizations to answer promptly the questionnaire prepared by the Special Rapporteur on the topic concerning the reservations to treaties; and requested the Secretary-General to again invite Governments to submit as soon as possible relevant materials, including treaties, national legislation, decisions of national tribunals and diplomatic and official correspondence relevant to the topic "State succession and its impact on the nationality of natural and legal persons". By the same resolution, the Assembly noted the suggestions of the Commission to include in its agenda the topic "Diplomatic protection" and initiate a feasibility study on a topic concerning the law of the environment, and decided to invite Governments to submit comments on these suggestions through the Secretary-General for consideration by the Sixth Committee during the fifty-first session of the General Assembly; and requested the Secretary-General to invite Governments to comment on the current state of the codification process within the United Nations system and to report thereon to the General Assembly at its fifty-first session.

### 7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW<sup>180</sup>

#### TWENTY-EIGHTH SESSION OF THE COMMISSION<sup>181</sup>

The United Nations Commission on International Trade Law held its twenty-eight session in Vienna from 2 to 26 May 1995.

On the topic of the draft Convention on Independent Guarantees and Standby-by Letters of Credit, UNCITRAL submitted to the General Assembly the draft Convention for its consideration.

The draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication was sent to all Governments and to interested organizations for comment.<sup>182</sup> The Commission, not having completed its consideration of the draft Model Law, decided to place it, together with the draft Guide to Enactment of the Model Law, on the agenda of its twenty-ninth session.

With respect to the matter of international commercial arbitration, UNCITRAL had before it at the current session the revised "Draft Notes on Organizing Arbitral Proceedings".<sup>183</sup> After consideration, the Commission requested the United Nations Secretariat to prepare a revised draft of the Notes for final approval by the Commission at its twenty-ninth session in 1996.

Concerning the topic of receivables financing, UNCITRAL had before it a report submitted by the United Nations Secretariat on the possible scope of future work and a number of assignment related issues, and suggestions on possible solutions to problems arising in the context of receivables financing.<sup>184</sup> The prevailing view during the current session was that the Commission should assign the report and the draft uniform rules contained in the report to a working group in order to prepare a uniform law on assignment in receivables financing.

The topics of (a) cross-border insolvency; (b) build-operate-transfer projects (BOT); and (c) monitoring implementation of the 1958 New York Convention were also considered at the twenty-eighth session as possible future work for UNCITRAL.

The Commission also noted that since its twenty-seventh session in 1994, three additional sets of abstracts with court decisions and arbitral awards relating to the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration had been published.<sup>185</sup>

#### CONSIDERATION BY THE GENERAL ASSEMBLY

At its fiftieth session, on 11 December 1995, the General Assembly, on the recommendation of the Sixth Committee, adopted two resolutions in the international trade area.<sup>186</sup> By its resolution 50/47, the Assembly took note of the report of UNCITRAL on the work of its twenty-eighth session; and by resolution 50/48, the Assembly adopted and opened for signature or accession the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.<sup>187</sup>

#### 8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

In addition to the report of the International Law Commission and international trade law matters, dealt with separately in the above sections, the Sixth Committee also considered the following topics at the fiftieth session of the General Assembly before submitting its recommendations on the topics to the Assembly:

##### (a) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly, by its resolutions 50/43 of 11 December 1995,<sup>188</sup> approved the guidelines and recommendations contained in section III of the report of the Secretary-General<sup>189</sup> and adopted by the Advisory Committee on the United Nations Programme of Assistance, and authorized the Secretary-General to carry out in 1996 and 1997 the activities specified in his report.

##### (b) United Nations Decade of International Law

By its resolution 50/44 of 11 December 1995,<sup>190</sup> the General Assembly, expressing its appreciation to the Secretary-General for his report<sup>191</sup> submitted pursuant to Assembly resolution 49/50 of 9 December 1994, expressed appre-

ciation for the work done on the United Nations Decade of International Law to States and international organizations and institutions that had undertaken activities in implementation of the programme for the activities for the third term (1995-1996) of the Decade; and further expressed its appreciation to the Secretary General for the successful organization of the United Nations Congress on Public International Law, held at United Nations Headquarters from 13 to 17 March 1995.<sup>192</sup>

(c) Establishment of an international criminal court

The General Assembly, by its resolution 50/46 of 11 December 1995,<sup>193</sup> took note of the report of the Ad Hoc Committee on the Establishment of an International Criminal Court,<sup>194</sup> including the recommendations contained therein; decided to establish a preparatory committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission; and also decided that the Preparatory Committee would meet from 25 March to 12 April and from 12 to 30 August 1996 and submit its report to the General Assembly at the beginning of its fifty-first session.

(d) Report of the Committee on Relations with the Host Country

By its resolution 50/49 of 11 December 1995,<sup>195</sup> the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 67 of its report,<sup>196</sup> expressed its appreciation for the efforts made by the host country, and hoped that problems raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law; and took note with appreciation of the report of the Secretary-General on the problem of diplomatic indebtedness.<sup>197</sup> By the same resolution, the Assembly urged the host country to consider lifting travel controls with regard to certain missions and staff members of the United Nations Secretariat of certain nationalities; and called upon the host country to review measures and procedures relating to the parking of diplomatic vehicles.

(e) United Nations Model Rules for the Conciliation of Disputes between States.

The General Assembly, by its resolution 50/50 of 11 December 1995,<sup>198</sup> commended the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for having completed the final text of the United Nations Model Rules for the Conciliation of Disputes between States,<sup>199</sup> and drew the attention of States to the possibility of applying the Model Rules wherever a dispute had arisen between States which it had not been possible to solve through direct negotiations. The text of the Model Rules follows:

## **United Nations Model Rule for the Conciliation of Disputed between States**

### CHAPTER I

#### APPLICATION OF THE RULES

##### *Article 1*

1. These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.

2. The States which agree to apply these rules may at any time, through mutual agreement, exclude or amend any of their provisions.

### CHAPTER II

#### INITIATION OF THE CONCILIATION PROCEEDINGS

##### *Article 2*

1. The conciliation proceedings shall begin as soon as the States concerned (henceforth: the parties) have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the member and emoluments of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

2. If the States cannot reach agreement on the definition of the subject of the dispute, they may by mutual agreement request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also by mutual agreement request his assistance agreement on the modalities of the conciliation proceedings.

### CHAPTER III

#### NUMBER AND APPOINTMENT OF CONCILIATORS

##### *Article 3*

There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

##### *Article 4*

If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

### *Article 5*

1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

3. If, at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

4. If, at the end of the three-month period referred to in the preceding paragraph 2 of this article, the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph.

### *Article 6*

Vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

## CHAPTER IV

### FUNDAMENTAL PRINCIPLES

### *Article 7*

The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. If no settlement is reached during the consideration of the dispute, the commission may draw up and submit appropriate recommendations to the parties for consideration.

## CHAPTER V

### PROCEDURES AND POWERS OF THE COMMISSION

### *Article 8*

The commission shall adopt its own procedure.

#### *Article 9*

1. Before the commission begins its work, the parties shall designate their agents and shall communicate the names of such agents to the president of the commission. The president shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be invited.

2. The agents of the parties may be assisted before the commission by counsel and experts appointed by the parties.

3. Before the first meeting of the commission, its members may meet informally with the agents of the parties, if necessary, accompanied by the appointed counsel and experts to deal with administrative and procedural matters.

#### *Article 10*

1. At its first meeting, the commission shall appoint a secretary.

2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any them. He may be a United Nations official if the parties agree with the Secretary-General on the conditions under which the official will exercise these functions.

#### *Article 11*

1. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, should decide in consultation with the parties whether the parties should be invited to submit written pleadings and, if so, in what order and within what time limits, as well as the dates when, if necessary the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

2. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

#### *Article 12*

The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall provide it to the greatest possible extent with whatever documents, information and explanations may be relevant.

#### *Article 13*

1. The commission may ask the parties for whatever relevant information or documents as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statement or proposals made by the parties.

2. The commission may accede to any request by a party that person whose testimony it considers necessary or useful be heard, or that experts be consulted.

#### *Article 14*

In cases where the parties disagree on issues of fact, the commission may use all means at its disposal, such as the joint expert advisers mentioned in article 15, or consultation with experts, to ascertain the facts.

*Article 15*

The commission may propose to the parties that they jointly appoint expert advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

*Article 16*

Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make hereon.

*Article 17*

At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention the parties to any measure which in its opinion might be advisable to facilitate a settlement.

*Article 18*

The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Abstentions are not allowed. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

*Article 19*

The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

CHAPTER VI

CONCLUSION OF THE CONCILIATION PROCEEDINGS

*Article 20*

1. On concluding its consideration of the dispute, the commission may, if full settlement has not been reached draw up and submit appropriate recommendations to the parties for consideration. To that end, it may hold exchange of views with the agents of the parties, who may be heard jointly or separately.

2. The recommendations adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the recommendations submitted. The commission shall refrain from presenting in its report any final conclusions with regard to factors or from ruling formally on issues of law, unless the parties have jointly asked it to do so.

3. If the parties accept the recommendations submitted by the commission, a procès-verbal shall be drawn up setting forth the conditions of acceptance. The procès-verbal shall be signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

4. Should the commission decide not to submit recommendations to the parties, its decision to the effect shall be recorded in a procès-verbal signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

#### *Article 21*

1. The recommendations of the commission will be submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties undertake to study them in good faith, carefully and objectively.

2. If one of the parties does not accept the recommendations and the other party does, it shall inform the latter in writing, of the reasons why it could not accept them.

#### *Article 22*

1. If the recommendations are not accepted by both parties but the latter wish efforts to continue in order to reach agreement on different terms, the proceedings shall be resumed. Article 24 shall apply to the resumed proceedings, with the relevant time limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

2. If the recommendations are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a procès-verbal signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the procès-verbal signed by the secretary.

#### *Article 23*

Upon conclusion of the proceedings, the president of the commission shall, with the prior agreement of the parties, deliver the documents in the possession of the secretariat of the commission either to the Secretary-General of the United Nations or to another person or entity agreed on by the parties. Without prejudice to the possible application of article 26, paragraph 2, the confidentiality of the documents shall be preserved.

#### *Article 24*

The commission shall conclude its work within the period agreed upon by the parties. Any extension of this period shall be agreed upon by the parties.

### CHAPTER VII

#### CONFIDENTIALITY OF THE COMMISSION'S WORK AND DOCUMENTS

#### *Article 25*

1. The commission's meetings shall be closed. The parties and the members and expert advisers of the commission, the agents and counsel of the parties, and the secretary and the secretariat staff, shall maintain strictly the confidentiality of any documents or statements, or any communication concerning the progress of the proceedings unless their disclosure has been approved by both parties in advance.

2. Each party shall receive, through the secretary, certified copies of any minutes of the meetings at which it was represented.

3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

*Article 26*

1. Except with regard to certified copies referred to in article 25, paragraph 3, the obligation to respect the confidentiality of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to recommendations and proposals which have not been accepted.

2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents that in accordance with the preceding paragraph are to remain confidential, or authorize the publication of all or some of those documents.

CHAPTER VII

OBLIGATION NOT TO ACT IN MANNER WHICH MIGHT HAVE AN  
ADVERSE EFFECT ON THE CONCILIATION

*Article 27*

The parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular refrain from any measures which might have an adverse effect on the recommendations submitted by the commission, so long as those recommendations have not been explicitly rejected by either of the parties.

CHAPTER IX

PRESERVATION OF THE LEGAL POSITION OF THE PARTIES

*Article 28*

1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the recommendations submitted by the commission or any proposal made by the commission, unless agreed to by both parties.

2. Acceptance by a party of recommendations submitted by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the recommendations.

CHAPTER X

COSTS

*Article 29*

The costs of the conciliation proceedings and the emoluments of expert advisers appointed in accordance with article 15 shall be borne by the parties in equal shares.

- (f) Implementation of provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.

By its resolution 50/51,200 the General Assembly, taking note of the report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by application of sanctions under Chapter VII of the Charter,<sup>201</sup> underlined the importance of the consultations under Article 50 of the Charter of the United Nations, as early as possible, with third States which might be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council under Chapter VII of the Charter and of early and regular assessments, as appropriate, of their impact on such States, and, for this purpose, invited the Security Council to consider appropriate ways and means for increasing the effectiveness of its working methods and procedures applied in the consideration of the requests by the affected countries for assistance, in the context of Article 50; welcomed the measures taken by the Security Council aimed at increasing the effectiveness and transparency of the sanctions committees, and strongly recommended that the Council should continue its efforts further to enhance the functioning of those committees; and requested the Secretary-General, within existing resources, to ensure that the Security Council and its sanctions committees were able to carry out their work expeditiously.

- (g) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly, by its resolution 50/52 of 11 December 1995,<sup>202</sup> took note of the report of the Special Committee,<sup>203</sup> expressed its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses from Articles 53, 77 and 107 at its earliest appropriate future session. By the same resolution, the Assembly decided that the Special Committee should henceforth be open to all States Members of the United Nations and that it would continue to operate on the basis of the practice of consensus; and also decided that the Special Committee should be authorized to accept the participation of observers of States other than States Members of the United Nations which were members of specialized agencies or of the International Atomic Energy Agency in its meetings, and further decided to invite intergovernmental organizations to participate in the debate in the plenary meetings of the Committee on specific items when it considered that such participation would assist in the work.

- (h) Measures to eliminate international terrorism

By its resolution 50/53 of 11 December 1995,<sup>204</sup> the General Assembly, having examined the report of the Secretary-General of 24 August 1995,<sup>205</sup> strongly condemned all acts, methods and practices of terrorism as criminal and unjustifiable; reaffirmed the Declaration on Measures to Eliminate International

Terrorism annexed to its resolution 49/60 of 9 December 1994; urged all States to promote and implement effectively and in good faith the provisions of the Declaration in all its aspects; called upon all States to take the necessary steps to implement their obligations under existing conventions to observe fully the principles of international law and to contribute to the further development of international law on this matter, and recalled the role of the Security Council in combating international terrorism whenever it posed a threat to international peace and security.

(i) Review of the procedure provided for under article 11 of the Statute of the Administrative Tribunal of the United Nations

By its resolution 50/54 of 11 December 1995,<sup>206</sup> the General Assembly, having considered the report of the Secretary-General,<sup>207</sup> decided to amend the statute of the Administrative Tribunal with respect to the judgements rendered by the Tribunal after 31 December 1995, by deleting article 11 (providing for the submission of an application to the Committee established under Article 96, paragraph 2, of the Charter of the United Nations to request an advisory opinion from the International Court of Justice on a judgement rendered by the Tribunal); also decided that, with respect to judgements rendered by the Tribunal before 1 January 1996, the statute of the Tribunal should continue to apply as if the above amendment had not been made; and stressed the importance for the United Nations staff and the Organization alike of ensuring a fair, efficient and expeditious internal system of justice within the United Nations, including effective mechanisms for the resolution of disputes.

(j) Review of role of the Trusteeship Council

The General Assembly, by its resolution 50/55 of 11 December 1995,<sup>208</sup> noting the proposal made by Malta on the review of the role of the Trusteeship Council,<sup>209</sup> on the proposal made and different views expressed by Member States at the fiftieth session of the General Assembly on decisions relative to the future of the Trusteeship Council and the report of the Secretary-General on the work of the Organization,<sup>210</sup> requested the Secretary-General to invite Member States to submit, not later than 31 May 1996, written comments on the future of the Trusteeship Council; and also requested the Secretary-General to submit to the General Assembly, as early as possible and before the end of its fiftieth session, for appropriate consideration, a report containing comments made by Member States on the subject.

(k) Consideration of 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

By its decision 50/416 of 11 December 1995,<sup>211</sup> the General Assembly decided to bring three draft articles prepared by the International Law Commission<sup>212</sup> to the attention of Member States, and to remind Member States of the possibility that this field of international law and any further development within it might be subject to codification at an appropriate time in the future.

## 9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH<sup>213</sup>

The United Nations Institute for Training and Research continued to implement a number of training programmes. During 1995, the programme included the organization of a course, to be held at Geneva on an annual basis, on multilateral diplomacy and international cooperation, as well as information on the work of international organizations, for French speaking diplomats from developing countries and countries with economies in transition. Moreover, the UNEP/UNITAR second global training programme in environmental law and policy was held from 27 March to 13 April 1995 at UNEP headquarters in Nairobi. In the area of peacekeeping, UNITAR had created correspondence courses on the subject during the year. Furthermore, the Institute had begun a document series relating to issues on debt and financial management. "The role of the lawyer in external debt management" (Document No.5) was published in Geneva in October 1995.

### CONSIDERATION BY THE GENERAL ASSEMBLY

At its fiftieth session, the General Assembly, by its resolution 50/121 of 20 December,<sup>214</sup> adopted on the recommendation of the Second Committee,<sup>215</sup> reaffirmed the relevance of UNITAR, particularly in view of the many training requirements of all Member States, invited the Institute to further develop its cooperation with United Nations institutes and other relevant national, regional and international institutes; and welcomed the decision of the UNITAR Board of Trustees, at its thirty-third session and at its special session, inviting the Institute to open a liaison office in New York, in so far as that was possible within its existing resources and pursuant to General Assembly resolutions 47/227 and 49/125 of 19 December 1994, in order to respond to the training needs of the Missions and delegations of Member states in New York and in order to strengthen its cooperative relationship with the United Nations Secretariat.

### **B. General review of the legal activities of intergovernmental organizations related to the United Nations**

#### 1. INTERNATIONAL LABOUR ORGANIZATION

The International Labour Conference (ILC), which held its 82<sup>nd</sup> Session at Geneva from 6 to 22 June 1995, adopted several amendments to its Standing Orders:<sup>216</sup>

#### *General Standing Orders*

- (a) Two paragraphs have been added to article 19 (Methods of voting);

## *Standing Orders concerning special subjects*

### *Governing Body Elections*

(a) Amendment to article 49 (Governments electoral college), paragraph 4;

(b) Amendment to article 50 (Employers' and Workers' electoral colleges), paragraph 2;

At its 82<sup>nd</sup> Session, the International Labour Conference also adopted a Convention (No. 176) and a Recommendation (No. 183) concerning Safety and Health in Mines,<sup>217</sup> as well as the Protocol of 1995 to the Labour Inspection Convention (n.81), 1947.<sup>218</sup>

The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 16 February to 3 March 1995 and presented its report,<sup>219</sup> which was submitted to the International Labour Conference at its 82<sup>nd</sup> Session. The Committee met again in Geneva from 23 November to 8 December 1995 to adopt its report to the 83<sup>rd</sup> Session of the International Labour Conference (1996).<sup>220</sup>

Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by the Russian Federation of the Seafarer's Identity Documents Conventions, 1958 (No. 108)<sup>221</sup>; by Greece of the Labour Inspection Convention, 1948 (No. 81)<sup>222</sup> by the Congo the Protection of Wages Convention, 1949 (No. 95)<sup>223</sup>; by Peru of the Night Work (Women) Convention (Revised), 1934 (No.41); the Underground Work (Women) Convention, 1935 (No.45); and the Social Security (Minimum Standards) Convention, 1952 (No. 102);<sup>224</sup> by Senegal of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Abolition of Forced Labour Convention, 1957 (No. 105);<sup>225</sup> by Peru of the Right of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122);<sup>226</sup> and by Turkey of the Termination of Employment Convention, 1982 (No. 158)<sup>227</sup>.

The Governing Body of the International Labour Office, which met in Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 297<sup>th</sup> and 298<sup>th</sup> reports<sup>228</sup> (262<sup>nd</sup> Session, March/April 1995), the 299<sup>th</sup> Report<sup>229</sup> (263<sup>rd</sup> Session, June 1995); and the 300<sup>th</sup> and 301<sup>st</sup> Report<sup>230</sup> (264<sup>th</sup> Session, November 1995).

The Working Party on the Social Dimensions of the Liberalization of International Trade, constituted by the Governing Body of ILO at its 260<sup>th</sup> Session (June 1994), held two meetings in 1995 during the 262<sup>nd</sup><sup>231</sup> (March/April 1995) and 264<sup>th</sup><sup>232</sup> (November 1995) sessions of the Governing Body.

The Working Party on Policy regarding the Revision of Standards, constituted within the Committee on Legal Issues and International Labour Standards by the Governing Body of ILO at its 262<sup>nd</sup> Session (March/April 1995), held one meeting during 1995 during the 264<sup>th</sup> (November 1995) Session of the Governing Body.<sup>233</sup>

At its 264<sup>th</sup> Session (November 1995), the Governing Body of ILO adopted the General Characteristics and Standing Orders of Sectoral Meeting.<sup>234</sup>

## 2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

### (a) Membership

Five new members were admitted to the Organization: Azerbaijan, Georgia, Republic of Moldova, Tajikistan and Turkmenistan, at the 28<sup>th</sup> Session of the Conference, held in October 1995.

### (b) General Constitutional and legal matters

#### (i) *Decisions taken at the 28<sup>th</sup> Session of the Conference*

##### a. *Broadening of the mandate of the Commission on Plant Genetic Resources*

The Conference decided in resolution 3/95, to broaden the mandate of the Commission to cover all aspects of genetic resources of relevance to food and agriculture, and to implement the broadening in a step-by-step process. The renamed Commission is “Commission on Genetic Resources for Food and Agriculture”.

##### b. *Phytosanitary standards*

The Conference adopted “Guidelines for Pest Risk Analysis”, “Code of Conduct for the Import and Release of Exotic Biological Control Agents” and a Phytosanitary Standard on “Requirements for the Establishment of Pest Free Areas”.

##### c. *Code of Conduct for Responsible Fisheries*

The Conference adopted, in resolution 4/95, a voluntary “Code of Conduct for Responsible Fisheries”.

##### d. *General Regulations of the World Food Programme and reconstitution of the Committee on Food Aid Policies and Programmes as the Executive Board of the World Food Programme*

The Conference adopted resolution 9/95 transforming the Committee on Food Aid Policies and Programmes into an Executive Board of the World Food Programme and approved the revised General Regulations of WFP, to enter into force on 1 January 1996, subject to the concurrence of the General Assembly of the United Nations.

##### e. *Agreement between the Organization of African Unity and FAO*

By resolution 10/95, the Conference authorized the Director-General to conclude a revised Agreement between the two organizations.

(ii) *The Council*

a. *Coordinating Working Party on the Atlantic Fishery Statistic (CWP)*

At its 108th Session (June 1995), the Council approved revised Statutes and Rules of Procedure of the Coordinating Working Party on Atlantic Fishery Statistics.

b. *Participation of European Community and EC member States representing their overseas territories outside the geographical scope of the Treaty of Rome, in FAO meetings and intergovernmental agreements under FAO auspices*

At its 109<sup>th</sup> Session (October 1995), the Council adopted the following guidelines governing participation in agreements under article XIV of the Constitution:

“(a) In accordance with the provision of article XIV of the Constitution, each agreement should set its own criteria, and terms of conditions for participation by such Member States, bearing in mind the objectives and particular conditions of the agreement concerned.

(b) For agreements declared as falling within the mixed competence of a Member Organization and its Member States, the normal rules governing participation in general meetings of the Organization would apply, which eliminate any possibility of a “double voice” for the member Organization and its Member States.

(c) For agreements declared as falling within the exclusive competence of the Member Organization, the issue of the participation and voting rights should be decided upon in each individual agreement by the contracting parties concerned in the exercise of their sovereign rights, in accordance with the provisions of article XIV of the Constitution. In so deciding, the contracting parties concerned shall exercise care to avoid any possibility of a double voice for the Member Organization and its Member States in any body set up under the agreement, whether from a legal or a practical point of view.

(d) In cases where the contracting parties decide that the agreement concerned should be open to participation both by a member Organization and by individual Members States of that Organization having territories lying outside the geographical scope of the transfer of competence by those Member States to the Member Organization, such participation should be limited to participation on behalf of those territories and representing only the interests of those territories.”

The Council further agreed that the above guidelines should be supplemented by the following four points:

“(i) FAO is a technical organization and it is outside its mandate to deal with matters of essentially a political nature. These matters should be dealt with in the forum of the United Nations or other appropriate forums. The Guidelines ... should be understood in this context.

- (ii) The Guidelines, in essence, indicate that arrangements for participation in agreements established under article XIV of the Constitution should be resolved primarily by the parties to each agreement, in the agreement, in the context of the particular situation prevailing.
- (iii) The action taken by the Council at this session would be without prejudice to the rights and position of each State with respect to matters relating to its sovereignty.
- (iv) As provided for in article XIV itself, in agreements where a Member Organization becomes a party in the exercise of its exclusive competence over the subject matter, that Member Organization would participate with the single rather than a multiple vote, with equal rights of participation with those of the other parties.”

c. *Statutes of the Commission on Genetic Resources for Food and Agriculture*

At its 110<sup>th</sup> Session (November 1995), by resolution 110/1, the Council adopted the Statutes of the Commission Genetic Resources for Food and Agriculture.

(c) Legislative matters

*Agrarian legislation*

Albania (joint ventures), Burundi (rural land law), Guinea (farmers’ organizations), Guinea (rural land law), Guyana (land law), Morocco (agricultural investment), Namibia (land law), United Republic of Tanzania (land law).

*Water legislation*

Guinea (water law), Islamic Republic of Iran (water law), Kenya/United Republic of Tanzania/Uganda—Lake Victoria Basin (international legal/institutional aspects), Malaysia (irrigation and drainage legislation), Nile Basin countries (water law).

*Forestry and wildlife legislation*

Burkina Faso (forestry and wildlife), Cambodia (forestry), Comoros (forestry), Mauritania (forestry and wildlife), Myanmar (forestry), Namibia (forestry), Tonga (forestry), Trinidad and Tobago (forestry), United Republic of Tanzania (Zanzibar forestry).

*Environment legislation*

Cameroon (environmental institutions), Cambodia (environment legislation), Cyprus (protection and management of nature), United Republic of Tanzania (biodiversity in Zanzibar), United Republic of Tanzania (environmental legislation for Zanzibar).

*Fisheries legislation*

Burkina Faso (fish and aquaculture), Central African Republic (fish and aquaculture), Côte D’Ivoire, Lesotho, Lithuania, Madagascar, Togo (fish and aquaculture).

#### Animal and food legislation

Albania (veterinary), Cambodia (veterinary), Indonesia (veterinary), People's Democratic Republic of Laos (food), Lithuania (veterinary), Poland (veterinary), Togo (food), Venezuela (veterinary)

#### *Pesticides legislation*

*Central America and Panama, Lebanon, Malawi.*

#### *Plant legislation*

Albania (seed), El Salvador, Morocco (fruit and vegetables), United Republic of Tanzania (plant breeder's rights).

Other

Cyprus (protection of wetlands), Jamaica (customs duties).

#### *(d) Treaties and amendments*

##### *(i) Conventions and agreements concluded under article XIV of the FAO Constitution*

The FAO Council, at its 108<sup>th</sup> session (June 1995) approved amendments to the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Near East, which entered into force for all parties to the Agreement.

##### *(ii) Conventions and agreements concluded outside the framework of FAO in respect of which the Director-General exercises depository functions*

a. Amendments to the Constitution of the Centre for Marketing Information and Advisory Services for Fishery Products in the Arab Region (INFOSAMAK), were adopted by the General Assembly of the Centre on 16 March 1995, with immediate effect.

b. The Regional Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean entered into force on 11 August 1995.

### 3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

#### *(a) Membership in the Organization*

The Marshall Islands and Nauru became States Members of UNESCO on 30 June and 9 November 1995 respectively.

Macau became an Associate Member of UNESCO on 25 October 1995.

#### *(b) Constitutional and procedural questions*

During 1995, UNESCO amended its Constitution, Rules of Procedure and Financial Regulations.

Resolution 28 C/20.2, adopted on 31 October 1995: the General Conference at its 28<sup>th</sup> session decided to amend, with immediate effect, article V, paragraph 1, of the Organization's Constitution, to change the number of Member States composing the Executive Board from 51 to 58.

(c) *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 sessions at UNESCO Headquarters from 11 to 13 May and from 4 to 7 October 1995, in order to examine the communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3

At its May session, the Committee examined 27 communications of which 16 were examined with a view to determining admissibility, 4 were examined as regards their substance and 7 were examined for the first time. Of the communications examined, none were declared irreceivable and 8 were struck from the Committee's list, either because they were considered as having been settled or because they did not, upon examination of the merits, appear to warrant further action. The examination of 19 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 146<sup>th</sup> Session.

At its October session, the Committee had before its 21 communications, of which 14 were examined as to their admissibility, 4 were examined from the standpoint of their substance, and 3 were examined for the first time. Of the communications examined, none were declared irreceivable and 5 were struck from the Committee's list since they were considered as having been settled or because they did not, upon examination of the merits, appear to warrant further action. The examination of 16 communications was suspended. The Committee presented its report on its examination of these communications to the Executive board at its 147<sup>th</sup> session.

(d) *Copyright activities*

(1.) Organization of statutory meetings

(1.1) Intergovernmental Committee of the Universal Copyright Convention, Tenth

Ordinary Sessions, Paris 27-30 June 1995

On the Basis of studies prepared by the Secretariat, the Committee discussed and drew conclusions, *inter alia*, with regard to the following legal issues:

- Economic impact of the “*droit de suite*” (participation right) in States where it is applicable;
- Search for solutions to combat piracy (illegal use) of intellectual works;
- Search for a legal system for the protection of research results in genetics;

—Legal aspects of the production, diffusion and exploitation of multimedia works;

—Committee's prerogatives for settling differences between the States party to the Universal Copyright Convention.<sup>235</sup>

(1.2) Intergovernmental Committee of the Rome Convention, Fifteenth Ordinary Session, held jointly with ILO and WIPO, Geneva, 3-5 July 1995

The Committee discussed and drew conclusions with regard, *inter alia*, to a study prepared by the Secretariat regarding the implementation of or adherence to the Convention and the impact of digital technology on so-called neighbouring rights.

(2.) Legal assistance in the elaboration or revision of national laws on copyright and neighbouring rights was provided to *seven* Member States (Bolivia, Cuba, Paraguay, Russian Federation, Sudan, Uganda, and Ukraine) at their request. The adoption of the laws will stimulate national creativity and provide a legal framework for the development and smooth functioning of the cultural industry. Experience shows that the best results are obtained when the laws are elaborated on the spot. This allows the experts to meet the interested circles, to listen to their opinions and proposals and to involve domestic lawyers in drafting the bills, thus sharing with them the expert's knowledge and experience.

(3.) Two studies on the impact of copyright on the national economies, in Africa and Asia were prepared, and one on the author's trade, which will be published in UNESCO *Copyright Bulletin* in 1996. These activities are aimed at helping the States better understand the role of copyright in economic and overall development.

(4.) Training activities on copyright and neighbouring rights were carried out as follows:

- (i) A subregional seminar for the Arab States of the Gulf was held in Qatar in December 1995. The seminar was organized in cooperation with the National Commission of Qatar for UNESCO and the UNESCO Regional Office. It afforded an opportunity for governmental officials responsible for copyright and neighbouring rights matters to acquire knowledge in this field and discuss a wide range of questions with which they have to deal in their work.
- (ii) Two additional training courses on copyright were held: a course for Sudanese nationals (Khartoum, March 1995) and another for Ugandan nationals (Kampala, May 1995). The courses were organized in close cooperation with UNESCO National Commissions. The participants were representatives of various circles dealing with copyright. The knowledge they acquired will be used in their everyday work. Both Courses also provided opportunities to discuss the preliminary draft laws on copyright, which were revised in the light of the comments and suggestions made by the participants.
- (iii) In collaboration with the International Confederation of Societies of Authors and Composers, short-term grants for training in the collective administration of authors' rights were provided to seven national from Algeria, the Congo, Djibouti, Ghana, Madagascar and Senegal. These grants allowed the participants to acquire knowledge and practical experience in the function of authors' societies.

(iv) The current situation in developing countries being characterized by a great lack of qualified personnel in the field of copyright and in an endeavour to radically improve it, UNESCO continued its efforts to introduce and develop the teaching of copyright at the university level. A regional committee of experts-teachers of law was held for the African states having English as a common language (Nairobi, September 1995). The Committee was organized in close cooperation with the UNESCO Regional Office. The documents which were adopted were sent to the National Commissions of the States of the region with a request that they be brought to the attention of the Ministries of Higher Education.

(5.) A number of articles and studies on current copyright and neighbouring rights issues have been published in the UNESCO quarterly *Copyright Bulletin*. For the first time, the *Bulletin* was published in Chinese, in cooperation with Chinese authorities.

(6.) As a result of efforts to promote the international protection of copyright and neighbouring rights, in 1995, 15 Member States adhered to the conventions administered either by UNESCO alone, or in cooperation with ILO and WIPO, thus significantly widening international cooperation in this field and further ensuring cultural exchanges among States.

#### 4. WORLD HEALTH ORGANIZATION

##### (a) Constitutional and legal development

During 1995, the following country became a Member of the World Health Organization by deposit of an instrument of acceptance of the Constitution, as provided for in articles 4,6 and 79(b) of the Constitution:

Palau ..... 9 March 1995

Thus, at the end of 1995, there were 190 States Members and two Associate Members of WHO.

In August 1995, there was an exchange of letters between the Government of Japan and WHO on the establishment, as an integral part of the secretariat of WHO, of a Centre for Health Development in Kobe, to be opened in 1996. The WHO Centre will focus on issues relating to health development, particularly with respect to the relationships among social, cultural, economic, demographic, epidemiological and environmental factors and health.

In November 1995, WHO signed, together with UNICEF, UNDP, UNFPA, UNESCO and the International Bank for Reconstruction and Development, a Memorandum of Understanding establishing a Joint and Co-sponsored United Nations Programme on HIV/AIDS (UNAIDS) to further mobilize the global response to the HIV/AIDS epidemic.

*WHO/Regional Office for the Americas (AMRO)/PAHO*, in August 1995, an agreement was signed with Honduras to execute a programme for the prevention and control of AIDS. An agreement was also concluded with Paraguay in support of the institutional strengthening of its health services. In October 1995, an agreement was entered into with the European Communities Humanitarian Office (ECHO) for the provision of humanitarian assistance to the victims of cyclone disaster in region. In September 1995, a multilateral agreement for the continued operation of the Caribbean Epidemiological Center (CAREC)

with the Governments of the Caribbean was concluded to strengthen the capabilities of the subregion in the areas of epidemiology, laboratory technology and public health.

#### (b) Health legislation

In May 1995, the World Health Assembly adopted various resolutions addressing health legislation issues.

Resolution WHA48.7, "Revision and updating of the international Health Regulations", requested the Director-General to take steps to prepare a revision of the International Health Regulations. It also urged Member States to participate in its revision.

Resolution WHA48.11, "An international strategy for tobacco control", requested the Director-General to report to the Forty-ninth World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration or an international convention on tobacco control to be adopted by the United Nations, taking into account existing trade and other conventions and treaties.

In the course of 1995, the *International Digest of Health Legislation* (years 1980-1995) became available on CD-ROM. This greatly improves the accuracy of legislation searches in response to Governments requests for cooperation in drafting legislation.

In 1995, WHO dealt with over 200 requests from Governments and various institutions concerning various topics such as HIV/AIDS legislation, human genetics, reproductive technologies, medical ethics, the rights of patients, etc.

In cooperation with UNAIDS, a worldwide directory of HIV/AIDS legislation has been updated and it is expected that this document, prepared in 1995, will be finalized in July 1996.

*WHO/Regional Office for the Americas/PAHO* Health Legislation continued with its cooperation in the production of the LEYES database containing an index to Latin American and Caribbean health legislation and published in a LILACS compact disk produced by the Latin American Centre on Health Information (BIREME), one of PAHO's centres. Advice was given for the drafting of health codes/general health laws for the Dominican Republic, Guatemala, Nicaragua and Panama. Other areas of work included the development of regulatory frameworks for control of blood, vaccines, traditional medicine, workers health, breast feeding promotion, and others.

## 5. WORLD BANK

### (a) IBRD, IDA and IFC membership

In the course of 1995, Brunei Darussalam became a member of IBRD, Azerbaijan became a member of IDA and Armenia, Azerbaijan, Bahrain, Eritrea, Georgia and the Republic of Moldova became members of IFC. As at 31 December 1995, membership in IBRD, IDA and IFC stood at 179, 158 and 168 respectively.

(b) World Bank Inspection Panel

The World Bank's Inspection Panel was established on 22 September 1993 and started operations in August 1994.<sup>236</sup> The Panel provides groups of private citizens direct access to the Bank if they believe they are being directly and adversely affected by the failure of the Bank to follow its own policies and procedures with respect to the design, appraisal or implementation of a project financed by the Bank or IDA.

In the course of 1995, the Inspection Panel continued to deal with the first request for inspection, and dealt with four other requests. The following is a brief summary of the outcome of these requests.<sup>237</sup>

*Request No.1. Nepal—Proposed Arun III Hydroelectric Project.*

On the request for inspection of the planned Arun III hydroelectric power project in Nepal, registered in November 1994, the Executive Directors agreed with the Panel's recommendation that it should be authorized to carry out an investigation in three areas: environmental assessment, involuntary resettlement and treatment of indigenous peoples. The Panel concluded its investigation in June 1995. After receipt of the Panel's report, the Bank's Management reassessed the project and in August 1995 the President informed the Executive Directors that he had decided not to proceed with the project. He also informed the Executive Directors that he had assured the Nepalese authorities that IDA attached the highest priority to supporting Nepal in devising and implementing an alternative strategy for meeting its needs for electric power.

*Request No.2. Compensation for Expropriated Foreign Assets in Ethiopia*

In April 1995, the Panel received a request alleging that IDA had failed to observe its policies concerning lending to countries that had expropriated foreign property. The Panel recommended that no inspection should take place, and the Executive Directors concurred. In the course of the consideration of the present request, the Executive Directors clarified that (a) the Panel's mandate was limited to reviewing compliance with Bank policies and procedures with respect to the design, appraisal and /or implementation of projects as provided for in paragraph 12 of the resolution establishing the Panel; and (b) the term "project" as used in the resolution and in (a) above had the same meaning as used in Bank practice.

*Request No. 3. Emergency Power Project in the United Republic of Tanzania*

In March 1995, requesters claimed that financing to be provided under an IDA credit to buy and install emergency power generating units was against IDA's Articles of Agreement because private sector financing was available on reasonable terms (namely from the firm the requestors owned or worked for). The Panel did not recommend an investigation because it found during its preliminary review that the Bank Management had considered the alternative financing proposed by the requesters and adequately reported on it to the Executive Directors. The requesters also claimed potential harm as a result of an al-

leged violation of environmental policies. The Panel found that the requesters were not eligible to file the claim since they could not possibly be harmed directly by the alleged violation. In September 1995, the Executive Directors concurred in the Panel's recommendation not to conduct an inspection.

*Request. No. 4. Brazil—Rondonia Natural Resources  
Management Project (Planofloro)*

This request concerns a loan to Brazil to support a project in Rondonia, known locally as Planofloro, designed to correct the failure of the environmental and social components of a number of earlier projects in Rondonia (known as Polonoeste). In June 1995, intended beneficiaries of Planofloro requested inspection and claimed that the project design of Planofloro and the Bank's lack of enforcement of certain covenants had resulted in damages to them, and cited a number of policies including in the areas of indigenous peoples, forestry, investment lending, accounting, financial reporting and auditing, etc., they claimed the Bank had violated. In its response, the Bank stated that it shared some of the concerns raised in the request and noted that the thrust of the complaint was not that the project in itself was causing harm, but that it was not proceeding quickly enough and that Management had not used available legal remedies to accelerate progress. It suggested that lack of suspension of disbursements was not a sign of negligence or lack of concern on the part of Management, but rather a conscious decision to pursue other means to achieve the Projects' objectives.

After an initial field study on the part of one member of the Panel to assess the requester's claims of damage and the adequacy of Management's response, the Panel recommended an inspection. In September 1995, the Executive Directors asked the Panel to "further substantiate the materiality of the damages and to establish whether such damages were caused by a deviation from Bank policies and procedures". Thereafter, the Panel conducted an additional review of the complaints, taking into account further information from the requesters, Bank Management and outside parties, and Management presented to the Panel a draft progress report and a plan of action to remedy past failures and refocus project design and implementation. The Panel concluded by recommending once again that an inspection should be authorized. In January 1996, the Executive Directors decided, in the light of the action plan and the follow-up under way, that it would not be advisable to proceed with an investigation as recommended by the Panel. However, in view of the complexity of the Project and the desire of the Bank to assure its success, the Executive Directors agreed to review Management's progress report in six to nine months and to invite the Panel to assist in the review.

*Request No. 5. Chile: Panguel/Ralco Hydroelectric Complex*

In November 1995, requesters alleged that IFC's participation in the construction of the Panguel/Ralco complex of hydroelectric dams in Chile violated a number of IFC and World Bank policies. The Panel informed the requesters and the Executive Directors of the Bank and IFC that the request was inadmissible because the Panel had no authority to examine complaints about IFC projects. Separately, Mr. Wolfenshon, as President of IFC, instructed IFC Management to conduct an impartial review of the project.

(c) Multilateral Investment Guarantee Agency (MIGA)

*Signatories and members*

The Convention Establishing the Multilateral Investment Guarantee Agency (the Convention)<sup>238</sup> was opened for signature to member countries of the World Bank and Switzerland in October 1985. As of December 1995, the Convention had been signed by 154 countries. During 1995, requirements for membership were completed by Armenia and Colombia.

*Significant decisions of the Council of Governors*

On 28 July 1989, pursuant to resolution No.47 of the Council of Governors adopted on 8 February 1994, the Board of Directors authorized a second increase in MIGA's allowable level of maximum contingent liabilities, from 250 per cent to 350 per cent of its unimpaired capital and reserves.

*Guarantee operations*

MIGA issues investment guarantees to eligible foreign investors in its developing member countries, against the major political (i.e., non-commercial) risks of expropriation, currency transfer, and war and civil disturbance. As at 31 December 1995, MIGA had issued 178 contracts of guarantee, totaling more than US\$ 2.0 billion in maximum contingent liability. In addition, MIGA had six commitment letters outstanding for \$101 million of potential additional coverage. Aggregate foreign direct investment facilitated by all MIGA-insured projects was estimated to be more than \$8.0 billion. Investors holding MIGA guarantees were from: Belgium, Canada, Cayman Islands, France, Germany, Italy, Japan, Luxembourg, Netherlands, Norway, Republic of Korea, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America. Similarly, host countries of MIGA-guaranteed investments included: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Chile, China, Costa Rica, Czech Republic, Ecuador, El Salvador, Ghana, Guyana, Honduras, Hungary, Indonesia, Jamaica, Kazakhstan, Kuwait, Kyrgyzstan, Madagascar, Mali, Morocco, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Russia Federation, Saudi Arabia, Slovakia, South Africa, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uzbekistan, Venezuela and Viet Nam.

*Host Country investment agreements between  
MIGA and its member states*

As directed by article 23(b)(ii) of the Convention, the Agency concludes bilateral legal protection agreements with developing member countries to ensure that MIGA is afforded treatment no less favorable than that accorded by the member country concerned to any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of a compensated guarantee holder. As at 31 December 1995, MIGA had concluded 71 such agreements. In 1995, the Agency concluded 7 agreements with the Bahamas, Bulgaria, Ecuador, Equatorial Guinea, Lebanon, Saudi Arabia, and Venezuela.

In accordance with the directives of article 18(a) of the Convention, the Agency also negotiates agreements on the use of local currency. These agreements enable MIGA to dispose of local currency in exchange for freely usable currency, acquired by it as a result of subrogation arising from a claim paid by the Agency. As at 31 December 1995, MIGA had concluded 71 such agreements. In 1995, the Agency concluded agreement with Equatorial Guinea and Venezuela.

Article 15 of the Convention requires that before issuing a guarantee MIGA must obtain the approval of the host member country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with host country governments that provide a degree of automaticity in the approval procedure. As at 31 December 1995 MIGA had concluded 86 such agreements. In 1995, the Agency concluded agreements with the following 9 Countries: Armenia, the Bahamas, Bosnia and Herzegovina, Equatorial Guinea, Moldova, Pakistan, Republic of Togo, Trinidad and Tobago, Venezuela, and Viet Nam.

#### *IPAnet*

Article 2(b) of the MIGA Convention directs the Agency to “carry out appropriate complementary activities to promote the flow of investments to and among developing member countries”. As a logical up-to-date extension of this mandate, the Investment Promotion Agency Network (IPAnet) was launched over the Internet by MIGA on 7 October 1995 to promote investment in emerging markets in developing countries. IPAnet is an on-line marketing, information dissemination and communications network which links investment intermediaries, private investors and providers of technology and investment-related information throughout the world. When completed, it will carry information on investment opportunities, directories of key individuals, marketing billboards, ongoing electronic conferences and surveys, global databases on foreign investment conditions (including laws and implementing regulations), user-customized news, clubs for specialized groups of users and a pre-navigated tour of investment-related information on the Internet. IPAnet was initially intended for subscription by private investors and intermediaries such as investment promotion agencies (IPAs) in MIGA member countries, governments, business chambers and associations, financial institutions, and investment consultants.

#### (d) International Centre for Settlement of Investment Disputes

##### *Signatures and ratifications*

During 1995, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)<sup>239</sup> was signed by seven countries; Algeria, the Bahamas, Bahrain, Guatemala, Mozambique, Oman and Panama. Three of them—the Bahamas, Mozambique and Oman—as well as Bolivia, Nicaragua, Saint Kitts and Nevis, Uzbekistan and Venezuela, ratified the ICSID Convention in the course of the year. With these new signatures and ratifications, the number of the signatory States and Contracting States reached 139 and 123 respectively.

### *Disputes before the Centre*

During 1995, arbitration proceedings were instituted in three new cases: *Leaf Tobacco A. Michaelides S.A. and Greek-Albanian Leaf Tobacco & Co. S.A. v. Republic of Albania* (Case ARB/95/1); *Cable television of Nevis, Ltd. And Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis* (case ARB/95/2); and *Antoine Goetz and others v. Republic of Burundi* (case ARB/95/3).

As at 31 December 1995, four other cases were pending before the Centre: *American Manufacturing & Trading, Inc. v. Republic of Zaire* (case ARB/93/1); *Philippe Gruslin v. Government of Malaysia* (case ARB/94/1); *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie m.b.H V. Government of Madagascar* (case COIN/94/1; and *Tradex Hellas S.A. v. Republic of Albania* (case ARB/94/2).

## 6. INTERNATIONAL MONETARY FUND

### (a) Membership Issues

#### (i) *Accession to membership*

The Fund's membership increased by two countries in 1995. Brunei Darussalam became a member on 10 October 1995, with a quota of SDR 150 million.<sup>240</sup> On 20 December 1995, the Executive Board decided that Bosnia and Herzegovina had fulfilled the necessary conditions to succeed to the membership of the former Socialist Federal Republic of Yugoslavia, with a quota of SDR 121.2 million. Henceforth, the total membership in the Fund as at 31 December 1995, increased to 181 countries.

#### (ii) *Status under article VIII or XIV*

Under article XIV, section 2, of the Fund's Articles of Agreement, when joining the Fund a member may avail itself of the transitional arrangements and thus may maintain and adapt to changing circumstances the restrictions on the making of payments and transfers for current international transactions that were in existence at the time it became a Fund member. Article XIV does not, however, permit a member to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of the Fund. Members of the Fund formally accepting the obligations of article VIII, sections 2, 3, and 4, undertake, among other things, to refrain from (a) imposing restrictions on the making of payments and transfers for current international transactions, or (b) engaging in multiple currency practices without the Fund's approval. During 1995, the following 15 member countries formally accepted the obligations of article VII, raising the total number of countries that have accepted these obligations as at 31 December 1995 to 113 members: Botswana, Brunei Darussalam, Croatia, Czech Republic, Guinea, Jordan, Kyrgyzstan, Malawi, Philippines, Poland, Republic of Moldova, Sierra Leone, Slovakia, Slovenia, and Zimbabwe.

(iii) *Overdue financial obligations to the Fund*

Bosnia and Herzegovina and Zambia eliminated their protracted arrears (i.e., financial obligations that are overdue by six months or more) to the Fund in 1995. As a result, the number of countries in protracted arrears decreased from eight in 1994 to six (as at 31 December 1995). Of these six members, the following four members remain ineligible to use the general resources of the Fund pursuant to the declarations issued under article XXVI, section 2(a):<sup>241</sup> Liberia, Somalia, Sudan and Zaire.

Following the successful completion of the “rights accumulation programme,” Zambia cleared its arrears to the Fund on 20 December 1995, with the help of bridge loans from several members of the Fund.<sup>242</sup> Following this clearance and the lifting of Zambia’s ineligibility to use the Fund’s resources, the Executive Board approved successor (SAF/ESAF) arrangements totaling SDR 883.4 million, of which SDR 833.4 million was disbursed immediately.

Bosnia and Herzegovina cleared its arrears to the Fund on 20 December 1995 with the help of a bridge loan from another member and succeeded to membership in the Fund. The Fund approved a drawing of SDR 30.3 million (25 per cent of quota) under the Fund’s policy on emergency assistance in post-conflict countries to support the country’s economic programme for 1996. The settlement was part of a multilateral collaborative effort to normalize the country’s relations with the international community and to lay the foundations for economic reconstruction and development.

(iv) *Suspension of voting rights and compulsory withdrawal—Sudan and Zaire*

a. *Sudan*

The Executive Board decided to suspend the voting and certain related rights of Sudan on 6 August 1993, in accordance with article XXVI, section 2(b). The procedure for compulsory withdrawal from the Fund was initiated on 8 April 1994, in accordance with Article XXVI, section 2(c), by the issuance of a complaint by the Managing Director. During 1995, the complaint was considered by the Executive Board on two occasions, but no further action was taken.

b. *Zaire*

The Executive Board decided to suspend the voting and certain related rights of Zaire, effective 2 June 1994. The decision to suspend Zaire’s voting rights was reviewed by the Executive Board on 3 August 1995, and it was decided that, unless Zaire resumed active cooperation with the Fund in the areas of policy implementation and payments performance, the Board would consider initiating the procedure for compulsory withdrawal. At the end of 1995, however, no further action had been taken against Zaire.

(v) *Annual Meetings*

a. *Representation of member countries*

Special circumstances in 1995 involving Liberia, Somalia, the Sudan and Zaire raised issues concerning their participation at the 1995 Annual Meetings. There were also issues relating to representation of countries whose member-

ship applications were outstanding or at issue, and attendance of observers to the Annual Meetings, as follows:

- **Liberia:** In March 1995, the Executive Board completed the twelfth post-ineligibility review of Liberia's arrears to the Fund and decided to defer a decision on whether procedure for the suspension of Liberia's voting rights in the Fund should be initiated. After numerous attempts at a peaceful settlement of the civil war, a ceasefire was declared in August 1995 and a new power-sharing agreement was reached among the competing factions. In the light of this situation, the Executive Board decided to invite the Governor and the Alternate Governor, appointed by the Liberian authorities, to attend the Annual Meetings.
- **Somalia:** Owing to the severity of the hostilities confronted in Somalia, the process of government had collapsed. There was no effective government in the country. Accordingly, the Executive Board decided to leave the seat of Somalia unfilled at the 1995 Annual Meetings.
- **Sudan:** In accordance with Schedule L of the Fund's Articles of Agreement, which applied following the suspension of the Sudan's voting rights (pursuant to article XXVI section 2(b)), the Governor and Alternate Governor for Sudan had ceased to hold office. Sudan did thus not participate at the 1995 Annual Meetings.
- **Zaire:** As with the Sudan, in view of the suspension of Zaire's voting rights with effect from 2 June 1994, the Governor and the Alternate Governor appointed by Zaire had ceased to hold office. Representatives of Zaire were therefore not permitted to attend the 1995 Annual Meetings.

*b. New and successor members*

- **Brunei Darussalam:** As the Executive Board had approved the membership resolution and forwarded it to the Board of Governors for consideration at the Annual Meetings, Brunei Darussalam was invited as an observer. The resolution was approved on the first day of the Meetings.
- **Andorra:** Because Andorra had expressed interest in applying for membership in the Fund, it was invited to attend the Annual Meetings as a special guest.
- **Bosnia and Herzegovina:** In December 1992, the Fund decided that the Socialist Federal Republic of Yugoslavia had ceased to exist as a member and established a mechanism under which, when certain conditions were met, each of its five successor republics could succeed to its membership in the Fund.<sup>243</sup> In accordance with those decisions, the Republic of Croatia, the Republic of Slovenia, and the Former Yugoslav Republic of Macedonia became members of the Fund in 1993. However, as of the 1995 Annual Meetings, Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) had not become members of the Fund. In view of the pending succession of Bosnia and Herzegovina to membership, representatives of that country were invited to attend the 1995 Annual Meeting as observers. No such invitation was extended to the Federal Republic of Yugoslavia (Serbia and Montenegro).

*c. Attendance of observers*

Section 5(b) of the Fund's By-Laws provides that the Chairman of the Board of Governors, in consultation with the Executive Board, may invite observers to attend any meeting of the Board of Governors. The list of observers for the 1995

Annual Meetings was the same as in 1994, except for the following modifications and additions: GATT was replaced by the World Trade Organization, while the European Investment Fund (a joint venture between the European Investment Bank, the European Commission and a group of banks and financial institutions from the member countries of the European Union) and the African Export-Import Bank (whose shareholders comprise African Governments, central banks, financial institutions, and private investors as well as foreign financial institutions) were added to the list. The Council of Arab Economic Unity, the Great Lakes Economic Community, the Southern Cone Common Market and the West African Economic Community were removed from the list.

(b) Fund facilities

(i) *Compensatory and Contingency Financing Facility*

On 20 December, the Executive Board adopted a decision that extended the period within which a member may obtain financial assistance from the Fund under the cereal imports component of the Compensatory and Contingency Financing Facility (CCFF) from 13 January 1996 to 15 January 1997.<sup>244</sup>

(ii) *Systemic Transformation Facility*

The Executive Board, on April 29 decided not to extend the Systemic Transformation Facility (STF)<sup>245</sup> beyond 1995. In accordance with the terms of the decision establishing the Facility, the period within which a member could make a first purchase expired on 30 April 1995, and the period within which the second purchase might be made expired on 31 December 1995.

(iii) *Enhanced Structural Adjustment Facility*

The Instrument to Establish the ESAF Trust,<sup>246</sup> was amended by the Executive Board to permit the extension of annual arrangements for a period not exceeding six months in cases where (a) an extension is necessary to complete the mid-year review and (b) there is good prospect that the member will achieve the objectives of the programme within the extended period. Moreover, the list of members eligible for assistance under the ESAF Trust Instrument was amended to include Azerbaijan, Eritrea, and the Republic of the Congo.<sup>247</sup>

(c) Tenth General Review of Quotas

Article III, section 2(a) of the Fund's Articles of Agreement requires the Board of Governors to conduct a general review of quotas at intervals of not more than five years. Taking into account the date by which the Ninth General Review of Quotas should have been concluded, the five-year period corresponding to the Tenth General Review of Quotas ended on 31 March 1993. In April 1993, the Board of Governors adopted a resolution extending the work on the Tenth General Review of Quotas and requesting the Executive Board to submit a report and proposals by 31 December 1994. The Tenth General Review of Quotas was completed by the Board of Governors on 17 January 1995 (where it endorsed the report by the Executive Board).

In its report, the Executive Board had concluded that the overall size of the Fund for the time being was broadly sufficient to enable the Fund to promote its purposes effectively and to fulfil its central role in the international monetary

system. In reaching this conclusion, the Executive Board had noted that the increased quotas, which had come into effect in 1992 under the Ninth General Review, provided the Fund with substantial useable resources.

(d) Guidelines on Performance Criteria with Respect to Foreign Borrowing

The Guidelines on Performance Criteria with respect to Foreign Borrowing<sup>248</sup> were amended by the Executive Board on 25 October 1995. The revised guidelines provided that when the size and rate of growth of external indebtedness is a relevant factor in the design of an adjustment programme, a performance criterion relating to official and officially guaranteed foreign borrowing will be included in upper credit tranche arrangements. The criterion will include foreign loans with maturities of over one year and, in appropriate cases, other financial instruments that have the potential to create substantial external liabilities for Governments. The criterion will usually be formulated in terms of debt contracted or authorized. However, in appropriate cases, it may be formulated in terms of net disbursements or net changes in the stock of external official and officially guaranteed debt. Flexibility will be exercised to ensure that the use of the performance criterion will not discourage capital flows of concessional nature by excluding from the coverage loans defined as concessional on the basis of currency-specific discount rates based on the OECD commercial interest reference rates, and including a grant element of at least 35 per cent, provided that a higher grant element may be required in exceptional cases. Normally, the performance criterion will include a subceiling on foreign debt with maturities of over one year and up to five years. Additionally subceilings may be also included on debt with specified maturities beyond five years or worth a specified grant element lower than 35 per cent.

Under the revised guidelines, the staff is encouraged to include short-term debt of a maturity of less than one year in the performance criteria relating to foreign borrowing, while allowing for some flexibility in the light of the different institutional reporting procedures employed by members and the statistical difficulties in recording that category.

(e) Surveillance over Exchange Rate Policies

On 10 April 1995, the Executive Board completed the biennial review of the 1977 Decision on Surveillance over Exchange Rate Policies.<sup>249</sup> The review took place against the background of ongoing systemic changes. In particular, the increased globalization of capital markets and the greater mobility of cross-border capital flows presented new challenges for the Fund's surveillance. The Executive Board noted that the December 1994-95 financial crisis in Mexico had illustrated the speed and intensity with which international capital markets could react to developments in a country and spread their impact to others. It underscored the importance of improving the Fund surveillance so as to prevent such a crisis from recurring. The Executive Board examined the ways of enhancing the effectiveness of surveillance, using the Fund's surveillance experience with Mexico as an illustrative example.

In the light of that review, the Executive Board decided to amend the Principles of Fund Surveillance over Exchange Rate Policies to take account of capital flows more explicitly. Accordingly, the Fund, when conducting its sur-

veillance of members' exchange rate policies, shall consider unsustainable flows of private capital among the developments that might indicate the need for discussion with a member.

Under its revised surveillance policy, the Fund's appraisal of a member's exchange rate policies shall be based on an evaluation of the developments in the member's balance of payments, including the size and sustainability of capital flows, against the background of its reserve position and its external indebtedness. This appraisal shall be made with the framework of a comprehensive analysis of the general economic situation and economic policy strategy of the member, and shall recognize that domestic as well as external policies can contribute to timely adjustment of the balance of payments. Further, the appraisal shall take into account the extent to which the policies of the member, including its exchange rate policies, serve the objective of the continuing development of the orderly underlying conditions that are necessary for financial stability, the promotion of sustained sound economic growth, and reasonable levels of employment.

(f) Technical assistance-establishment of a Framework Administered Account

Pursuant to article V, section 2(b), of the Fund's Articles of Agreement, the Executive Board decided, on 31 April 1995, to establish an administered account<sup>250</sup> for the administration, by the Fund, of resources contributed by Governments and official agencies of countries and intergovernmental organization for the purpose of technical assistance activities (including seminars for training of officials in recipient countries). These contributions may take the form of grants or concessional loans and may be used by the Fund for technical assistance activities consistent with its purposes in accordance with the Instrument annexed to the Decision. Under the Framework Account, separate subaccounts will be established to administer the contributions by individual countries.

(g) Valuation of the Special Drawing Right (SDR)

(i) *Revision of SDR valuation basket*

The list of currencies, and the respective weights on the currencies that determine the value of SDR, were reviewed by the Executive Board on 25 September 1995.<sup>251</sup> The Executive Board decided that, effective 1 January 1996, the list of currencies in the valuation basket shall remain unchanged. With respect to the weight of each of these currencies to be used to calculate the amount of each of these currencies in the basket, it was decided to adjust the weight by subtracting 1 per cent from the weight of the United States dollar and adding 1 per cent to the weight of the Japanese yen, as follows:

<i>Currency</i>	<i>Weight (per cent)</i>
United States dollar	39
Deutsche mark	21
Japanese yen	18
French franc	11
Pound sterling	11

(ii) *Valuation of SDR*

Following the Revision of the SDR valuation basket, the Executive Board on 29 December 1995 decided to amend rule O-1 of the Fund's Rules and Regulations concerning the valuation of the SDR. It was decided that the value of the SDR shall be the sum of the values of the following amounts of the following currencies:

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<i>Currency</i>	
United States Dollar	0.582
Deutsche mark	0.446
Japanese yen	27.2
French franc	0.813
Pound sterling	0.105

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(h) *Collaboration with the World Trade Organization*

In January 1995, the Executive Board discussed the relationship between the World Trade Organization and the Fund. Executive Directors emphasized the importance of close, constructive cooperation between the two institutions, and noted that, although they had different mandates, the Fund and WTO should be mutually supportive. A three-stage process in the development of relations between the Fund and WTO was broadly endorsed by Executive Directors. The first stage established transitional arrangements for continuing Fund participation in the new WTO Committee on Balance of Payments Restrictions in consultation on trade measures taken to safeguard the balance of payments. The second stage would consider specific modalities for closer cooperation, with a view to designing a cooperation agreement for working relations between the institutions, including issues related to observer status and the exchange of documents and information. In the third stage WTO and the Fund would discuss in greater detail areas that were not fully resolved in stage two or which may need more time to define, such as issues related to "global coherence in economic policy making", as stated in the WTO Charter.

7. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(a) *Privileges, immunities and facilities*

Ninety-three States have undertaken to apply to ICAO the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the United Nations General Assembly in November 1947.<sup>252</sup> No additional State undertook to apply the Convention to ICAO during 1995.

(b) *Convention on International Civil Aviation*<sup>253</sup>

Palau adhered to the Convention on International Civil Aviation on 4 October 1995, bringing the number of Contracting States to 184. The number of parties to the International Air Services Transit Agreement rose to 110 with the

deposit of instruments of acceptance by the former Yugoslav Republic of Macedonia (succession), the Democratic People's Republic of Korea, Slovakia (succession), Croatia (succession), Estonia, Palau, Antigua and Barbuda (succession), Bosnia and Herzegovina (succession) and Slovenia (succession). The number of parties to the International Air Transport Agreement remained unchanged at 11.

(c) Registration of agreements and arrangements

In 1995, the total number of agreements and arrangements registered with the Organization pursuant to Article 83 of the Convention rose by 31 to 3,946.

(d) Legal meetings

During the 31<sup>st</sup> session of the ICAO General Assembly, the Legal Commission held three meetings from 28 September to 2 October 1995, to discuss, *inter alia*, the work programme of ICAO in the legal field (see below) and the privileges and immunities of ICAO. Noting that there were 102 parties to the Convention on the Privileges and Immunities of the Specialized Agencies, the Commission decided to invite the Assembly to appeal again to all contracting states which had not done so to become parties to the Convention. The Assembly approved the decision.

A Diplomatic Conference held in Montreal from 25 to 29 September 1995 adopted the authentic text of the Convention on International Civil Aviation and of the Amendments thereto in the Arabic Language.

A regional legal seminar on air law, attended by States from the Asia and Pacific region, was held in Bangkok from 11 to 13 January 1995 to discuss major issues and challenges in the legal field.

(e) Work programme of the Legal Committee

Pursuant to a decision of the Assembly at its 31<sup>st</sup> session of the Council at its 146<sup>th</sup> Session, the General Work Programme of the Legal Committee is as follows:

- (i) Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework;
- (ii) Modernization of the Warsaw System and review of the question of ratification of international air law instruments;
- (iii) Liability rules which might be applicable to air traffic service (ATS) providers as well as to other potentially liable parties—liability of air traffic control agencies;
- (iv) United Nations Convention on the Law of the Sea: implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments.

Regarding the first item, the Assembly decided that the Council should establish a panel of legal and technical experts on the establishment of a legal framework with regard to global navigation satellite systems (GNSS) on 6 December 1995, the Council established the panel, which will meet in November 1996.

On the second item, the Council on 15 November 1995 agreed that a secretariat study group should be established to assist the Legal Bureau in developing a mechanism within the framework of ICAO to accelerate the modernization of the Warsaw System. The Study Group was subsequently established by the Secretariat.

(f) Collection of national aviation laws and regulations

The collection of national aviation laws and regulations in the Legal Bureau was maintained up to date on the basis of material received from States.

## 8. UNIVERSAL POSTAL UNION

(a) Legal status, privileges and immunities of the Universal Postal Union

No changes have been made to the conventions which currently govern the legal status, privileges and immunities of the organization.

With respect to the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the United Nations General Assembly, 96 member States extend the privileges and immunities provided for in that Convention to UPU, representatives of member States, staff members of the International Bureau of UPU and experts.

(b) Seoul Congress

At the request of the participants in the 1994 Seoul Congress, the Council of Administration began to study a number of legal issues in 1995. This work is still under way and will probably continue for the next two years, in view of its importance. The main issues under examination are the following:

(i) *Study of the legal, regulatory, technological and commercial environment in relation to the single postal territory*

Under article 1 of the Constitution of the Universal Postal Union, the States members of UPU comprise a single postal territory for the reciprocal exchange of letter-post items. The trend towards increased deregulation, liberalization and competition in many countries, as well as the globalization of trade, are gradually changing the legal and commercial environment to which postal administrations had been accustomed. The Universal Postal Union has undertaken a study of the legal, regulatory and commercial repercussions on its own single-territory model.

(ii) *Study of the relationship between certain international agreements and the concept of free circulation of postal items*

The aim, in particular, is to study the compatibility between international trade agreements and the provisions of the organic Acts of UPU concerning *inter alia*, the free circulation of postal items.

(iii) *The status of UPU members and the representation of the parties involved in postal activity*

In view of the changes which have taken place in the postal communications market, such as the emergence of strong competition, the Universal Postal Union considers that it should begin now to reflect on its positioning in that market and on the situation of the other parties involved in postal activity, especially in terms of reciprocal relations at the international level, and to study, in particular, the conditions on which other actors, users and consumers, employees and regulatory bodies could become more closely associated with the work of the Union so that the latter may become a forum for expression and debate by all parties involved in postal activity.

(iv) *Mission of the Universal Postal Union*

Taking into account the consequences of the development of competition, the liberalization of trade in services and the need to consider the interests of all the parties involved in postal activity, the Seoul Congress of 1994 instructed the UPU Council of Administration to conduct an in-depth review of the mission of UPU. Without calling into question the purpose of UPU, as defined in its Constitution, the Congress considered that the Union's mission should be adapted to the new competitive environment.

(v) *Revision of the Acts*

In the context of the restructuring of the organs of the Union, it was decided that some of the legislative functions of the Congress should be transferred to the two permanent organs of UPU: The Council of Administration and the Postal Operations Council. To that end, it was necessary to revise the Acts. This process was begun at the Seoul Congress and is still underway. The primary objective of this revision is, on the one hand, to make it possible to modify the regulations quickly without waiting for the approval of the Congress, and on the other, to produce clear, simple and flexible texts on the provision of client services.

## 9. INTERNATIONAL TELECOMMUNICATION UNION

### (a) Membership of ITU

During 1995, no new States become Members of ITU. In the preceding year, two new States had become Members of the Union: Kyrgyzstan, and Tajikistan. As of 31 December 1995, there were 184 Members of the Union

In the course of 1995, 13 Member States ratified and 4 Members acceded to the Constitution and the Convention of ITU<sup>254</sup> had been adopted in 1992 in Geneva. As of the end of the year, 79 Members had either ratified or acceded to those instruments. Further, in 1995, 3 Members ratified the instruments amending the ITU Constitution and Convention (Geneva, 1992) which had been adopted by the Plenipotentiary Conference of ITU (Kyoto, 1994).

(b) Legislative matters

*The Council*

The annual session of the ITU Council was held at ITU headquarters in June 1995. The session was attended by representatives of the 46 Members that were elected to the Council. Among the major actions by the Council was the adoption of its new working methods and structures and the approval of the first biennial budget of the union, replacing the old practice under which budgets were submitted and approved annually. The Council also resolved to convene the first World Telecommunication Policy Forum in Geneva in 1996 to discuss the theme "Global Mobile Personal Communications by Satellite".

(c) Legal assistance and advice

The Legal Service, which became the Legal Affairs Unit (JUR) on 1 January 1992, first within the External Relations Department and then in the Office of the Secretary-General, has continued to perform activities which have remained, in substance, similar to past years. The Legal Affairs Unit carried out studies and provided legal opinions on a broad range of documents in order to enable the Secretary-General to exercise fully his functions as legal representative of the Union in its relations with the Governments of States Members of the Union, other international organizations and the host country. The Legal Affairs Unit has also exercised the legal functions entrusted to the Secretary-General in his role as depository for international treaties and agreements. The Legal Affairs Unit was closely involved in preparatory negotiations concerning the construction of a new ITU office building and in an increasing number of issues involving copyright and intellectual property arising from the expanding activities of the Union in electronic publishing and multimedia. The Unit was actively involved in negotiations with the host country regarding the implications for ITU and for the Telecom 95 Exhibition, of the introduction of a value-added tax in Switzerland.

In addition, the Unit conducted studies and provided legal opinions in respect of all types of documents and in a wide variety of areas, including general public international law, telecommunications law, treaty law, matters related to personnel, finance, development, privileges and immunities, and the purchase and rental of equipment and services. It has also participated actively in drafting revisions to the Staff Regulations and Staff Rules. In addition, the Legal Affairs Unit has been extensively involved in preparing the numerous contracts and agreements reached within the framework of the Union pursuant to the holding of regional and world telecommunication exhibitions. Finally, the Unit participated in the work of many conferences and meetings of the Union, especially the World Radiocommunication Conference.

(d) World Radiocommunication Conference

The World Radiocommunication Conference (WRC-95) was held in Geneva in October 1995 with the participation of 1,223 delegates from 140 countries, as well as observers from the United Nations, international organizations and specialized agencies. The Conference was convened in response to resolution 3 of the Plenipotentiary Conference of ITU (Kyoto, 1994).

In conformity with its terms of reference agenda, the Conference adopted a simplified, partial revision of the Radio Regulations and appendices thereto, as contained in the Final Acts of WRC-95. The Radio Regulations are binding international instruments, with the force of international treaties, as they form part of the administrative regulations of ITU which are expressly reference in and complement the Constitution and the Convention of the Union. WRC-95 also made significant decisions concerning the use of non-geostationary orbits by mobile satellite services for mobile communications. The final Acts of the Conference were signed by the delegates of 130 Members of ITU. The revised provisions of the Radio Regulations shall apply as of 1 June 1995, while certain specified provisions shall apply provisionally as of 1 January 1997.

## 10. INTERNATIONAL MARITIME ORGANIZATION

### (a) Membership of the Organization

During 1995, the following countries become Members of the International Maritime Organization: South Africa (28 February 1995), Azerbaijan (15 May 1995) and Lithuania (7 December 1995). As at 31 December 1995, the number of Members of IMO was therefore 153. There are also two Associate Members.

### (b) Review of legal activities of IMO<sup>255</sup>

#### (i) *Liability for damage caused by hazardous and noxious substances*

##### a. *Draft HNS convention*

The Legal Committee concluded its work on a draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (draft HNS Convention) at its seventy-second session in April 1995. The Committee recommended that the draft should be forwarded to a diplomatic conference for consideration and adoption in the spring of 1996

The HNS Convention establishes a system of compensation for liability for damage caused by hazardous and noxious substances. It covers in principle all kinds of hazardous and noxious substances and defined its scope of application by reference to existing lists of such substances, such as the International Maritime Dangerous Goods Code (the IMDG Code) and Annex II to MAROPOL. It goes further in its scope than the oil pollution compensation regime in that it covers not only pollution but also the risks of fire and explosion.

It consists of a two-tier system, providing for strict liability of the shipowner, which should be covered by compulsory insurance. This is supplemented by a second tier, the HNS Fund, financed by cargo interests. In principle, compensation will be paid from the HNS Fund when the shipowner's liability is insufficient to provide full compensation or when no liability arises under the first tier. Contribution to the second tier will be levied on persons in the Contracting States who receive a certain minimum quantity of HNS cargo during a calendar year. The tier will consist of one general account for chemicals and two or three separate accounts. The system with separate accounts had been seen as a way to avoid cross-subsidization between different HNS substances.

The general account would include two sectors, the first with contributions in respect of gaseous, liquid and solid chemicals, the second from large volume and low hazard substances. It was agreed that the separate accounts for liquefied natural gas (LNG) and within square brackets, liquefied petroleum gas (LPG), would be named in the draft.

*b. Definition of HNS cargo*

The Legal Committee noted the extensive practical difficulties which would be caused by the incorporation of a free-standing list including all substances referred to in the draft. These difficulties arise not only from the high number of substances (approximately 6,000) but also from the fact that the lists mentioned in article 1, 5(a) were updated on a regular basis. In view of the explanations, the Committee decided that HNS substances should be defined by reference to the existing lists rather than by reference to a free-standing list.

The Committee's discussions were inconclusive with regard to the inclusion or exclusion from the scope of the draft Convention of specific substances such as radioactive materials and coal and other low hazard bulk cargo.

Many delegations supported the exclusion of coal from the draft HNS Convention, indicating that reliable statistics showed that coal could not cause any damage to the environment or outside the ship. Other delegations favoured the retention of coal, pointing out that coal had been included in the draft not only to compensate for HNS damage to the environment but also to cover fire and explosion risks. The Committee agreed to include two alternative texts, one of which would exclude coal and one based on the retention of coal, within square brackets in the draft convention. The final decision on the inclusion or exclusion of those substances would be left for the Diplomatic Conference.

*c. Other outstanding issues*

The Committee recalled that linking the HNS Convention to general limitation treaties and existing national limitation regimes had been proposed in order to respond to the need to make better use of the available insurance capacity. A compromise to enable States party to the HNS Convention to remain party to the other limitation conventions was discussed. Those States would however, have to ensure that supplementary compensation was provided to fill any potential gap in the first tier caused by this linkage without increasing the liabilities of the second tier. The Committee decided that informal consultations should continue with a view of reaching decisions regarding the linkage with other limitation regimes.

*d. Diplomatic conference*

At its seventy-fourth session, in June 1995, the IMO Council unanimously endorsed the recommendation of the Legal Committee that a diplomatic conference of three weeks' duration should be convened in early 1996 to consider the adoption of the draft HNS Convention as well as the draft Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims. The IMO Assembly, at its nineteenth regular session, in November 1995, confirmed the decision.

(ii) *Consideration of the revision of the Convention on Limitation of Liability for Maritime Claims, 1976*<sup>256</sup>

The Legal Committee continued with the consideration of a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC) with a view to concluding the work in time to submit the draft for consideration and adoption by the HNS Conference 1996. The Committee had confirmed at its previous session that the scope of revision should extend only to the limits and procedures for amendments.

The Committee addressed the issue of updating the limits of compensation for passenger claims to correspond to the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (Athens Convention).<sup>258</sup> There was overwhelming support for removing the overall ceiling per incident in respect of passenger claims for death and personal injury. The deletion would have the effect that individual passenger claims would only be limited in accordance with the Athens Convention and corresponding regimes. The Committee further agreed that States parties should be permitted to set higher limits of liability for personal injury or loss of life in respect of passengers than those prescribed in the draft Protocol.

In the light of the recent ferry tragedy in the Baltic, it was suggested that the introduction of compulsory insurance should be considered to ensure that sufficient compensation would be available. However, it was noted that this matter, which would require careful consideration as well as consultation with the insurance industry, has been raised too late to be dealt with in the ongoing revisions of the Convention.

At its seventy-second session (3 to 7 April 1995), the Committee unanimously agreed to recommend to the IMO Council that the Diplomatic Conference to be convened to consider the draft HNS Convention should also deal with the draft Protocol to the 1976 LLMC. The recommendation was endorsed by the Council at its seventy-fourth session.

(iii) *Technical Cooperation subprogramme for maritime legislation*

The Committee noted the information and progress report on the implementation of the subprogramme for maritime legislation in the Integrated Technical Cooperation Programme from January to June 1995.

(iv) *Draft convention on wreck removal.*

At its seventy-third session in October 1995, the Legal Committee received the text of a draft international convention on wreck removal prepared by Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland. Most delegations regarded the subject of wreck removal as important for the Committee and one which should receive high priority. The Committee, therefore, decided to include the subject in its work programme for 1996.

(v) *Compensation for pollution from ships' bunkers*

The Legal Committee at its seventy-third session considered a number of submissions on the issue of compensation for pollution from ships' bunkers. In one of them, attention was drawn to the overriding concern to provide a mecha-

nism by which coastal States can be assured that all visiting vessels have the means to compensate States for bunker oil damage.

In another submission reference was made to the significant number of potentially disastrous incidents which had taken place involving oil pollution caused by ships' bunkers and also to experience which had shown that spills of oil from non-tankers could be just as damaging and costly as those covered by the regime created by the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. Sponsoring delegations were therefore seeking the commitment of the Legal Committee to include as a matter of high priority the development of free-standing compensation regime for damage caused by the bunkers of non-tankers. It was suggested that the regime should follow the precedents set by CLC and draft as far as practicable and, in particular, provide for strict liability and compulsory insurance cover.

The Committee decided that the subject should be considered on a priority basis and it was included in the Work Programme for 1996.

(vi) *Compulsory insurance*

At its seventy-first session in October 1994, the Legal Committee in the light of discussions on the limitation of liability for passenger claims, agreed to include the subject of compulsory insurance in its work programme for the 1996-1997 biennium. The Committee at its seventy-third session decided to retain the subject as one of the priority subjects in its 1996 work programme.

(vii) *Consideration of the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, 1952*<sup>61</sup>

The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the International Maritime Organization and the United Nations Conference on Trade and Development, held its eighth session at the headquarters of the International Maritime Organization.

London, from 9 to 10 October 1995 and considered the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, 1952.

The Group started to consider a set of revised draft articles prepared by the secretariats of UNCTAD and IMO and decided to continue with its consideration at its next session to be held at UNCTAD, Geneva, from 2 to 6 December 1996.

(viii) *Salvage Convention, 1989*<sup>62</sup>

The Committee considered submissions by Greenpeace International and the International Salvage Union concerning the Salvage Convention, 1989, one relating to the definition of damage to the environment (article 1), and the other to claims for special compensation (article 14) and the geographic restriction with regard to the application of the special compensation provisions.

The Committee was requested to amend the Convention or to give a uniform interpretation to define all offshore areas as being adjacent to coastal areas. Most delegations were of the view that it was not appropriate to initiate any amendment procedure. Regarding the uniform interpretation requested, many delegations were of the view that was a matter for the parties to the Salvage Convention.

The Committee agreed that the matter had not received sufficient support to be included in the work programme. However it was suggested that interested delegations could bring it up later under the agenda item "Any other business".

(ix) *Consideration of a draft convention on offshore mobile craft*

At its seventy-third session (October 1995) the Legal Committee recalled that at its seventy-second session in April 1995, it had given preliminary consideration to a new draft convention on offshore mobile craft (the "Sydney draft") prepared by the Committee Maritime International (CMI). It was noted that most States already treated offshore mobile craft as ships for purposes of national maritime law. The Legal Committee did not consider the subject as a high priority, particularly as CMI had indicated that there might be further work on it by CMI.

(x) *Treaties*

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel<sup>263</sup>

An International Conference on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, convened, in consultation with the Director-General of the International Labour Office, to consider and adopt an International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, was held at IMO headquarters from 26 June to 7 July 1995.

The Conference was attended by representatives of 74 States, observers from one Associate member, representatives from two organizations of the United Nations system and observers from four intergovernmental organizations and nine non-governmental organizations in consultative status.

As a result of its deliberations, the Conference adopted the International Convention on Standards of Training, Certification and Watchkeeping of Fishing Vessel Personnel (STCW-F), 1995.

The Conference decided that the Convention was to be deposited with the Secretary-General of IMIO. The Secretary-General and the Organization were assigned certain responsibilities in respect of the Convention.

The Convention was opened for signature at IMO headquarters from 1 January 1996 to 30 September 1996 and will thereafter remain open for accession.

(xi) *Amendments to treaties*

a. *1995 Revision of International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978,*

Pursuant to the decision of parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, made during the sixty-second session (24 to 28 May 1993) of the Maritime Safety Committee and subsequent decisions by the IMO Council and Assembly, a Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, convened, in consultation with the Director-General of the International Labour Office, to consider and adopt amendments to the annex to the 1978 STCW Convention and an associated Seafarer's Training Certification and Watchkeeping (STCW) Code was held at the headquarters of the organization from 26 June to 7 July 1995.

As a result of its deliberations the Conference adopted amendments to the Annex to the International Convention on Standard of Training, Certification and Watchkeeping (STCW) Code.

The STCW Convention had for some time been regarded as technically out of date. Criticisms also had been made that vague language gave rise to different interpretations, resulting in non-uniform application of the Convention, and that it did not impose strict obligations on parties regarding implementation.

The amendments represent a major revision of the Convention. One of the key features is the adoption of the new STCW Code to which many of the technical regulations have been transferred. Part of the Code is mandatory part of it contains recommendations only. This is intended to simplify its administration as well as future amendments.

The amendments to the Annex oblige parties to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the Convention, education and training courses, certification procedures and other factors relevant to implementation. This information will be used by the Maritime Safety Committee to identify parties that are able to demonstrate that they can give full and complete effect to the Convention. Other Parties will on the basis be able to accept that certificates issued by those parties are in compliance with the Convention.

The amendments are expected to enter into force on 1 February 1997 under the tacit acceptance procedure.

b. *1995 Amendments to the International Convention for the Safety of Life at Sea, 1974<sup>264</sup> (Chapter V/8; Ships' Routing)*

The Maritime Safety Committee at its sixty-fifth session adopted by resolution MSC.46(65) amendments to chapter V of the 1974 SOLAS Convention. These amendment and provisions of regulation V/8 on ships' routing. Consequential amendments to the General Provisions on Ships' Routing were also adopted. These amendments are expected to enter into force on 1 January 1997 provided they are deemed to have been accepted on 1 July 1996 in accordance with the provisions of article VIII of the SOLAS Convention.

c. *1995 Amendments to the International Convention for the Safety of Life at Sea, 1974 (Chapters II-1, 11-2, III, IV and V; Ro-Ro Passenger Ships)*

Pursuant to the decisions of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) attending the Maritime Safety Committee at its sixty-fifth session and the Council of the Organization at its seventy-fourth session, a four-day conference to consider and adopt a number of amendments to the 1974 SOLAS Convention aimed at enhancing the safety of roll-on/roll-off passenger ships was convened at IMO headquarters on 20, 27, 28 and 29 November 1995.

The Conference was attended by representatives from 83 Contracting Governments to SOLAS 1974, observers from 9 Contracting Governments and from 5 States which are not Contracting Governments, an observer from one Associate Member of the Organization and observers from 3 intergovernmental organizations and 15 non-governmental organizations.

As a result of its deliberation the Conference adopted amendments to the following chapters;

Chapter II-1: Construction—subdivision and stability, machinery and electrical installations;

Chapter II-2: Construction—fire protection, fire detection and fire extinction;

Chapter III: Life-saving appliances and arrangements;

Chapter IV: Radio communications

Chapter V: Safety of navigation

The Conference also adopted 14 resolutions.

The most important of the changes concerned the stability of ro-ro passenger ships. The Conference agreed to significantly upgrade the damage stability requirement to be applied to all existing ro-ro passenger ships.

The Conference further adopted a resolution which permits regional arrangements to be made on special safety requirements for ro-ro passenger ships. The resolution acknowledges the desire of certain SOLAS Contracting Governments that, having regard to the prevailing sea conditions and other local conditions, special stability requirements should apply to all ro-ro passenger ships undertaking regularly scheduled voyages between designated ports of those Contracting Governments, and agrees that two or more Contracting Governments may conclude agreements modifying safety requirements in respect of such ships.

Governments proposing an agreement will have to notify the Secretary-General of IMO of their intention to negotiate an agreement and shall make appropriate arrangements for other interested Contracting Governments to be involved in the negotiations.

The amendments are expected to enter into force under the Conventions' tacit acceptance procedure on 1 July 1997.

d. *1995 Amendments to the International Convention for the Prevention of Pollution from Ships, 1973,<sup>265</sup> as modified by the Protocol of 1978 relating thereto<sup>266</sup>*

The Marine Environment Protection Committee at its thirty-seventh session (September 1995) by its resolution MEPC.65(37) adopted amendments to the International convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

The amendments to Annex V of MARPOL 73/78, which, *inter alia*, add new regulation 9 entitled “Placards, waste management plans and garbage record keeping”, thus provided a basis for the enforce of the requirements of Annex V. The amendments are expected to enter into force on 1 July 1997. The requirements apply to existing ships as from 1 July 1998.

e. *1995 Amendments to the International Convention on Load lines, 1966<sup>267</sup>*

On 23 November 1995, the IMO Assembly by its resolution A.784(19) adopted amendments to regulation 49(7)(b) of the Convention, together with consequential changes to the chart of zones and seasonal areas.

In accordance with article 29(3)(c) of the Convention, the amendments, if adopted by the Assembly, shall come into force 12 months after the date on which they are accepted by two thirds of Contracting Governments.

(xii) *Entry into force instruments and amendments*

a. *Instruments*

Protocol of 1992 to amend the International Convention of Civil Liability for Oil Pollution Damage, 1969

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

The conditions for the entry into force of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol of 1992 to amend the International Convent on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 were met on 30 May 1995 with the deposit of instruments of ratification by Denmark. In accordance with the relevant articles the Protocols with enter into force on 30 May 1996.

International Convention on Salvage, 1989

The conditions for the entry into force of the International Convention on Salvage, 1989 were met on 14 July 1995 with the deposit of an instrument of ratification by Italy. In accordance with article 29 the Convention will enter into force on 14 July 1996.

International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990<sup>268</sup>

The conditions for the entry into force of this Convention were met on 13 May 1994 with the deposit of an instrument of accession by Mexico. In accordance with Article 16, the Convention entered into force on 13 May 1995.

*b. Amendments*

1993 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended

These amendments to the Convention were adopted by the Assembly on 4 November 1993 by resolution A.736(18). The conditions for their entry into force were met on 4 May 1994 and the amendments entered into force on 4 November 1995 for all Contracting parties except Tunisia.

1994 (chapters V, II-2) amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.31(63). The conditions for the entry into force of the amendments set out in annex 1 to the resolution were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 (new chapters IX, X and XI) amendments to the International Convention for the Safety of Life at Sea, 1974

These amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on 24 May 1994 by resolution 1 of the Conference. The conditions for the entry into force of the amendments set out in annex 1 to the resolution were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.33(63). The conditions for their entry into force were met on 1 July 1995 and the amendments will enter into force on 1 January 1996.

1994 (Annexes I, II, III and V) amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973,

These amendments were adopted by the Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, on 2 November 1994. The conditions for their entry into force were met on 3 September 1995 and the amendments will enter into force on 3 March 1996.

## 11. WORD INTELLECTUAL PROPERTY ORGANIZATION

The year 1995 witnessed the further expansion WIPO activities in its three main fields of work: cooperation with developing countries in the strengthening of their intellectual property systems (development cooperation), promotion of the adoption of new, or the revision of existing, norms for the protection of intellectual property at the national, regional and multilateral levels (norm-setting), and facilitating the acquisition of intellectual property protection, through international registration systems (registration activities).

### (a) Development cooperation

Compared to 1994, WIPO's *cooperation with developing countries* quickened its pace; there was a 14 per cent increase in the number of beneficiary developing countries to 123, while the number advisory mission grew by 19 per cent to 200. The human resource development activities of the Organization benefited close to 100,000 people, who participated in some 120 courses and seminars. With the approval of the Governing Bodies, the International Bureau began, in October 1995, an intensive programme of assistance to developing countries in their preparations for the implementation of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement). This new activity covers, in particular, advice and assistance on intellectual property laws to ensure their compatibility with the TRIPS Agreement, as well as the holding of seminars to explain the Agreement to lawmakers, government officials and private sector circles. A highlight of this new type of activity was the holding, in Cairo, in December, of a three-day WIPO Regional Symposium for Arab Countries on the Implications of the TRIPS Agreement. Panel discussions were led by the Director General of WIPO, with the participation of international experts, including an official of the World Trade Organization. It was the first of series of projected regional meetings entirely devoted to the subject.

The Governing Bodies of WIPO decided to double the development cooperation budget in the Organization's 1996-97 regular budget, compared to the 1994-1995 regular budget. The increase will facilitate the satisfaction of the increasing needs of assistance of developing countries in the development and strengthening of their intellectual property systems in view of their obligations under the TRIPS Agreement, an area in respect of which the Governing Bodies gave WIPO the mandate to provide increased legal-technical assistance to those countries.

### (b) Norm-setting

Significant advances were made towards the possible convocation, in the 1996-1997 biennium, of diplomatic conferences for the adoption of new international instruments in the areas of copyright and neighbouring rights, harmonization of patent laws and industrial designs.

The September/October Governing Bodies of WIPO decided that in the forthcoming biennium WIPO would also study various questions of special or topical interest, including the protection of well-known and famous marks, business identifiers, the recordings and indicating of trademark licences, the legal effects of certain electronic communications in procedures before industrial property offices, the protection of inventions and creations made or used in outer space, enforcement of intellectual property rights, biotechnological inventions and trade secrets. WIPO would organize two or three global symposia on topical subjects of intellectual property. Furthermore, the Governing Bodies agreed to create the WIPO Standing Advisory Committee on the Intellectual Property Aspects of the Global Information Infrastructure, which would meet to consider the intellectual property aspects of the operation of the so-called global information infrastructure (interactive digital networks, digital superhighways, etc.).

Finally, the year 1995 was particularly marked by the conclusion of a co-operation Agreement between WIPO and WTO, which entered into force on 1 January 1996.

Furthermore, international forums continued to be organized by WIPO for the exchange of ideas among interested circles on topical intellectual property subjects, such as the impact of digital technology on copyright, the utilization of CD-ROM technology for the storage and dissemination of industrial property information, arbitration and mediation procedures for the settlement of intellectual property disputes among private parties and the introduction and management of automation in industrial property offices.

### (c) Registration activities

The continuous high rate of growth in the use of the Patent Cooperation Treaty (owing, in part, to particularly significant increase of its membership in 1995) resulted in a record number of almost 39,000 international applications filed in 1995 (representing an increase of about 14 per cent as compared to 1994), while in the areas of trademarks and industrial designs, there was an increase of about 8 per cent and 3 per cent, respectively, in the number of registrations under the Madrid Agreement<sup>269</sup> and of deposits, renewals and prolongations under the Hague Agreement concerning the International Deposit of Industrial Designs.<sup>270</sup>

The Protocol relating to the Madrid Agreement concerning the International Registration of Marks<sup>271</sup> went into effect in December 1995. Operations under this Protocol will start on 1 April 1996.

This continuous expansion of WIPO's activities in the areas mentioned above was reflected in the adoption, by the WIPO Governing Bodies in September/October of a programme and budget for the 1996-97 biennium with an income and expenditure of about 300 million Swiss francs, with a projected ratio of the income of contribution-financed Unions to that of free-financed Unions of about 15 per cent to 85 per cent

The growing importance attached to the effective protection of intellectual property was further underlined by increased membership of the WIPO, Paris and Berne Conventions. During the period under review, the number of member States increased from 150 to 157 for WIPO, from 127 to 136 for the Paris Convention and from 110 to 117 for the Berne Convention.

(d) Development cooperation activities

A total of 123 (108 in 1994) developing countries, two Territories and 12 intergovernmental organizations of developing countries benefited from WIPO's development cooperation programme in the fields of industrial property and copyright and neighbouring rights. One hundred and twenty courses, seminars or other meetings were held at the global or national levels, giving training or information to some 9,500 (9,000 in 1994) men and women coming from the government and private sectors. The travel and living expenses of some 1,100 men and women were borne by WIPO, donor member States of WIPO and intergovernmental organizations. Study visits were organized for 89 persons.

As for WIPO advisory missions relating to legislation and institution-building, 200 such missions were undertaken to 75 developing countries. The enactment of laws or the revision of existing ones remained one of the prime objectives of such missions. In most instances those missions took place after the International Bureau had prepared and sent to the interested national authorities draft laws or provisions, often with accompanying commentaries. The draft laws took full account of the relevant provisions of the TRIPS Agreement. As follow-up to such missions, officials were later invited to Geneva to finalize those drafts. The International Bureau prepared at the request of the Group of African States based in Geneva, a study on the compatibility of the national intellectual property laws of a number of African States with the provisions of the TRIPS Agreement. Such studies and advice were also provided on request for individual countries. In addition, in July, the International Bureau completed a draft study on the implications of the TRIPS Agreement for the treaties administered by WIPO. The aim of the paper was to elucidate for the information of developing countries the possible changes in obligations of States that were party to the said Agreement and to WIPO treaties.

With regard to institution-building, the missions focused mainly on the streamlining and computerization of administrative procedures in industrial property offices and on the use of CD-ROM technology in disseminating and accessing the industrial property information. A number of such advisory missions also gave on-the-job training to government officials or supervised the installation of computer equipment and software. Each mission was composed of WIPO officials and/or specially recruited WIPO consultants. In total, 276 consultants were engaged either for advisory missions or as speakers in courses and seminars, 36 per cent of them coming from developing countries (an increase of 13 per cent compared to 1994).

The WIPO Academy conducted two two-week sessions each for middle- and senior-level government officials, one in English and one in French. The aim of each session was to present, for reflection and discussion, current intellectual property issues in such a way as to highlight the policy considerations behind them and thereby enable the participants in the Academy, on their return to their countries, to better formulate appropriate policies for their Governments.

Cooperation with developing countries at the regional or subregional level was further strengthened, as shown by the closer dialogue and cooperation with such organizations as the African Regional Industrial Property Organization (ARIPO), the Association of South-East Asian Nations (ASEAN), the Board of the Cartagena Agreement (JUNAC), the Southern Common Market

(MERCOSUR), the African Intellectual Property Organization (OAPI), the Organization of African Unity (OAU), and the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA).

In carrying out its development cooperation programme, WIPO received financial support, or support in kind, from 90 countries, both developing and industrialized, one Territory and 10 intergovernmental organizations. The donor countries which provided funds in trust for the programme were France, Japan and Sweden, and the main donor intergovernmental organizations were the United Nations Development Programme, the European Patent Office and the Commission of the European Communities.

The trend of increasing resources from the WIPO regular budget for development cooperation activities was markedly reinforced for the coming 1996-1997 biennium, with the October decision of the Governing Bodies to double, compared to the 1994-1995 biennium, allocations for developing cooperation activities, including assistance to developing countries in respect of the implementation of the TRIPS Agreement in view of the expanded programme of work adopted for the 1996-1997 biennium.

#### (e) Normsetting activities

The period under review was characterized by substantial advances towards the possible adoption, through a diplomatic conference, of new international instruments in the fields of patents, industrial designs, copyright and neighbouring rights and the settlement of intellectual property disputes among States. On the other hand, new work commenced in respect of the question of a more effective protection of well-known marks. Prepared in this regard, a new Committee of Experts was convened by WIPO to examine the results of a study by the International Bureau on the subject and prospects for improving the protection of this category of marks.

With respect to patents, the WIPO Governing Bodies agreed to take a new approach in promoting the harmonization of patent laws and also agreed that, as proposed by the consultative Meeting held in May, future work should focus on matters concerning the formalities in respect of national and regional patent applications, such as signatures, changes in names and addresses, and correction of mistakes, and standardized forms. A Committee of Experts on the Patent Law Treaty held its first session in December and reviewed the proposals made by the International Bureau under the new approach.

Regarding copyright and neighbouring rights, work advanced in particular in respect of issues related to: (a) the possible adoption of a protocol to the Berne Convention (including computer programs and databases, non-voluntary licences for the sound recording of musical works and for primary broadcasting and satellite communication); and (b) the possible adoption of a new instrument for the protection of rights of performers and producers of phonograms (including moral rights of performers, economic rights of performers and of producers of phonograms, terms of protection), as well as in respect of issues which might be considered "common" to the two groups of issues, such as distribution right, importation right and rental right issues, the so-called digital agenda, enforcement of rights, and national treatment. A work programme in respect of these three groups of issues was defined by the Committee of Experts on a Possible

Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms at their joint meeting in September in Geneva.

As particularly concerns the impact of digital technology on copyright, high-level and open international forums for the exchange of ideas on this issue were provided by WIPO during the period under review, through the organization of the Worldwide Symposium on Copyright in the Global Information Infrastructure held in Mexico City in May, in cooperation with the Mexican authorities, and the World Forum on the Protection of Intellectual Property Creations in the Information Society held in Naples, in October in cooperation with the Italian authorities. A Consultative Forum for Non-governmental Organizations on the Protection and Management of Copyright and Neighbouring Rights in Digital Systems was also organized in Geneva in June to give the non-governmental organizations involved in the international debate on the subject an opportunity to express their views.

#### (f) Registration activities

Compared to 1994 the number of registrations in the three international registration systems increased in 1995.

Under the Patent Cooperation Treaty (PCT),<sup>272</sup> 38,906 international applications filed, representing a growth of 14.08 per cent compared to 1994 (34,104). Of these 1,151 applications were filed directly with the International Bureau in its capacity as a receiving office. As an average of 46.4 countries were designated per application, one may consider that the 38,906 international applications were equivalent to some 1,807,220 national applications.

In the Madrid trademark system, the total number of international registrations was 18,890, representing an increase of 8.02 per cent compared to 1994 (17,486). As an average of 10.44 countries were designated per application, one may equally consider that the 18,890 international applications were equivalent to some 197,210 national applications.

Having obtained the required number of notifications, the Madrid Protocol entered into force on 1 December 1995. On 31 December 1995, the following nine States had deposited their instrument of accession or ratification: China, Cuba, Denmark, Finland, Germany, Norway, Spain Sweden, United Kingdom of Great Britain and Northern Ireland. Draft Common Regulations under the Madrid Agreement and Protocol were finalized by the International Bureau during the period under review, for approval by the Madrid Assembly.

The Madrid Assembly adopted the Common Regulations including the Schedule of Fees, which entered into force on 1 April 1996, the date on which the Protocol also entered into operation. That date coincides with the date of entry into operation of the Community Trademark system.

In the Hague industrial design system, the combined total of industrial design deposits renewals and prolongations was 5,592, representing an increase of 2.7 per cent in relation to the 1994 figure (5,446).

In October, revised schedules of fees were adopted by the PCT and Hague Assemblies. In the case of the PCT system, the maximum number of designations for which fees are payable was increased from 10 to 11. Also, the PCT

Assembly approved a 75 per cent reduction in PCT fees for any applicant who is a natural person and a national of and resident in a country whose per capita national income is below US\$ 3,000. In the case of the Hague system, the fees were increased by 3 per cent.

(g) Countries in transition to a market-economy system

By 31 December 1995, nine States (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan) had deposited with the Director General of WIPO their instrument of accession to, or ratification of, the Eurasian Patent Convention. The draft of the Convention had been prepared with assistance of the International Bureau of WIPO. The Convention, which had been finalized, adopted and initialed in Geneva in February 1994 and done at Moscow on 9 September 1994 entered into force on 12 August 1995. In November, the Administrative Council of the Eurasian Patent Organization adopted the patent administrative and financial instructions under the Convention and fixed 1 January 1996 as the starting date of operations under the Convention. That was the date as from which the Eurasian Patent Office (established under the Convention and located in Moscow) receives Eurasian patent applications and Eurasian patents could be sought in international applications under the Patent Cooperation Treaty.

Technical cooperation with countries in transition to a market economy system also quickened its pace. In 1995, nine national and regional seminars and other meetings in the fields of industrial property and copyright and neighbouring rights were organized by WIPO in those countries for some 700 individuals from government and other interested circles. Governments Leaders and officials from most of those countries held consultations in Geneva with Director General and other WIPO officials and studied the International Bureau's work, while WIPO officials and consultants undertook 29 missions to 17 of those countries to give advice, in particular, on the preparation of laws with one or more aspects of intellectual property (including the implications of the TRIPS Agreement on national legislation), the advantages of adherence to WIPO-administered treaties and the establishment or strengthening of national infrastructures for the administration intellectual property rights as well as to provide on the job training in various specialized fields of intellectual property. In several instances, following the missions, WIPO prepared and sent to the governments concerned draft laws and or regulations, often with commentaries. Training of staff of the national offices of those countries was also undertaken through 15 study visits to industrial property offices in industrialized countries.

(h) Cooperation with the World Trade Organization

The year 1995 was also marked by the signature, on 22 December of a Cooperation Agreement between WIPO and WTO. The conclusion of the Agreement was the culmination of a process started in September/October 1994 and pursued in 1995 through, among other things, two meetings (in February and May) of the ad hoc working group established by the WIPO General Assembly in September/October 1994 to, *inter alia*, "advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO", the preparation, by the International Bureau of WIPO and, in the period between October and December, intensive negotiations between, on one side, the

WIPO Coordination Committee and, on the other side, the Council for TRIPS of WTO. Also, an extraordinary session of the WIPO Budget Committee was convened by WIPO in November to examine the financial implications of the draft Agreement.

The Agreement includes provisions related to the process of notifications of laws and regulations under article 63(2) TRIPS Agreement (including the accessibility to, and the translation of, those laws and regulations), the implementation of article 6ter of the Paris Convention for the Protection of Industrial Property for the purpose of the TRIPS Agreement.

(i) New adherence to treaties

In 1995, the number of States party to treaties administered by WIPO continued to increase. The following States become party to, *inter alia*, the following treaties (figures in brackets indicate the total number of States party to the treaties as at 31 December 1995):

*WIPO Convention*:<sup>274</sup> Azerbaijan, Bahrain, Cambodia, Nigeria, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Turkmenistan (157);

*Paris Convention*: Albania, Azerbaijan, Costa Rica, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Turkmenistan, Venezuela (136);

*Berne Convention*:<sup>275</sup> Georgia, Haiti, Latvia, Republic of Moldova, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Ukraine (117);

*Budapest Treaty*:<sup>276</sup> China (35);

*Rome Convention*:<sup>277</sup> Bulgaria, Republic of Moldova, Venezuela (50);

*Geneva (Phonograms) Convention*:<sup>278</sup> Bulgaria (53);

*Brussels (Satellites) Convention*:<sup>279</sup> Portugal (20);

*Strasbourg Agreement*:<sup>280</sup> Canada, Cuba, Malawi, Trinidad and Tobago, Turkey (33);

*Vienna Agreement*:<sup>281</sup> Trinidad and Tobago, Turkey (7);

*Nice Agreement*:<sup>282</sup> Cuba, Iceland, Malawi, Trinidad and Tobago, Turkey (46);

*Locarno Agreement*:<sup>283</sup> Iceland, Malawi, Trinidad and Tobago (25);

*Patent Cooperation Treaty*: Albania, Azerbaijan, Lesotho, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan (83);

*Madrid (International Registration of Marks) Agreement*: Albania, Azerbaijan, Liberia (46);

*Madrid Protocol*: China, Cuba, Denmark, Finland, Germany, Norway, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland (9).

(j) WIPO Arbitration Centre

Throughout 1995, the newly created WIPO Arbitration Centre undertook a number of promotional activities on the features and advantages of this new service, including jointly organizing with the Swiss Arbitration Association an international conference on the WIPO mediation, arbitration and expedited arbitration rules, as well as organizing two training programmes for mediators.

The second Meeting of the WIPO Arbitration Council, held in September, reviewed the activities of the Centre since September 1994 and studied a draft proposal to introduce an emergency interim arbitral procedure, available at 24 hours' notice.

(k) Director General

In October, the General Assembly appointed Dr. Arpad Bogsch unanimously and by acclamation Director General of WIPO for an additional period of two years, expiring on 1 December 1997.

12. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(a) Membership

Approval of application for non-original membership

As its Eighteenth Session (25-27 January 1995), the Governing Council approved the non-original membership in IFAD of the Republic of Georgia and decided that that State should be classified as a member of category III in accordance with articles 3.2(b) and 13.1(c) of the Agreement establishing IFAD and section 10 of the By-Laws for the Conduct of the Business of the Fund.

(b) Review of IFAD's resources requirements and related governance issues

Amendment of the Agreement Establishing IFAD, the By-laws for the Conduct of the Business of IFAD and other Basic Legal Instruments of the Fund

The Governing Council, at its Eighteenth Session, adopted, on 26 January 1995, resolution 86/XVII on the Amendment of the Agreement Establishing IFAD, the By-laws for the Conduct of the Business of IFAD and other Basic Legal Instruments of the Fund, on the Basis of the report and recommendations of the Special Committee on IFAD's Resources Requirements and Related Governance Issues (see *Juridical Yearbook, 1994*). The resolution:

- (i) Approved the report and recommendations of the Special Committee on IFAD's Resource Requirements and Related Governance issues with the principles specified therein;
- (ii) Accordingly amended:
  - The Agreement Establishing IFAD;
  - The By-laws for the Conduct of the Business of IFAD;
  - The Rules and Procedure of the Governing Council;
  - Governing Council Resolution 77/2
  - The Rules of Procedure of the Executive Board;
  - Other Official IFAD documents.

The above-mentioned amendments to the Agreement Establishing IFAD will enter into force on the completion of the Resolution on the Fourth Replenishment of IFAD's resources by the Executive Board in accordance with paragraph III of that Resolution. The amendments to the By-laws for the Conduct of the Business of IFAD, the Rules of Procedure of the Governing Council and Governing Council resolution 77/2 will enter into force on the date on which the amendments to the Agreement Establishing IFAD entered into force.

(c) Resolution on the Fourth Replenishment of IFAD's Resources

At its Eighteenth Session, the Governing Council adopted Resolution 887/XVIII on the Fourth Replenishment of IFAD's Resources. Paragraph III of the resolution states:

“The Executive Board, taking into account the report of the President of IFAD, is requested to take action by its Fifty-Fifth Session (in September 1995) to complete this resolution in accordance with its provisions, including the allocation of the amounts of pledged contributions in Attachment A hereto. The Executive Board shall take such action only at the moment that pledges shall have been received equalling at least ninety per cent (90 per cent) of the four hundred and twenty million dollars (US\$ 420,000,000) target of the former category I member countries and eight-five percent (85 per cent) of the combined one hundred and fifty million dollars (US\$ 150,000,000) target of the former category II and III member countries. In the event that such pledges do not reach the above mentioned target levels, the Executive Board shall then recommend what further action shall be taken in a report to the Governing Council.”

While adopting the above resolution, member states are encouraged to take the opportunity afforded by the Resolution to achieve the overall target level of US\$ 600 million for the Fourth Replenishment of IFAD's Resources.

(d) Amendment of the lending policies and criteria

The Governing Council, at its Eighteenth Session, decided to further amend IFAD's lending policies and criteria. Resolution 89/XVIII added an annex to the document on “A Framework for Sector/Sub-sector Allocation: Principles Revisited” and added a new paragraph 24A, which reads as follows:

“24A. The recommended allocation of IFAD's future lending by region shall be established periodically by the Executive Board, on the understanding that such allocations were indicative figures and shall be applied flexibly, keeping in mind the necessity to give priority attention to sub-Saharan Africa and that there may be annual fluctuations which will be evened out on a cumulative average basis. The allocation to any single recipient country shall not exceed ten percent (10 per cent) of IFAD's total annual lending, or such other percent as may be determined by the Executive Board, to be applied flexibly depending on resource availability.”

### 13. WORLD TRADE ORGANIZATION

#### (a) Membership

The Marrakech Agreement Establishing the World Trade Organization (WTO Agreement) entered into force on 1 January 1995. The following 76 States and separate customs territories were original members as of the date of the entry into force: Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Brazil, Brunei Darussalam, Canada, Chile, Costa Rica, Côte D'Ivoire, Czech Republic, Denmark, Dominica, European Communities, Finland, France, Gabon, Germany, Ghana, Greece, Guyana, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Kenya, Kuwait, Luxembourg, Macau, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Romania, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, and Zambia. During 1995, the following 36 States additionally become original members pursuant to article XI of the WTO Agreement: Trinidad and Tobago, Zimbabwe, Dominican Republic, Jamaica, Turkey, Tunisia, Cuba, Israel, Colombia, El Salvador, Burkina Faso, Egypt, Botswana, Central African Republic, Djibouti, Guinea Bissau, Lesotho, Malawi, Mali, Maldives, Mauritania, Togo, Poland, Switzerland, Guatemala, Burundi, Sierra Leone, Cyprus, Slovenia, Mozambique, Liechtenstein, Nicaragua, Bolivia, Guinea, Madagascar and Cameroon. No State or separate customs territory acceded to the WTO Agreement during 1995. At the end of the year, membership of the WTO stood at 112.

#### (b) Dispute settlement

The Understanding on Rules and Procedures governing the Settlement of Disputes (DSU) and the Dispute Settlement Body (DSB) became operational in 1 January 1995. In February 1995, DSB established the Appellate body pursuant to article 17.1 of the DSU. In December 1995, the following persons were appointed as members of the Appellate Body: James Bacchus (United States), Christopher Beeby (New Zealand), Claus-Dieter Ehlermann (Germany), Siad El-Naggar (Egypt), Justice Florentino P. Feliciano (Philippines), Julio Lacarte Muro (Uruguay), and Mitsuo Matsushita (Japan).

During 1995, 25 requests for consultations were received pursuant to article 4 of the DSU. DSB established panels regarding the following cases:

*United States—Standards for Reformulated and Conventional Gasoline*, complaints by Venezuela (WT/DS2) and (WT/DS4);

*European Communities—Trade Description of Scallops*, complaints by Canada (WT/DS7), Peru (WT/DS12) and Chile (WT/DS14);

*Japan—Taxes on Alcoholic Beverages*, complaints by the European Communities (WT/DS8), Canada (WT/DS10) and the United States (WT/DS11);

*European Communities—Duties on Imports of Cereals*, complaint by Canada (WT/DS9).

## 14. INTERNATIONAL ATOMIC ENERGY AGENCY

### PRIVILEGES AND IMMUNITIES

During 1995 there was no change in the status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.<sup>284</sup> At the end of 1995, there were 65 parties.

### CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL<sup>285</sup>

During 1995, one State—Peru—became a party, bringing the total at year end to 53.

### CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT<sup>286</sup> CONVENTION ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY<sup>287</sup>

During 1995, Peru adhered to the Notification Convention. By the end of 1995, there were 75 States parties.

In 1995, Peru also adhered to the Convention on Assistance, bringing the total number of parties to 71 by year end.

### VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963<sup>288</sup>

During 1995, Latvia and Slovakia adhered, bringing the total number of parties to 26 by the end of the year.

### JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION<sup>289</sup>

Latvia, Slovakia, and Slovenia became parties during the year, making a total of 20 by the end of 1995.

### AFRICAN REGIONAL COOPERATIVE AGREEMENT<sup>290</sup>

The extension of the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) entered into force on 4 April 1995 on expiration of the original Agreement. It was accepted by the following 18 States of the region: Algeria, Cameroon, Egypt, Ethiopia, Ghana, Kenya, Madagascar, Mauritius, Morocco, Namibia, Niger, Nigeria, Sierra Leone, South Africa, Sudan, Tunisia, United Republic of Tanzania and Zaire.

### REGIONAL COOPERATIVE AGREEMENT FOR RESEARCH, DEVELOPMENT AND TRAINING RELATED TO NUCLEAR SCIENCE AND TECHNOLOGY, 1987 (RCA AGREEMENT)<sup>291</sup>

There was no change during 1995, the total number of States parties remaining at 17.

## SAFEGUARDS AGREEMENTS

During 1995, Safeguards Agreements were concluded between IAEA and two States pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons:<sup>292</sup> Republic of Moldova and Slovenia. An agreement was also concluded with the Government of Barbados pursuant to the Non-Proliferation Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco).

Agreements between Belarus<sup>293</sup> and Bolivia (Non-Proliferation Treaty and Tlatelolco Treaty),<sup>294</sup> Chile (Tlatelolco Treaty),<sup>295</sup> Croatia,<sup>296</sup> Kazakhstan,<sup>297</sup> Myanmar<sup>298</sup> and the Zimbabwe<sup>299</sup> entered into force in 1995. A *sui generis* comprehensive Safeguards Agreement between Ukraine and IAEA for the application of Safeguards to all Nuclear Material in all Peaceful Nuclear Activities of Ukraine also entered into force.<sup>300</sup>

By the end of 1995, there were 207 Safeguards Agreements in force with 125 States, 105 of which agreements were concluded pursuant to the Non-Proliferation Treaty and/or the Treaty of Tlatelolco with 108 non-nuclear-weapon States. Voluntary offer agreements are in force with all five nuclear-weapon States.

## LIABILITY FOR NUCLEAR DAMAGE

The Standing Committee on Liability for Nuclear Damage continued its examination of the revision of the Vienna Convention and elaboration of an instrument for supplementary funding. The committee adopted, with the exception of liability amounts, and reservations to some provisions, a full set of draft tests for an amending protocol to the Vienna Convention. The draft amendments cover important areas where a need for improvement was recognized, such as: the geographical scope of the Convention; its application to military installations; the concept of nuclear damage; increase of operator liability and provision of an Installation State tier; and extended time limits for the submission of claims.

On the question of supplementary funding, two basic approaches were under consideration. One provides for a convention that will operate within the legal framework of the Vienna and Paris Conventions and cover both transboundary and domestic nuclear damage. The other approach envisages a free-standing convention which is open to adherence irrespective of participation in the Vienna or Paris Conventions and is dedicated to transboundary nuclear damage only. As there was not consensus on either approach, efforts were made to reconcile them into a single draft. Thus, there would be a free standing instrument whose system was supplementary to national legislation that (a) implements the Vienna or Paris Conventions, or (b) would be consistent with the requirements set out in an annex to the draft convention which restate the major liability norms of the two conventions. A single supplementary fund would cover domestic and transboundary damage on the basis of a specified ratio. Contributions by States parties to the fund would be based on a formula which took into account their nuclear capacity and their rate of assessment to the United Nations regular budget. The position of non-nuclear States was also taken into account.

A convergence of views appeared to be possible on the form and many provisions of the new draft. Also, in informal consultations, elements of the structure of the supplementary fund were identified as a basis for further work.

On the basis of the progress made, the Standing Committee at its 13<sup>th</sup> session concluded that it seemed feasible to prepare texts for the amending protocol to the Vienna Convention, as well as convention on supplementary funding to be submitted at a diplomatic conference. The goal of the Committee was to complete its preparatory work before the end of 1996.

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#### NOTES

<sup>1</sup>For detailed information, see *The United Nations Disarmament Yearbook*, vol. 20: 1995 (United Nations publication, Sales No. E.96. 1X.1).

<sup>2</sup>See *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992, vol. I (United Nations publication, Sales No. E.93. 1X.11 (Vol.1)).

<sup>3</sup>Adopted by a recorded vote of 161 to none, with 2 abstentions.

<sup>4</sup>Full title: Treaty Banning Nuclear Weapon Tests, see *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992, vol. I (United Nations publication, Sales No. E.93. 1X.11 (Vol.1)).

<sup>5</sup>Namely, Treaty on the Limitation of Underground Nuclear Weapon Tests and Treaty on Underground Nuclear Explosions for Peaceful Purposes, both of which entered into force in 1990.

<sup>6</sup>Adopted by a recorded vote of 166 to none, with 1 abstention.

<sup>7</sup>Adopted by a recorded vote of 85 to 18, with 43 abstentions.

<sup>8</sup>Adopted by a recorded vote of 110 to 4, with 45 abstentions.

<sup>9</sup>Adopted by a recorded vote of 122 to none, with 44 abstentions.

<sup>10</sup>Established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), Concluded in 1967: United Nations, *Treaty Series*, vol. 634, p. 281.

<sup>11</sup>Established by the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), concluded in 1985: United Nations, *Treaty Series*, vol. 1445, p.177.

<sup>12</sup>Adopted without a vote.

<sup>13</sup>Adopted by a recorded vote of 154 to 3, with 9 abstentions.

<sup>14</sup>Adopted without a vote.

<sup>15</sup>Adopted without a vote.

<sup>16</sup>General Assembly resolution 2826 (XXVI), annex. Concluded in 1971 and entered into force in 1975.

<sup>17</sup>CD/CW/WP.400/Rev. 1; see also *International Legal Materials*, vol. XXXII (1993), p. 800.

<sup>18</sup>Adopted without a vote.

<sup>19</sup>Adopted without a vote.

<sup>20</sup>A/50/547 and Corr.1 and Add. 1-4.

<sup>21</sup>A/50/60-S/1995/1, paras. 60-65; see *Official Records of the Security Council, Fiftieth Year, Supplement for January, February, and March 1995*, Document S/1995/1, paras. 60-65.

<sup>22</sup>See *Status of Multilateral Arms Regulation and Disarmament Agreements*, Fourth edition: 1992 (United Nations publication, Sales No. E.93.1.11) vol. 1.

<sup>23</sup>Adopted by a recorded vote of 149 to non, with 15 abstentions.

<sup>24</sup>Adopted by a recorded vote of 140 to none, with 19 abstentions.

<sup>25</sup>Adopted without a vote.

<sup>26</sup>Adopted without a vote.

<sup>27</sup>Adopted without a vote.

<sup>28</sup>Adopted without a vote.

<sup>29</sup>Adopted by a recorded vote of 157 to 4, with 2 abstentions.

<sup>30</sup>Adopted by a recorded vote of 121 to none, with 46 abstentions.

<sup>31</sup>For the report of the Subcommittee, see A/AC.105/607 and Corr.1.

- <sup>32</sup>See questionnaire: *ibid.*, annex I, appendix.
- <sup>33</sup>See working papers: *ibid.*, annex III, sects. B and C.
- <sup>34</sup>For the report of the Committee, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20 (A/50/20)*.
- <sup>35</sup>Adopted without a vote.
- <sup>36</sup>See A/50/604.
- <sup>37</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 20 (A/50/20)*.
- <sup>38</sup>*Ibid.* sect. II.C.
- <sup>39</sup>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); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).
- <sup>40</sup>Adopted without a vote.
- <sup>41</sup>See A/50/607.
- <sup>42</sup>A/50/60-S/1995/1; see *Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995*, document S/1995/1.
- <sup>43</sup>*Official Records of the Security Council, Fiftieth Year, Resolutions and Decisions of the Security Council, 1995*, document S/PRST/1995/9.
- <sup>44</sup>A/49/681.
- <sup>45</sup>A/50/230.
- <sup>46</sup>For the report of the Governing Council, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 25 (A/50/25)*.
- <sup>47</sup>For the texts of the decisions adopted by the UNEP Governing Council at its eighteenth session, see *ibid.*, annex.
- <sup>48</sup>UNEP/GC.18/23 and Corr. 1 and Add. 1 and 2.
- <sup>49</sup>Adopted without a vote.
- <sup>50</sup>See A/50/618/Add.6.
- <sup>51</sup>Adopted without a vote.
- <sup>52</sup>See A/50/618/Add. 1.
- <sup>53</sup>See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institution Programme Activity Centre), June 1992.
- <sup>54</sup>A/50/218.
- <sup>55</sup>Adopted without a vote.
- <sup>56</sup>See A/50/618/Add.1.
- <sup>57</sup>A/49/84/Add.2, annex, appendix II.
- <sup>58</sup>Adopted without a vote.
- <sup>59</sup>See A/50/618/Add. 3.
- <sup>60</sup>A/AC.2379/91 and Add. 1.
- <sup>61</sup>A/50/536, annex.
- <sup>62</sup>FCCC/CP/1995/7 and Add. 1.
- <sup>63</sup>United Nations, *Treaty Series*, vol. 520, p.151.
- <sup>64</sup>*Ibid.*, vol. 1019, p. 175.
- <sup>65</sup>*Ibid.*, vol. 976, pg. 3.
- <sup>66</sup>*Ibid.*, p. 105.
- <sup>67</sup>E/CONF. 82/15 and Corr. 2; issued also as a United Nations publication (Sales No. E. 91.X1.6.).
- <sup>68</sup>Adopted without a vote.
- <sup>69</sup>See A/50/631.
- <sup>70</sup>General Assembly resolution S-17/2, annex.
- <sup>71</sup>See A/49/139-E/1994/57.
- <sup>72</sup>Adopted without a vote; see A/50/629.
- <sup>73</sup>A/CONF. 169/16
- <sup>74</sup>A/50/432.
- <sup>75</sup>A/50/433.
- <sup>76</sup>A/50/375.
- <sup>77</sup>E/CN.15/1995/9 and Add.1.
- <sup>78</sup>United Nations, *Treaty Series*, vol. 993, p.3.

- <sup>79</sup>Ibid., vol. 999, p. 171.
- <sup>80</sup>Ibid.
- <sup>81</sup>General Assembly resolution 44/128, annex.
- <sup>82</sup>Adopted without a vote.
- <sup>83</sup>See A/50/635/Add. 1.
- <sup>84</sup>*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40)*.
- <sup>85</sup>Ibid., *Fiftieth Session and Supplement No. 40 (A/50/40)*.
- <sup>86</sup>*Official Records of the Economic and Social Council, 1995, Supplement No. 2 and corrigendum (E/1995/22 and Corr. 1)*.
- <sup>87</sup>General Assembly resolution 2103 A (XX), annex; reproduced in *Juridical Yearbook, 1965*, p.63; see also United Nations, *Treaty Series*, vol. 660, p.195.
- <sup>88</sup>Adopted without a vote.
- <sup>89</sup>See A/50/626.
- <sup>90</sup>A/50/467, annex.
- <sup>91</sup>A/50/18.
- <sup>92</sup>General Assembly resolution 3068 (XXVIII), annex; reproduced in *Juridical Yearbook, 1973*, p.70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.
- <sup>93</sup>General Assembly resolution 34/180, annex; reproduced in *Juridical Yearbook, 1979*, p. 115; see also United Nations, *Treaty Series*, vol. 1249, p.13.
- <sup>94</sup>Adopted without a vote.
- <sup>95</sup>See A/50/816.
- <sup>96</sup>General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135.
- <sup>97</sup>General Assembly resolution 44/45, annex.
- <sup>98</sup>Adopted without a vote.
- <sup>99</sup>See A/50/633.
- <sup>100</sup>CRC/C/38.
- <sup>101</sup>General Assembly resolution 45/158, annex.
- <sup>102</sup>Adopted without a vote.
- <sup>103</sup>See A/50/Add. 1.
- <sup>104</sup>A/50/469.
- <sup>105</sup>Adopted without a vote.
- <sup>106</sup>See A/50/635/Add. 1.
- <sup>107</sup>A/50/505, annex.
- <sup>108</sup>A/CONF.157/PC/62/Add. 11/Rev. 1.
- <sup>109</sup>Adopted without a vote.
- <sup>110</sup>See A/50/635/Add.2.
- <sup>111</sup>A/50/635.
- <sup>112</sup>Adopted without a vote.
- <sup>113</sup>See A/50/635/Add.
- <sup>114</sup>Adopted by a recorded vote of 91 to 57, with 21 abstentions.
- <sup>115</sup>See A/50/635/Add. 2.
- <sup>116</sup>A/CONF.157/24 (part I), chap. III.
- <sup>117</sup>Adopted by a recorded vote of 156 to none, with 15 abstentions.
- <sup>118</sup>See A/50/635/Add. 2.
- <sup>119</sup>A/CONF.157/24 (part I), chap. III, sect. II, para. 67.
- <sup>120</sup>A/50/736.
- <sup>121</sup>United Nations, *Treaty Series*, vol. 189, p. 137.
- <sup>122</sup>Ibid., vol. 606, p. 267.
- <sup>123</sup>Ibid., vol. 606, p.360, p. 117.
- <sup>124</sup>Ibid., vol. 989, p.175.
- <sup>125</sup>Adopted without a vote.
- <sup>126</sup>See A/50/632.
- <sup>127</sup>*Official Record of the General Assembly, Fiftieth Session, Supplement No. 12 (A/50/12)*.
- <sup>128</sup>Ibid., *Supplement No. 12A, (A/50/12/Add. 1)*.
- <sup>129</sup>A/CONF.177/20 and Add. 1, chap. 1, resolution 1, annex II.
- <sup>130</sup>A/50/365-S/1995/728; see *Official Records of the Security Council, Fiftieth Year, Supplement for July, August and September 1995*, document S/1995/728. See also chapter VII of this *Yearbook*.
- <sup>131</sup>Adopted by recorded vote of 124 to none, with 24 abstentions.

- <sup>132</sup>See A/50/L. 28 and Add.1.
- <sup>133</sup>For detailed information, see the 1995 report of the Secretary-General on the Law of the Sea (A/50/713).
- <sup>134</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.
- <sup>135</sup>A/50/713, paras. 55-58.
- <sup>136</sup>*Ibid.*, paras. 23-31.
- <sup>137</sup>Adopted by a recorded vote of 132 to 1, with 3 abstentions.
- <sup>138</sup>See A/50/L. 34 and Add. 1.
- <sup>139</sup>For the composition of the Court, see General Assembly decision 50/319.
- <sup>140</sup>As of 31 December 1995, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice, increased by one, bringing the total to 61.
- <sup>141</sup>For detailed information, see *International Court of Justice Yearbook, 1994-1995*, No. 49 and *International Court of Justice, Yearbook, 1995-1996*, No. 50.
- <sup>142</sup>*I.C.J. Reports 1995*, p.90.
- <sup>143</sup>*I.C.J. Reports 1954*, p.19.
- <sup>144</sup>*I.C.J. Reports 1995*, pp. 107-118, 119-128, 129-134 and 135-138.
- <sup>145</sup>*Ibid.*, pp. 139-223 and 224-277.
- <sup>146</sup>*Ibid.*, pp.423.
- <sup>147</sup>*Ibid.*, pp.6.
- <sup>148</sup>*Ibid.*, pp.27-39, 40-50, 51-66, 67-73 and 74-78.
- <sup>149</sup>*Ibid.*, p.83.
- <sup>150</sup>*I.C.J. Reports 1996*, p.6.
- <sup>151</sup>*I.C.J. Reports 1995*, pp.282 and 285.
- <sup>152</sup>*Ibid.*, p.80.
- <sup>153</sup>*Ibid.*, p. 279
- <sup>154</sup>*I.C.J. Reports 1994*, p. 151.
- <sup>155</sup>*Ibid.*, p.105.
- <sup>156</sup>*I.C.J. Reports 1995*, p.87.
- <sup>157</sup>*Ibid.*, p.288.
- <sup>158</sup>*I.C.J. Reports 1974*, p. 467, para. 31.
- <sup>159</sup>*Ibid.*, pp.466, para.29.
- <sup>160</sup>*Ibid.*, p.469, para. 55.
- <sup>161</sup>*Ibid.*, p.475, para. 55.
- <sup>162</sup>*Ibid.*, p.477, para. 62.
- <sup>163</sup>*I.C.J. Reports 1995*, pp. 309, 310 and 311.
- <sup>164</sup>*Ibid.*, pp.312-316.
- <sup>165</sup>*Ibid.*, pp.317-362, 363-380, 381-421.
- <sup>166</sup>*Ibid.*, p.3.
- <sup>167</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 4 (A/do/4)*.
- <sup>168</sup>For the membership of the International Law Commission, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 10 (A/50/10)*, chap. I, sect. A.
- <sup>169</sup>For detailed information, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 10 (A/50/10)*.
- <sup>170</sup>A/CN. 4/466 and Corr. 1.
- <sup>171</sup>A/CN. 4/L. 506 and Corr.1.
- <sup>172</sup>A/CN. 4/467.
- <sup>173</sup>A/CN. 4/469 and Corr. 1 and Add. 1 and 2.
- <sup>174</sup>A/CN. 4/468.
- <sup>175</sup>A/CN. 4/471.
- <sup>176</sup>A/CN. 4/470 and Corr. 1 and 2.
- <sup>177</sup>Adopted without a vote.
- <sup>178</sup>See A/50/638.
- <sup>179</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 10 (A/50/10)*.
- <sup>180</sup>For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, chap. I, sect. B.

- <sup>181</sup>For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXVI: 1995 United Nations publication and Sales No. E.96.V.8).
- <sup>182</sup>See comments in document A/CN.9/409 and Add. 1 to 4.
- <sup>183</sup>A/CN.9/410.
- <sup>184</sup>A/CN.9/412.
- <sup>185</sup>A/CN.9/SER. C/ABSTRACTS/4, 5 and 6.
- <sup>186</sup>Adopted without a vote; see A/50/640 and Corr. 1.
- <sup>187</sup>For the text of the Convention, see chap. IV of this *Yearbook*.
- <sup>188</sup>Adopted without a vote; see A/50/637.
- <sup>189</sup>A/50/726.
- <sup>190</sup>Adopted without a vote; see A/d0/637.
- <sup>191</sup>A/50/368 and Add. 1-3.
- <sup>192</sup>The proceedings of the United Nations Congress are contained in: *International Law as a Language for International Relations* (United Nations publication Sales No. T.96.V.4).
- <sup>193</sup>Adopted without a vote; see A/50/639.
- <sup>194</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 22* (A/50/22).
- <sup>195</sup>Adopted without a vote; see A/50/641.
- <sup>196</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 26* (A/50/22).
- <sup>197</sup>A/AC.154/277.
- <sup>198</sup>Adopted without a vote; see A/50/642 and Corr. 1.
- <sup>199</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 33* (A/50/33), chap. V, sect. A.
- <sup>200</sup>Adopted without a vote; see A/50/642 and Corr. 1.
- <sup>201</sup>A/50/361.
- <sup>202</sup>Adopted by a recorded vote of 155 to none, with 3 abstentions; see A/50/642 and Corr. 1.
- <sup>203</sup>*Official Records of the General Assembly, Fiftieth Session, Supplement No. 33* (A/50/33).
- <sup>204</sup>Adopted without a vote; see A/50/643.
- <sup>205</sup>A/50/372 and Add. 1.
- <sup>206</sup>Adopted without a vote; see A/50/645.
- <sup>207</sup>A/C.6/49/2.
- <sup>208</sup>Adopted without a vote; see A/50/646.
- <sup>209</sup>A/50/142.
- <sup>210</sup>See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 1* (A/49/1).
- <sup>211</sup>See A/50/644, para. 7.
- <sup>212</sup>*Official Records of the General Assembly, Forty-fourth Session Supplement No. 10* (A/44/10), chap. II.D.
- <sup>213</sup>For detailed information, see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 14* (A/51/14). This report of the Acting Executive Director of UNITAR covers the period from 1 July 1994 to 30 June 1996.
- <sup>214</sup>Adopted without a vote.
- <sup>215</sup>See A/50/620.
- <sup>216</sup>ILC, 82<sup>nd</sup> Session, 1995, *Record of Proceedings*, nos. 1, 11, 14 (p.1); English, French, Spanish; *Official Bulletin* of the ILO, vol. LXXVIII, Series A, No. 2, pp.42-43; English, French, Spanish.
- <sup>217</sup>*Official Bulletin* of the ILO, vol. LXXVIII, 1995, Series A, No. 2, pp. 18-33; English, French, Spanish. (Information on the preparatory work for the adoption of instruments, which, by virtue of the double discussion procedure, normally covers a period of two years, is given in order to facilitate reference work.) Regarding the preparatory work, see: *First discussion*—Safety and Health in Mines, ILC, 81<sup>st</sup> Session (1994); Report V(1) and V(2), 67 and 69 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 81<sup>st</sup> Session (1994), *Record of Proceedings*, No.26; No. 28, pp.2-6; English, French, Spanish. *Second discussion*—Safety and Health in Mines, ILC, 82<sup>nd</sup> Session (1995); Report IV (1), Report IV (2A), Report IV (2B); 19, 69 and 32 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC,

82<sup>nd</sup> Session (1995), *Record of Proceedings*, No. 19, No. 26, p.3; English, French, Spanish.

<sup>218</sup>*Official Bulletin* of the ILO, v. LXXVIII, Series A, N. 2, pp. 33-36; English, French, Spanish; *Single Discussion*: Protocol to the Labour Inspection Convention, 1947: ILC, 82<sup>nd</sup> Session, 1995, Report VI (1), Report VI(2), 51 and 86 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 82<sup>nd</sup> Session (1995), *Record of Proceedings*, No. 20; No. 23, pp. 1-5; English, French, Spanish.

<sup>219</sup>This report has been published as Report III (Part 4) to the 82<sup>nd</sup> Session of the Conference (1995) and comprise two volumes: vol. A, General Report and Observations concerning particular countries (Report III (Part 4A), xvii + 460 pages; English, French, Spanish) and vol. B, General Survey of the Termination of Employment Convention (No. 158) (Report III (Part 4B), xi + 157 pages; English, French, Spanish).

<sup>220</sup>This report has been published as Report III (Part 4) to the 83<sup>rd</sup> Session of the Conference (1996) and comprises two volumes: vol. A, General Report and Observations concerning particular countries (Report III (Part 4A), xvi + 449 pages; English, French, Spanish) and vol. B, General Survey of Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958 (Report III (Part 4B), ix + 133 pages; English, French, Spanish).

<sup>221</sup>GB.263/5/1, GB.265/12/8; English, French, Spanish.

<sup>222</sup>GB.264/17/1.; English, French, Spanish.

<sup>223</sup>GB.265/13/1; English, French, Spanish.

<sup>224</sup>GB.264/17/2; English, French, Spanish.

<sup>225</sup>GB.265/13/3; English, French, Spanish.

<sup>226</sup>GB.265/13/2; English, French, Spanish.

<sup>227</sup>GB.265/13/4; English, French, Spanish.

<sup>228</sup>*Official Bulletin* of the ILO, vol. LXXVIII, 1995, Series B, No.1, English, French, Spanish.

<sup>229</sup>*Ibid.*, vol. LXXVIII, 1995, Series B, No.2; English, French, Spanish.

<sup>230</sup>*Ibid.*, vol. LXXVIII, 1995, Series B, No.2; English, French, Spanish.

<sup>231</sup>GB.262/WP/SDL/Inf.1; GB.262/WP/DSL/Inf.2; GB.262/WP/SDL/Inf.4; Gb.262/WP/SDL/1/2; Gb.262/WP/SDL/RP; English, French, Spanish.

<sup>232</sup>GB.264/WP/SDL/1; GB.264/14; English, French, Spanish.

<sup>233</sup>GB.264/LILS/WP/PRS/1; GB.264/LILS/4; GB.264/9/2; English, French, Spanish.

<sup>234</sup>*Official Bulletin* of ILO, vol. LXXVIII, 1995, Series A, No. 3 (to be published); English, French, Spanish.

<sup>235</sup>United Nations, *Treaty Series*, vol. 943. p.178.

<sup>236</sup>For details on the establishment of the Inspection Panel, see *Juridical Yearbook*, 1993 p. \_\_\_\_\_.

<sup>237</sup>For details on the inspections, please see the report of the Inspection Panel for the period from 1 August 1994 to 31 July 1996, published for the Inspection Panel by the World Bank, Washington D.C., 1996.

<sup>238</sup>*International Legal Materials*, vol. XXIV, p. 1605.

<sup>239</sup>The text of the ICSID Convention is reproduced in *Judicial Yearbook*, 1966, p.196.

<sup>240</sup>A member's quota in the Fund determines, in particular, the amount of its subscription, its voting weight, its access to Fund financing, and its share in the allocation of SDRs.

<sup>241</sup>Article XXVI, section 2(a) provides that, "[i]f a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund".

<sup>242</sup>Under the rights accumulation program (RAP), a member with overdue financial obligations to the Fund earns "rights" as it satisfactorily performs under an economic adjustment programme monitored by the Fund. The accumulated rights are then "encashed" in conjunction with a financial arrangement—such as the arrangement under the enhanced structural adjustment facility, a stand-by or an extended arrangement—approved by the Fund. The rights approach, however, is available only to members that were in protracted arrears to the Fund at the end of 1989.

<sup>243</sup>The five successor republics of the Socialist Federal Republic of Yugoslavia are: Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia and Herzegovina, Republic of Croatia, Republic of Slovenia and the former Yugoslav Republic of Macedonia.

<sup>244</sup>CCFF is a policy of the Fund on the use of its resources in the General Resources Account (adopted pursuant to article V, section 3 of the Articles). It is intended to provide financial assistance to member countries that are experiencing balance of payment diffi-

culties arising out of (a) temporary export shortfalls, (b) adverse external contingencies, or (c) excess cost of cereal imports. *Selected Decisions, Twenty-First Edition* (Washington, D.C., IMF, 1996), pp. 160-188.

<sup>245</sup>The Systemic Transformation Facility was a temporary facility established in April 1993 to provide financial assistance from the Fund's resources in the General Resource Account to members with economies in transition that faced balance of payment difficulties arising from severe disruptions to their trade and payment arrangements owing to a shift from reliance on trading at non-market prices to multilateral, market-based trade. *Selected Decisions, supra*, note 244, p.214.

<sup>246</sup>Executive Board Decision No. 8759-(87/176) ESAF, 18 December 1987, as amended, *Selected Decisions, supra*, note 214 pp. 22-23. The Enhanced Structural Adjustment Facility Trust, established in 1987, is a trust administered and operated by the Fund for the purpose of providing financial assistance on highly concessional terms to low-income countries facing protracted balance-of-payments problems and to support eligible members' medium-term macroeconomic adjustment and structural reform policies.

<sup>247</sup>The list is attached as an Annex to Executive Board Decision No.8240-(86/56) SAF, 26 March 1986, *Selected Decisions, supra*, note 244, pp.312-313.

<sup>248</sup>Executive Board Decision No.6230-(79/140), August 1979, *Selected Decisions, supra*, note 244, pp.103-105.

<sup>249</sup>Executive Board Decision No. 5392-(77/63) 29 April 1977, *Selected Decisions, supra*, note 244, pp.8-12.

<sup>250</sup>Establishment of a Framework Administered Account for Technical Assistance Activities, Executive Board Decision No. 10942-(95/33), 3 April 1995, *Selected Decisions, supra*, note 244, p. 60.

<sup>251</sup>In accordance with Valuation of the Special Drawing Right, Executive Board Decision No. (6631-80/145)G/S, 17 September 1980, *Selected Decisions, supra*, note 244, p.439.

<sup>252</sup>United Nations, *Treaty Section*, vol. 33, p. 261.

<sup>253</sup>*Ibid.*, vol. 15, p.295.

<sup>254</sup>United Nations, *Treaty Series*, vol. 195, p.2; vol. 1209, p.32; vol. 1281, p.297. See also International Telecommunication Convention, concluded at Nairobi on 6 November 1982 (not yet published) and Constitution and Convention of the International Telecommunication Union concluded at Geneva on 22 December 1992 (not yet published).

<sup>255</sup>The reports of the two sessions of the Legal Committee held during 1995 are contained in documents LEG 72/9 and LEG 73/14 respectively.

<sup>256</sup>United Nations, *Treaty Series*, vol.1456, p.221.

<sup>257</sup>IMO document LEG/CONF.8/10.

<sup>258</sup>United Nations, *Treaty Series*, vol.1463, p.19.

<sup>259</sup>United Nations, *Treaty Series*, vol. 973, p. 3.

<sup>260</sup>*Ibid.*, Vol. 1110, p. 57.

<sup>261</sup>*Ibid.*, vol. 439, p. 193.

<sup>262</sup>Unpublished.

<sup>263</sup>Unpublished.

<sup>264</sup>United Nations, *Treaty Series*, vol. 1184, p. 2.

<sup>265</sup>*International Legal Materials*, vol. XII, p. 1319.

<sup>266</sup>*Ibid.*, vol. XVII, p. 546.

<sup>267</sup>United Nations, *Treaty Series*, vol. 640, p.133.

<sup>268</sup>*International Legal Materials*, vol. XXX, p. 725.

<sup>269</sup>United Nations, *Treaty Series*, vol. 828. p.389.

<sup>270</sup>*Ibid.*, vol.74, p. 343.

<sup>271</sup>Cm 1601, *British Treaty Series* 3 (1997).

<sup>272</sup>United Nations, *Treaty Series*, vol. 1160, p. 231.

<sup>273</sup>*Ibid.*, vol. 828, p. 107.

<sup>274</sup>*International Law Materials*, vol. 36, p. 65.

<sup>275</sup>United Nations, *Treaty Series*, vol. 828, p. 221.

<sup>276</sup>*International Law Materials*, vol. 17, p. 285.

<sup>277</sup>United Nations, *Treaty Series*, vol. 496, p. 43.

<sup>278</sup>*Ibid.*, vol. 866, p. 67.

<sup>279</sup>*Ibid.*, vol. 1144, p. 3.

<sup>280</sup>*Ibid.*, vol. 1160, p. 483.

<sup>281</sup>Not published.

- <sup>282</sup>United Nations, *Treaty Series*, vol. 828, p. 191.  
<sup>283</sup>*Ibid.*, Vol. 828, p. 438.  
<sup>284</sup>INFCIRC/9/Rev.2.  
<sup>285</sup>INFCIRC/274/Rev.1.  
<sup>286</sup>INFCIRC/335.  
<sup>287</sup>INFCIRC/336.  
<sup>288</sup>INFCIRC/500.  
<sup>289</sup>INFCIRC/402.  
<sup>290</sup>INFCIRC/377/Add.. 7.  
<sup>291</sup>INFCIRC/167/Add. 15.  
<sup>292</sup>United Nations, *Treaties Series*, vol. 729, p. 161.  
<sup>293</sup>INFCIRC/495.  
<sup>294</sup>INFCIRC/465.  
<sup>295</sup>INFCIRC/476.  
<sup>296</sup>INFCIRC/463.  
<sup>297</sup>INFCIRC/504.  
<sup>298</sup>INFCIRC/477.  
<sup>299</sup>INFCIRC/483.  
<sup>300</sup>INFCIRC/462.

## Chapter IV

### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RE- LATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Treaties concerning international law concluded under the auspices of the United Nations

1. FINAL DOCUMENT OF THE 1995 REVIEW AND EXTENSION CONFERENCE OF THE PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS.<sup>1</sup> DONE AT NEW YORK ON 11 MAY 1995 OF THE 1995.<sup>2</sup>

#### 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

#### FINAL DOCUMENT

#### PART I

#### Organization and work of the Conference<sup>3</sup> New York, 1995

##### Contents

Introduction

Organization of the Conference

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*Annex.* Decisions and resolution adopted by the Conference

##### *Introduction*

1. At its forty-seventh session, the General Assembly of the United Nations, in its resolution 47/52 A of 9 December 1992, took note of the decision of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons, following appropriate consultations, to form a preparatory committee for a conference to review the operation of the Treaty and to decide on its extension, as called for in article X, paragraph 2, and also as provided for in article VIII, paragraph 3, of the Treaty.

2. The preparatory Committee held four sessions: the first in New York from 10 to 14 May 1993, the second in New York from 17 to 21 January 1994,

the third in Geneva from 12 to 16 September 1994 and the fourth in New York from 23 to 27 January 1995. Progress reports on the first three sessions of the Committee were issued as documents NPT/CONF. 1995/PC.I/2, NPT/CONF.1995/PC.II/3 and NPT/CONF.1995/PC.III/15, respectively.

3. Pursuant to the request of the Preparatory Committee, the United Nations Secretariat, the International Atomic Energy Agency, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean and the South Pacific Forum prepared a number of background papers, which were submitted to the Conference as background documents as follows:

(a) By the United Nations Secretariat:

Developments since the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons towards the realization of the purposes of the tenth preambular paragraph of the Treaty (NPT/Conf.1995/2)

Implementation of articles I and II of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/3)

Developments since the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons relating to article VI of the Treaty (NPT/CONF.1995/4)

Implementation of article VII of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/5 and Corr.1)

Developments with regard to effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons (NPT/CONF.1995/6)

Other activities relevant to article III (NPT/CONF.1995/7/Part II)

(b) By the International Atomic Energy Agency:

Activities of the International Atomic Energy Agency relevant to article III of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/7/Part I)

Activities of the International Atomic Energy Agency relevant to article IV of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/8)

Activities of the International Atomic Energy Agency relevant to article V of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/9)

(c) By the Agency for the Prohibition of Nuclear Weapons—in Latin America and the Caribbean:

Memorandum from the General Secretariat of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean prepared for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/10 and Add.1)

(d) By the South Pacific Forum secretariat:

South Pacific Nuclear-Free-Zone Treaty (NPT/CONF.1995/11)

4. The final report of the Preparatory Committee for the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation

of Nuclear Weapons (NPT/Conf.1995/1 and Corr.1) was issued as a document of the Conference prior to its Conference, a proposed allocation of items to the Main Committees of the Conference, the draft rules of procedure and a schedule for the division of costs of the Conference.

### *Organization of the Conference*

5. In accordance with the decision of the Preparatory Committee, the Conference was convened on 17 April 1995 at United Nations Headquarters in New York. After the opening of the Conference by Mr. Pasi Patokallio (Finland), Chairman of the fourth session of the Preparatory Committee, the Conference elected by acclamation as its President Mr. Jayantha Dhanapala (Sri Lanka). The Conference also unanimously confirmed the nomination of Mr. Prvoslav Davinic, Director of the United Nations Centre for Disarmament Affairs, as Secretary-General of the Conference.

6. At the same meeting, Mr. Boutros Boutros-Ghali, Secretary-General of the United Nations, and Mr. Hans Blix, Director-General of the International Atomic Energy Agency, addressed the Conference. Mr. Warren Christopher, Secretary of State of the United States of America, welcomed the participants on behalf of the host country.

7. At the opening meeting, the Conference adopted its agenda and the allocation of items to the Main Committees of the Conference as proposed by the Preparatory Committee (NPT/CONF.1995/1 and Corr.1).

8. At its 16<sup>th</sup> plenary meeting, on 10 May 1995, the Conference adopted the rules of procedure (NPT/CONF.1995/28).

9. The rules of procedure provided for the establishment of three Main Committees, a General Committee, a Drafting Committee and a Credentials Committee.

10. The Conference unanimously elected the Chairmen and Vice-Chairmen of the three Main Committees, the Drafting Committee and the Credentials Committee, as follows:

Main Committee I	Chairman	Mr. Isaac E. Ayewah (Nigeria)
	Vice-Chairman	Mr. Richard Starr (Australia)
	Vice-Chairman	Mr. Anatolia M. Zlenko (Ukraine)
Main Committee II	Chairman	Mr. Andre Erdos (Hungary)
	Vice-Chairman	Mr. Enrique de la Torre (Argentina)
	Vice-Chairman	Mr. Rajab Sukayri (Jordan)
Main Committee III	Chairman	Mr. Jaap Ramaker (Netherlands)
	Vice-Chairman	Mr. Yanko Yanes (Bulgaria)
	Vice-Chairman	Mr. Gustavo Alvarez Goyoaga (Uruguay)
Drafting Committee	Chairman	Mr. Tadeusz Strulak (Poland)
	Vice-Chairman	Mr. Nabil Fahmy (Egypt)
	Vice-Chairman	Mr. Pasi Patokallio (Finland)
Credentials Committee	Chairman	Mr. Andelfo Garcia (Colombia)
	Vice-Chairman	Mr. Alyksandr Sychou (Belarus)
	Vice-Chairman	Ms. Mary Elizabeth Hoinkes (United States of America)

11. The Conference also unanimously elected 33 Vice-Presidents from the following States parties: Algeria, Australia, Austria, Bangladesh, Belarus, Bulgaria, Cameroon, Canada, China, Congo, Czech Republic, Finland, France, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Mali, Mexico, Norway, Peru, Romania, Russian Federation, Slovakia, South Africa, Sweden, Trinidad and Tobago, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Venezuela.

12. The Conference appointed representatives from the following states parties as members of the Credentials Committee: Armenia, Germany, Italy, Lesotho, Lithuania and Myanmar.

#### *Participation in the Conference*

13. One hundred and seventy-five States parties to the Treaty on the Non-Proliferation of Nuclear Weapons participated in the Conference as follows: Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zaire, Zambia and Zimbabwe.

14. In accordance with subparagraph 1(a) of rule 44, 10 States not parties to the Treaty, namely Angola, Brazil, Chile, Cuba, Djibouti, Israel, Oman, Pakistan, the United Arab Emirates and Vanuatu, attended the Conference as observers.

15. In accordance with subparagraph 1(b) of rule 44, Palestine was granted observer status.

16. The United Nations and the International Atomic Energy Agency participated in the Conference in accordance with paragraph 2 of rule 44.

17. In accordance with paragraph 3 of rule 44, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the European Union, the League of Arab States, the South Pacific Forum, the International Committee of the Red Cross, the Nuclear Energy Agency of the Organization for Economic Cooperation and Development, the North Atlantic Assembly, the Organization of African Unity and the Organization of the Islamic Conference were granted observer agency status.

18. One hundred and ninety-five research institutes and non-governmental organizations attended the Conference in accordance with paragraph 4 of rule 44.

19. A list of all delegations to the Conference, including States parties, observers, the United Nations and the International Atomic Energy Agency, observer agencies and research institutes and non-governmental organizations, is contained in part II of the present document.

20. The Credentials Committee held four meetings and, on 9 May 1995, adopted its report to the Conference on the credentials of States parties (NPT/CONF.1995/CC/1). At its 16<sup>th</sup> plenary meeting, on 10 May, the Conference took note of the report.

#### *Financial arrangements*

21. At its 16<sup>th</sup> Plenary meeting, the Conference decided to adopt the cost-sharing formula proposed by the Preparatory Committee in the appendix to rule 12 of the rules of Procedure (NPT/CONF. 1995/28). The final schedule of costs as contained in document NPT/Conf.1995/29 was based on the actual participation of States parties in the Conference.

#### *Work of the Conference*

22. The Conference held 19 plenary meetings between 17 April and 12 May 1995, when it concluded its work.

23. The general debate in plenary, in which 116 States parties took part, was held from 18 to 25 April.

24. Main Committee I held 12 meetings between 19 April and 6 May 1995. Its report (NPT/CONF.1995/MC.I/1) was submitted to the Conference at the 15<sup>th</sup> plenary meeting, on 8 May 1995. Main Committee II held 10 meetings between 19 April and 5 May 1995. Its report (NPT/CONF.1995/MC.II/1) was submitted to the Conference at the 14<sup>th</sup> plenary meeting, on 5 May 1995. Main Committee III held 6 meetings between 20 April and 5 May 1995. Its report (NPT/CONF. 1995/MC.III/1) was submitted to the Conference at the 14<sup>th</sup> plenary meeting, on 5 May 1995. The reports of the three Main Committees as submitted to the Conference constitute part of the Final Document.

25. The Drafting Committee met during the period 28 April 12 May 1995. Its report (NPT/CONF.1995/DC/1) was submitted to the Conference at the 19<sup>th</sup> Plenary meeting on 12 May 1995. At that meeting, the Conference took note of the report.

### *Documentation*

26. A list of the documents of the Conference is contained in part II of the present document.

### *Conclusions of the Conference*

27. At its 19<sup>th</sup> plenary meeting, on 12 May 1995, the Conference, notwithstanding extensive consultations and considerable effort, was unable to adopt a final declaration on the review of the operation of the Treaty.

28. In connection with agenda item 19, entitled "Decision on the extension of the Treaty as provided for in article X, paragraph 2", the Conference had before it the following proposals:

(a) A draft resolution (NPT/CONF.1995/L.1/Rev.1) submitted by Mexico;

(b) A draft resolution (NPT/CONF.1995/L.2) submitted by Canada, on behalf of Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Benin, Bolivia, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Grenada, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malta, Marshall Islands, Micronesia (Federated States of), Monaco, Mongolia, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Tonga, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Uzbekistan. Subsequently, Guyana, Haiti, Nauru, Nepal, the Philippines, Suriname, Venezuela and Zaire joined in sponsoring the draft decision;

(c) A draft decision (NPT/CONF.1995/L.3) submitted by Indonesia, on behalf of the Democratic People's Republic of Korea, Indonesia, the Islamic Republic of Iran, Jordan, Malaysia, Mali, Myanmar, Nigeria, Papua New Guinea, Thailand and Zimbabwe. Subsequently, Ghana, the United Republic of Tanzania and Zambia joined in sponsoring the draft decision.

29. The Conference also had before it the following draft decisions proposed by the President:

(a) A draft decision (NPT/CONF.1995/L.4) entitled "Strengthening the review process for the Treaty;"

(b) A draft decision (NPT/CONF.1995/L.5) entitled "Principles on objectives for nuclear non-proliferation and disarmament;"

(c) A draft decision (NPT/CONF.1995/L.6) entitled "Decision on the extension of the Treaty on the Non-Proliferation of Nuclear Weapons".

30. At its 17<sup>th</sup> plenary meeting, on 11 May 1995, the Conference decided to take action on the three draft decisions proposed by the President as follows:

- (a) NPT/CONF.1995/L.4 was adopted without a vote as decision 1;
- (b) NPT/CONF.1995/L.5 was adopted without a vote as decision 2;
- (c) NPT/CONF.1995/L.6 was adopted without a vote as decision 3;

The text of these decisions is contained in the annex to the present document.

31. Consequently, the sponsors of draft resolution NPT/CONF.1995/L.1/Rev.1 and of draft decisions NPT/CONF.1995/L.2 and NPT/CONF.1995/L.3 did not pursue action with regard to their specific proposals.

32. In connection with rule 24 of the rules of procedure, that is, submission of other proposals, the Conference had before it a draft resolution (NPT/CONF.1995/L.7) sponsored by Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, the Libyan Arab Jamahiriya, Mauritania, Morocco, Qatar, Saudi Arabia, the Sudan, Tunisia and Yemen and a draft resolution (NPT/CONF.1995/L.8) sponsored by the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

33. At its 17<sup>th</sup> plenary meeting, the Conference adopted draft resolution NPT/CONF.1995/L.8, as orally amended, without a vote, as resolution 1. The text of the resolution is contained in the annex to the present document. The sponsors of draft resolution NPT/CONF.1995/L.7 did not pursue action with regard to their proposal.

## ANNEX

### Decisions and resolution adopted by the Conference

Decision 1 -----	Strengthening the review process for the Treaty
Decision 2 -----	Principles and objectives for nuclear non-proliferation and disarmament
Decision 3 -----	Extension of the Treaty on the Non- Proliferation of Nuclear Weapons
Resolution on the Middle East	

### Decision 1

#### STRENGTHENING THE REVIEW PROCESS FOR THE TREATY

1. The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons examined the implementation of article VIII, paragraph 3, of the Treaty and agreed to strengthen the review process for the operation of the Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.

2. The States party to the Treaty participating in the Conference decided, in accordance with article VIII, paragraph 3, that Review Conferences should continue to be held every five years and that, accordingly, the next Review Conference should be held in the year 2000.

3. The Conference decided that, beginning in 1997, the Preparatory Committee should hold, normally for a duration of 10 working days, a meeting in each of the three years prior to the Review Conference. If necessary, a fourth preparatory meeting may be held in the year of the Conference.

4. The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the decision on the principles and objectives for nuclear non-proliferation and disarmament, adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.

5. The Conference also concluded that the present structure of three Main Committees should continue and the question of an overlap of issues being discussed in more than one Committee should be resolved in the General Committee, which would coordinate the work of the Committee so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one Committee.

6. It was also agreed that subsidiary bodies could be established within the respective Main Committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues. The establishment of such subsidiary bodies would be recommended by the Preparatory Committee for each Review Conference in relation to the specific objectives of the Review Conference.

7. The Conference further agreed that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.

## Decision 2

### PRINCIPLES AND OBJECTIVES FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT

*The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,*

*Reaffirming* the preamble and articles of the Treaty on the Non-Proliferation of Nuclear Weapons,

*Welcoming* the end of the cold war, the ensuing easing of international tension and the strengthening of trust between States,

*Desiring* a set of principles and objectives in accordance with which nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings evaluated periodically within the review process provided for in article VIII, paragraph 3, of the Treaty, the enhancement and strengthening of which is welcomed,

*Reiterating* the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control.

*The Conference affirms* the need to continue to move with determination towards the full

Realization and effective implementations of the provisions of the Treaty, and accordingly adopts the following principles and objectives:

### *Universality*

1. Universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All States not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those States that operate unsafeguarded nuclear facilities. Every effort should be made by all States parties to achieve this objective.

### *Non-proliferation*

2. The proliferation of nuclear weapons would seriously increase the danger of nuclear war. The treaty on the Non-Proliferation of Nuclear Weapons has a vital role to play in preventing the proliferation of nuclear weapons. Every effort should be made to implement the Treaty in all its aspects to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by States parties to the Treaty.

### *Nuclear disarmament*

3. Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. The undertakings with regard to nuclear disarmament as set out in the Treaty on the Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear-weapon States reaffirm their commitment, as stated in article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below:

(a) The completion by the Conference on Disarmament of the negotiations on a universal and internationally and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty no later than 1996. Pending the entry into force of a Comprehensive Test-Ban Treaty, the nuclear-weapon States should exercise utmost restraint;

(b) The immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices, in accordance with the statement of the Special Coordinator of the Conference on Disarmament and the mandate contained therein;

(c) The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.

### *Nuclear-weapon-free zones*

5. The conviction that the establishment of internationally recognized nuclear-weapon free zones, on the basis of arrangements freely arrived at among the States of the region concerned, enhances global and regional peace and security is reaffirmed.

6. The development of nuclear-weapon-free zones, especially in regions of tension, such as in the Middle East, as well as the establishment of zones free of all weapons of mass destruction, should be encouraged as a matter of priority, taking into account the specific characteristics of each region. The establishment of additional nuclear-weapon-free zones by the time of the Review Conference in the year 2000 would be welcome.

7. The cooperation of all the nuclear-weapon States and their respect and support for the relevant protocols is necessary for the maximum effectiveness of such nuclear-weapon-free zones and the relevant protocols.

#### *Security assurances*

8. Noting United Nations Security Council resolution 984 (1995), which was adopted unanimously on 11 April 1995, as well as the declarations of the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon states party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.

#### *Safeguards*

9. The International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the statute of the Agency and the Agency's safeguards system, compliance with its safeguards agreements with States parties undertaken in fulfilment of their obligations under article III, paragraph 1, of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.

10. All States parties required by article III of the Treaty to sign and bring into force comprehensive safeguards agreements and which have not yet done so should do so without delay.

11. International Atomic Energy Agency safeguards should be regularly assessed and evaluated. Decisions adopted by its Board of Governors aimed at further strengthening the effectiveness of Agency safeguards should be supported and implemented and the Agency's capability to detect undeclared nuclear activities should be increased. Also, States not party to the Treaty on the Non-Proliferation of Nuclear Weapons should be urged to enter into comprehensive safeguards agreements with the Agency.

12. New Supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, used or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

13. Nuclear fissile material transferred from military use to peaceful nuclear activities should, as soon as practicable, be placed under Agency safeguards in the framework of the voluntary safeguards agreements in place with the nuclear-weapon States. Safeguards should be universally applied once the complete elimination of nuclear weapons had been achieved.

#### *Peaceful uses of nuclear energy*

14. Particular importance should be attached to ensuring the exercise of the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I, II as well as III of the Treaty.

15. Undertakings to facilitate participation in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy should be fully implemented.

16. In all activities designed to promote the peaceful uses of nuclear energy, preferential treatment should be given to the non-nuclear-weapon States party to the Treaty, taking the needs of developing countries particularly into account.

17. Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.

18. All States should, through rigorous national measures and international cooperation, maintain the highest practicable levels of nuclear safety, including in waste management, and observe standards and guidelines in nuclear materials accounting, physical protection and transport of nuclear materials.

19. Every effort should be made to ensure that the International Atomic Energy Agency has the financial and human resources necessary to meet effectively its responsibilities in the areas of technical cooperation, safeguards and nuclear safety. The Agency should also be encouraged to intensify its efforts aimed at finding ways and means for funding technical assistance through predictable and assured resources.

20. Attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.

*The Conference requests* that the President of the Conference bring the present decision, the decision on strengthening the review process for the Treaty and the decision on the extension of the treaty on the Non-proliferation of Nuclear Weapons, to the attention of the heads of State or Government of all States and seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.

### Decision 3

#### EXTENSION OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

*The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,*

*Having convened* in New York from 17 April to 12 May 1995, in accordance with article VIII, paragraph 3, and article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons,

*Having reviewed* the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

*Having reaffirmed* article VIII, paragraph 3, of the Treaty and the need for its continued implementation in a strengthened manner and, to this end, emphasizing the decision on strengthening the review process for the treaty and the decision on principles and objectives for nuclear non-proliferation and disarmament, also adopted by the Conference,

*Having established* that the Conference is quorate in accordance with article X, paragraph 2, of the Treaty,

*Decides* that, as a majority exists among States party to the Treaty for its indefinite extension, in accordance with article X, paragraph 2, the Treaty shall continue in force indefinitely.

## Resolution on the Middle East

*The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,*

*Reaffirming* the purpose and provisions of the Treaty on the Non-Proliferation of Nuclear Weapons,

*Recognizing* that, pursuant to article VII of the Treaty, the establishment of nuclear-weapon-free zones contributes to strengthening the international non-proliferation regime,

*Recalling* that the Security Council, in its statement of 31 January 1992 (S/23500), affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international peace and security,

*Recalling also* General Assembly resolutions adopted by consensus supporting the establishment of a nuclear-weapon-free zone in the Middle East, the latest of which is resolution 49/71 of 15 December 1994,

*Recalling further* the relevant resolutions adopted by the General Conference of the International Atomic Energy Agency concerning the application of Agency safeguards in the Middle East, the latest of which is GC(XXXVIII)/RES/21 of 23 September 1994, and noting the danger of nuclear proliferation, especially in areas of tension,

*Bearing in mind* Security Council resolution 687 (1991) and in particular paragraph 14 thereof,

*Noting* Security Council resolution 984 (1995) and paragraph 8 of the decision on principles and objectives for nuclear non-proliferation and disarmament adopted by the Conference on 11 May 1995,

*Bearing in mind* the other decisions adopted by the Conference on 11 May 1995,

1. *Endorses* the aims and objectives of the Middle East peace process and recognizes that efforts in this regard, as well as other efforts, contribute to *inter alia*, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction;

2. *Notes with satisfaction* that, in its report (NPT/CONF.1995/MC.III/1), Main Committee III of the Conference recommended that the Conference “call on those remaining States not parties to the Treaty to accede to it, thereby accepting an international legally binding commitment not to acquire nuclear weapons or nuclear explosive devices and to accept International Atomic Energy Agency safeguards on all their nuclear activities”;

3. *Notes with concern* the continued existence in the Middle East of unsafeguarded nuclear facilities, and reaffirms in this connection the recommendation contained in section VI, paragraph 3, of the report of Main Committee III urging those non-parties to the Treaty on the Non-Proliferation of Nuclear Weapons that operate unsafeguarded nuclear facilities to accept full-scope International Atomic Energy Agency safeguards;

4. *Reaffirms* the importance of the early realization of universal adherence to the Treaty, and calls upon all States of the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible and to place their nuclear facilities under full-scope International Atomic Energy Agency safeguards;

5. *Calls upon* all States in the Middle East to take practical steps in appropriate forums aimed at making progress towards, *inter alia*, the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective;

6. *Calls upon* all States party to the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular the nuclear-weapon States, to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems.

2. UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS: AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982, RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS. ADOPTED AT NEW YORK ON 4 AUGUST 1995<sup>4</sup>

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>5</sup>

*The States Parties to this Agreement,*

*Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,<sup>6</sup>

*Determined* to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

*Resolved* to improve cooperation between States to that end,

*Calling* for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

*Seeking* to address in particular the problems identified in chapter 17, programme area C, of Agenda 21<sup>7</sup> adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized, and noting that there are problems of unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

*Committing* themselves to responsible fisheries,

*Conscious* of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

*Recognizing* the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

*Convinced* that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

*Affirming* that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

*Have agreed as follows:*

## PART I

### GENERAL PROVISIONS

#### *Article 1*

##### USE OF TERMS AND SCOPE

1. For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

(c) "fish" includes mollusks and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

(d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.

(b) This Agreement applies, *mutatis mutandis*:

(i) to any entity referred to in article 305, paragraph 1(c), (d) and (e), of the Convention and

(ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.

#### *Article 2*

##### OBJECTIVE

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention

#### *Article 3*

##### APPLICATION

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national

jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6, and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies, *mutatis mutandis*, in respect of areas under national jurisdiction.

#### *Article 4*

##### RELATIONSHIP BETWEEN THIS AGREEMENT AND THE CONVENTION

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

## PART II

### CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

#### *Article 5*

##### GENERAL PRINCIPLES

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discard, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort to do not exceed those commensurate with sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

#### *Article 6*

##### APPLICATION OF THE PRECAUTIONARY APPROACH

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measure to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limit and effort limit. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

#### *Article 7*

##### COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and

States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

### PART III

#### MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

#### *Article 8*

##### COOPERATION FOR CONSERVATION AND MANAGEMENT

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms for participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant

coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

#### *Article 9*

##### SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

#### *Article 10*

##### FUNCTIONS OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing efforts;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

#### *Article 11*

##### NEW MEMBERS OR PARTICIPANTS

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

#### *Article 12*

##### TRANSPARENCY IN ACTIVITIES OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

#### *Article 13*

##### STRENGTHENING OF EXISTING ORGANIZATIONS AND ARRANGEMENTS

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

#### *Article 14*

##### COLLECTION AND PROVISION OF INFORMATION AND COOPERATION IN SCIENTIFIC RESEARCH

1. States shall ensure that fishing vessels flying their flag provided such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

#### *Article 15*

##### ENCLOSED AND SEMI-ENCLOSED SEAS

In implementing this Agreement in an enclosed or semi-enclosed sea area, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

#### *Article 16*

##### AREAS OF HIGH SEAS SURROUNDED ENTIRELY BY AN AREA UNDER THE NATIONAL JURISDICTION OF A SINGLE STATE

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and

the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraph 4, 5, and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they do not engage in fisheries which could undermine the stocks concerned.

#### PART IV

##### NON-MEMBERS AND NON-PARTICIPANTS

###### *Article 17*

###### NON-MEMBERS OF ORGANIZATIONS AND NON-PARTICIPANTS IN ARRANGEMENTS

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

*Article 18*

DUTIES OF THE FLAG STATE

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:

(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) to prohibit fishing on the high seas by vessels which are not duly licenced or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization nor permit;

(iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provisions of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities through, inter alia:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

## PART VI

### COMPLIANCE AND ENFORCEMENT

#### *Article 19*

##### COMPLIANCE AND ENFORCEMENT BY THE FLAG STATE

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings, without delay, in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

#### *Article 20*

##### INTERNATIONAL COOPERATION IN ENFORCEMENT

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly fish migratory stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigation directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with internal law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities that undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

#### *Article 21*

##### SUBREGIONAL AND REGIONAL COOPERATION IN ENFORCEMENT

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article, such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management

organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding the inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigations and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of

the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3(a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies, *mutatis mutandis*, to boarding and inspection by a State party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established

by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

#### *Article 22*

##### BASIC PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO ARTICLE 21

1. The inspecting State shall ensure that its duly authorized inspectors:

(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;

(b) initiate notice to the flag State at the time of the boarding and inspection;

(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;

(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;

(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and

(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

(a) accept and facilitate prompt and safe boarding by the inspectors;

(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

- (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
- (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
- (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
- (f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

#### *Article 23*

##### MEASURES TAKEN BY A PORT STATE

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.
2. A port State may, inter alia, inspect documents, fishing gear and catch on boarding fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.
4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

#### PART VII

##### REQUIREMENTS OF DEVELOPING STATES

#### *Article 24*

##### RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks.

To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

#### *Article 25*

##### FORMS OF COOPERATION WITH DEVELOPING STATES

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 to 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organization and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resource development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

*Article 26*

SPECIAL ASSISTANCE IN THE IMPLEMENTATION OF THIS AGREEMENT

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

*Article 27*

OBLIGATION TO SETTLE DISPUTES BY PEACEFUL MEANS

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

*Article 28*

PREVENTION OF DISPUTES

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

*Article 29*

DISPUTES OF A TECHNICAL NATURE

Where a dispute concerns a matter of a technical nature, the States concerned may refer to the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously, without recourse to binding procedures for the settlement of disputes.

### *Articles 30*

#### PROCEDURES FOR THE SETTLEMENT OF DISPUTES

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply, *mutatis mutandis*, to any dispute between States Parties to this Agreement concerning the interpretation or application of a sub-regional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any disputes concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII, and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

### *Article 31*

#### PROVISIONAL MEASURES

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

*Article 32*

LIMITATIONS ON APPLICABILITY OF PROCEDURES FOR THE SETTLEMENT OF DISPUTES

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

*Article 33*

NON-PARTIES TO THIS AGREEMENT

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

*Article 34*

GOOD FAITH AND ABUSE OF RIGHTS

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

## PART XI

### RESPONSIBILITY AND LIABILITY

#### *Article 35*

### RESPONSIBILITY AND LIABILITY

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

## PART XII

### REVIEW CONFERENCE

#### *Article 36*

#### *Review conference*

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks highly migratory fish stocks.

## PART XIII

### FINAL PROVISIONS

#### *Article 37*

#### SIGNATURE

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

*Article 38*

RATIFICATION

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 39*

ACCESSION

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 40*

ENTRY INTO FORCE

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

*Article 41*

PROVISIONAL APPLICATION

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of the receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity to the depositary in writing of its intention to terminate provisional application.

*Article 42*

RESERVATION AND EXCEPTIONS

No reservations or exceptions may be made to this Agreement.

*Article 43*

DECLARATIONS AND STATEMENTS

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, 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 Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

*Article 44*

RELATION TO OTHER AGREEMENTS

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogating from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

*Article 45*

AMENDMENT

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as the applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature by States Parties for twelve months from the date of adoption at United Nations Headquarters, unless otherwise provided in the amendment itself.

4. Articles 35, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a party to this Agreement after the entry into force of amendments to accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State party not bound by the amendment.

#### *Article 46*

#### DENUNCIATION

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

#### *Article 47*

#### PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and

(b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

*Article 48*

ANNEXES

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

*Article 49*

DEPOSITARY

The Secretary General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

*Article 50*

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

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

*Opened for signature* AT New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

## ANNEX I

### Standard requirements for the collection and sharing of data

#### *Article 1*

##### GENERAL PRINCIPLES

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

#### *Article 2*

##### PRINCIPLES OF DATA COLLECTION, COMPILATION AND EXCHANGE

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organizations or arrangements; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

### *Article 3*

#### BASIC FISHERY DATA

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight or both by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
- (c) discard statistics, including estimates where necessary, reported as number nominal weight by species, as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method; and
- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and
- (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies

### *Article 4*

#### VESSEL DATA AND INFORMATION

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and
- (d) fishing gear description (e.g., types gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fishing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

### *Article 5*

#### REPORTING

A State shall ensure that vessels flying its flag and send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries organization or arrangement, logbook requirements and regional and international obligations. Such data shall be transmitted, where necessary by radio, telex, facsimile or satellite transmission or by other means.

### *Article 6*

#### DATA VERIFICATION

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling

### *Article 7*

#### DATA EXCHANGE

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organizations or arrangements, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food And Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

## ANNEX II

### **Guidelines for the application of precautionary reference points in conservation and management of straddling fish stocks and highly migratory fish stocks**

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvests stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which correspond to maximum sustainable yield, and that the biomass does not fall below predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

3. CROATIA-LOCAL SERBIAN COMMUNITY: BASIC AGREEMENT ON THE REGION OF EASTERN SLOVENIA, BARANJA AND WESTERN SIRMIIUM,<sup>8</sup> INCLUDING SECURITY COUNCIL RESOLUTIONS 1023 (1995) AND 1037 (1996) WELCOMING AND IMPLEMENTING THE BASIC AGREEMENT. DONE AT CROATIA ON 12 NOVEMBER 1995.<sup>9</sup>

Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium

The Parties agree as follows:

1. There will be a transitional period of 12 months which may be extended at most to another period of the same duration if so requested by one of the parties.

2. The United Nations Security Council is requested to establish a Transitional Administration, which shall govern the region during the transitional period in the interest of all persons resident in or returning to the region.

3. The United Nations Security Council is requested to authorize an international force to deploy during the transitional period to maintain peace and security in the region and otherwise to assist in implementation of this Agreement. The region shall be demilitarized according to the schedule and procedures determined by the international force. This demilitarization shall be completed not later than thirty days after deployment of the international force and shall include all military forces, weapons and police, except for the international force and for police operating under the supervision of, or with the consent of, the Transitional Administration.

4. The Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin. All persons who have left the region or have come to the region with previous permanent residence in Croatia shall enjoy the same rights as all other residents of the region. The Transitional Administration shall also take the steps necessary to re-establish the normal functioning of all public services in the region without delay.

5. The Transitional Administration shall help to establish and train temporary police forces, to build professionalism among the police and confidence among all ethnic communities.

6. The highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region.

7. All persons have the right to return freely to their place of residence in the region and to live there in conditions of security. All persons who have left the region or who have come to the region with previous permanent residence in Croatia have the right to live in the region.

8. All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them.

9. The right to recover property, to receive compensation for property that cannot be returned and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity.

10. Interested countries and organizations are requested to take appropriate steps to promote the accomplishment of the Commitments in this Agreement. After the expiration of the transitional period and consistent with established practice, the international community shall monitor and report on respect for human rights in the region on a long-term basis.

11. In addition, interested countries and organizations are requested to establish a commission, which will be authorized to monitor the implementation investigate all allegations of violations of this Agreement, and to make appropriate recommendations.

12. Not later than thirty days before the end of the transitional period, selections for all local government bodies, including for municipalities, districts and counties, as well as the right of the Serbian community to appoint a joint council of municipalities, shall be organized by the Transitional Administration. International organizations and institutions (e.g., the Organization for Security and Cooperation in Europe, the United Nations) and interested States are requested to oversee the elections.

13. The Government of the Republic of Croatia shall cooperate fully with the Transitional Administration and the international boarder of the region in order to facilitate the free movement of persons across existing border crossings.

14. This Agreement shall enter into force upon the adoption by the United Nations Security Council of a resolution responding affirmatively to the requests made in this Agreement.

*Done* this twelfth day of November 1995.

RESOLUTION 1023 (1995)

ADOPTED BY THE SECURITY COUNCIL AT ITS 3596<sup>TH</sup> MEETING,  
ON 22 NOVEMBER 1995

*The Security Council,*

*Recalling* all its earlier relevant resolutions,

*Reaffirming* its commitment to the search for an overall negotiated settlement of the conflicts in the former Yugoslavia, ensuring the sovereignty and territorial integrity of all the States there within their internationally recognized borders, and stressing the importance it attaches to the mutual recognition thereof,

*Reaffirming once again* its commitment to the independence, sovereignty and territorial integrity of the Republic of Croatia, and emphasizing in this regard that the territories of Eastern Slovenia, Baranja and Western Sirmium, known as Sector East, are integral parts of the Republic of Croatia,

*Affirming* the importance it attaches to full respect for human rights and fundamental freedoms of all those territories,

*Commending* the continuing efforts of the representatives of the United Nations, the European Union, the Russian Federation and the United States of America to facilitate a negotiated solution to the conflict in the Republic of Croatia,

1. *Welcomes* the Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium (S/1995/951, annex), signed on 12 November 1995 between the Government of the Republic of Croatia and the local Serb representatives in the presence of the United Nations mediator and the United States Ambassador to the Republic of Croatia;

2. *Recognizes* the request to it contained in the Basic Agreement to establish a Transitional Administration and authorize an appropriate international force, stands ready to consider the above request expeditiously in order to facilitate the implementation of the Agreement, and invites the Secretary-General to maintain the closest possible contact with all those concerned in order to assist with its work on the matter;

3. *Stresses* the need for the Governments of the Republic of Croatia and the local Serb party to cooperate fully on the basis of the Agreement and refrain from any military activity or any measure that might hinder the implementation of the transitional arrangements set out in it and reminds them of their obligation to cooperate fully with the United Nations Confidence Restoration Operation in Croatia and to ensure its safety and freedom of movement;

4. *Decides* to remain actively seized of the matter.

RESOLUTION 1037 (1996)

ADOPTED BY THE SECURITY COUNCIL AT ITS 3619<sup>TH</sup> MEETING,  
ON 15 JANUARY 1996

*The Security Council,*

*Recalling* its earlier relevant resolutions, and in particular its resolutions 1023 (1995) of 22 November 1995 and 1025 (1995) of 30 November 1995,

*Reaffirming once again* its commitment to the independence, sovereignty and territorial integrity of the Republic of Croatia, and emphasizing in this regard that the territories of eastern Slovenia, Baranja and Western Sirmium are integral parts of the Republic of Croatia,

*Stressing* the importance it attaches to full respect for human rights and fundamental freedom of all in those territories,

*Expressing its support* for the Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium (S/1995/951, annex), signed on 12 November 1995 between the Government of the Republic of Croatia and the local Serbian community (the Basic Agreement),

*Having considered* the report of the Secretary—General of 13 December 1995 (S/1995/1028),

*Stressing* the importance it places on mutual recognition among the successor States to the former Socialist Federal Republic of Yugoslavia, within their internationally recognized borders,

*Desiring* to support the parties in their effort to provide for a peaceful settlement of their disputes, and thus to contribute to achievement of peace in the region as a whole,

*Stressing* the obligations of Member States to meet all their commitments to the United Nations in relations to the United Nations peacekeeping operations in the former Yugoslavia,

*Determining* that the situation in Croatia continues to constitute a threat to international peace and security,

*Determined* to ensure the security and freedom of movement of the personnel of the United Nations peacekeeping operation in the Republic of Croatia, and to these ends, acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to establish for an initial period of 12 months a United Nations peacekeeping operations for the Region referred to in the Basic Agreement, with both military and civilian components, under the name “United Nations Transitional Administration for Eastern Slovenia, Baranja and Western Sirmium”;

2. *Requests* the Secretary-General to appoint, in consultation with the parties and with the Security Council, a Transitional Administrator, who will have overall authority over the civilian and military components of the Transitional Authority, and who will exercise the authority given to the Transitional Administration in the Basic Agreement;

3. *Decides* that the demilitarization of the Region, as provided in the Basic Agreement, shall be completed within 30 days from the date the Secretary-General informs the Council, based on the assessment of the Transitional Administrator, that the military component of the Transitional Authority has been deployed and is ready to undertake its mission;

4. *Requests* the Secretary-General to report monthly to the Security Council, the first such report to be submitted within one week after the date on which the demilitarization is scheduled to be completed pursuant to paragraph 3 above, regarding the activities of the Transitional Authority and the implementation of the Basic Agreement by the parties;

5. *Strongly urges* the parties to refrain from any unilateral actions which could hinder the handover from the United Nations Confidence Restoration Operation in Croatia to the Transitional Authority or the implementation of the Basic Agreement, and encourages them to continue to adopt confidence-building measures to promote an environment of mutual trust;

6. *Decides* that, no later than fourteen days after the date on which demilitarization is scheduled to be completed pursuant to paragraph 3 above, it will review whether the parties have shown a willingness to implement the Basic Agreement, taking into consideration the parties' actions and information provided the Security Council by the Secretary-General

7. *Calls upon* the parties to comply strictly with their obligations under the Basic Agreement and to cooperate fully with the Transitional Authority;

8. *Decides* to reconsider the mandate of the Transitional Authority if at any time it receives a report from the Secretary-General that the parties have significantly failed to comply with their obligations under the Basic Agreement;

9. *Requests* the Secretary-General to report to the Security Council no later than 15 December 1996 on the Transitional Authority and the implementation of the Basic Agreement, and expresses its readiness to review the situation in the light of that report and to take appropriate action;

10. *Decides* the military component of the Transitional Authority shall consist of a force with an initial deployment of up to 5,000 troops which will have the following mandate:

(a) To supervise and facilitate the demilitarization as undertaken by the parties to the Basic Agreement, according to the schedule and procedures to be established by the Transitional Authority;

(b) To monitor the voluntary and safe return of refugees and displaced persons to their home of origin in cooperation with the United Nations High Commissioner for Refugees, as provided for in the Basic Agreement;

(c) To contribute, by its presence, to the maintenance of peace and security in the region;

(d) Otherwise to assist in implementation of the Basic Agreement;

11. *Decides* that, consistent with the objectives and functions set out in paragraphs 12 to 17 of the Secretary-General's report of 13 December 1995, the civilian component of the Transitional Authority shall have the following mandate:

(a) To establish a temporary police force, define its structure and size, develop a training programme and oversee its implementation, and monitor treatment of offenders and the prison system, as quickly as possible, as set out in paragraph 16(b) of the Secretary-General's report;

(b) To undertake tasks relating to civil administration as set out in paragraph 16(b) of the Secretary-General's report;

(c) To undertake tasks relating to the functioning of public services as set out in paragraph 16(c) of the Secretary-General's report;

(d) To facilitate the return of refugees as set out in paragraph 16(e) of the Secretary-General's report;

(e) To organize elections, to assist in their conduct and to certify the results as set out in paragraph 16(g) of the Secretary-General's report and in

(f) To undertake the other activities described in the Secretary-General's report, including assistance in the coordination of plans for the development and economic reconstruction of the region, and those described in paragraph 12 below;

12. *Decides* that the Transitional Authority shall also monitor the parties' compliance with the commitment, as specified in the Basic Agreement, to respect the highest standards of human rights and fundamental freedoms, promote an atmosphere of confidence among all local residents irrespective of their ethnic origin, monitor and facilitate the deeming of territory within the region and maintain an active public affairs element;

13. *Calls upon* the Governments of the Republic of Croatia to include the Transitional Authority and the United Nations Liaison Office in Zagreb in the definition of "United Nations Peace Forces and Operations in Croatia" in the present Status of Forces Agreement with the United Nations, and requests the Secretary-General to confirm urgently, and no later than the date referred to in paragraph 3 above, on whether this has been done;

14. *Decides* that Member States, acting nationally or through regional organizations or arrangements, may at the request of the Transitional Authority and on the basis of procedures communicated to the United Nations, take all necessary measures, including close air support, in defence of the Transitional Authority and, as appropriate, to assist in the withdrawal of the Transitional Authority;

15. *Requests* that the Transitional Authority and the multinational implementation force authorized by the Security Council in resolution 1031 (1995) of 15 December 1995 cooperate, as appropriate, with each other, as well as with the High Representative;

16. *Calls upon* the parties to the Basic Agreement to cooperate with all agencies and organizations assisting in the activities related to implementation of the Basic Agreement, consistent with the mandate of the Transitional Authority;

17. *Requests* all international organizations and agencies active in the Region to coordinate closely with the Transitional Authority;

18. *Calls upon* States and international financial institutions to support and cooperate with efforts to promote the development and economic reconstruction of the Region;

19. *Underlines* the relationship between the fulfilment by the parties of their commitments in the Basic Agreement and the readiness of the international community to commit financial resources for reconstruction and development;

20. *Reaffirms* that all States shall cooperate fully with the International Tribunal for the Former Yugoslavia and its organs in accordance with the provisions of resolution 827 (1993) of May 1993 and the Statute of the International Tribunal and shall comply with requests for assistance or orders issued by a Trial Chamber under article 29 of the Statute;

21. *Stresses* that the Transitional Authority shall cooperate with the International Tribunal in the performance of its mandate, including with regard to the protection of the sites identified by the Prosecutor and persons conducting investigations for the International Tribunal;

22. *Requests* the Secretary-General to submit for consideration by the Security Council at the earliest possible date a report on the possibilities for contributions from the host country offsetting the costs of the operations;

23. *Decides* to remain actively seized of the matter.

4. UNITED NATIONS: UNITED NATIONS CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT. ADOPTED BY THE GENERAL ASSEMBLY AT NEW YORK ON 11 DECEMBER 1995.<sup>10</sup>

United Nations Convention on Independent Guarantees  
and Stand-by Letters of Credit<sup>11</sup>

CHAPTER I. SCOPE OF APPLICATION

*Article 1*

SCOPE OF APPLICATION

1. This Convention applies to an international undertaking referred to in article 2:

(a) If the place of business of the guarantor/issuer at which the undertaking is issued is in a Contracting State, or

(b) If the rules of private international law lead to the application of the law of a Contracting State,

unless the undertaking excludes the application of the Convention.

2. This Convention applies also to an international letter of credit not falling within article 2 if it expressly states that it is subject to this Convention.

3. The provisions of articles 21 and 22 apply to international undertakings referred to in article 2 independently of paragraph 1 of this article.

## *Article 2*

### UNDERTAKING

1. For the purposes of this Convention, an undertaking is an independent commitment, known in international practice as an independent guarantee or as a stand-by letter of credit, given by a bank or other institution or person (“guarantor/issuer”) to pay to the beneficiary a certain or determinable amount upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the performance of an obligation, or because of another constituency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant or another person.

2. The undertaking may be given:

(a) At the request or on the instruction of the customer (“principal/applicant”) of the guarantor/issuer;

(b) On the instruction of another bank, institution or person (“instructing party”) that acts at the request of the customer (“principal/applicant”) of that instructing party; or

(c) On behalf of the guarantor/issuer itself.

3. Payment may be stipulated in the undertaking to be made in any form, including:

(a) Payment in a specified currency or unit of account;

(b) Acceptance of a bill of exchange (draft);

(c) Payment on a deferred basis;

(d) Supply of a specified item of value.

4. The undertaking may stipulate that the guarantor/issuer itself is the beneficiary when acting in favour of another person.

## *Article 3*

### INDEPENDENCE OF UNDERTAKING

For the purposes of this convention, an undertaking is independent where the guarantor/issuer’s obligation to the beneficiary is not:

(a) Dependent upon the existence or validity of any underlying transaction, or upon any other undertaking (including stand-by letters of credit or independent guarantees to which confirmations or counter-guarantees relate); or

(b) Subject to any term or condition not appearing in the undertaking, or to any future, uncertain act or event except presentation of documents or another such act or event within a guarantor/issuer’s sphere of operations.

## *Article 4*

### INTERNATIONALITY OF UNDERTAKING

1. An undertaking is international if the places of business, as specified in the undertaking, of any two of the following persons are in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer.

2. For the purposes of the preceding paragraph:

(a) If the undertaking lists more than one place of business for a given person, the relevant place of business is that which has the closest relationship to the undertaking;

(b) If the undertaking does not specify a place of business for a given person but specifies its habitual residence, that residence is relevant for determining the international character of the undertaking.

## CHAPTER II. INTERPRETATION

### *Article 5*

#### PRINCIPLES OF INTERPRETATION

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

### *Article 6*

#### DEFINITIONS

For the purposes of this Convention and unless otherwise indicated in a provision of this Convention or required by the context:

(a) "Undertaking" includes "counter-guarantee" and "confirmation of an undertaking";

(b) "Guarantor/issuer" includes "counter-guarantor" and "confirmer";

(c) "Counter-guarantee" means an undertaking given to the guarantor/issuer of another undertaking by its instructing party and providing for payment upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment under that other undertaking has been demanded from, or made by, the person issuing that other undertaking;

(d) "Counter-guarantor" means the person issuing a counter-guarantee;

(e) "Confirmation" of an undertaking means an undertaking added to that of the guarantor/issuer, and authorized by the guarantor/issuer, providing the beneficiary with the option of demanding payment from the confirmer instead of from the guarantor/issuer, upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the confirmed undertaking, without prejudice to the beneficiary's right to demand payment from the guarantor/issuer;

(f) "Confirmer" means the person adding a confirmation to an undertaking;

(g) "Document" means a communication made in a form that provides a complete record thereof.

## CHAPTER III. FORM AND CONTENT OF UNDERTAKING

### *Article 7*

#### ISSUANCE, FORM AND IRREVOCABILITY OF UNDERTAKING

1. Issuance of an undertaking occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer concerned.
2. An undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the guarantor/issuer and the beneficiary.
3. From the time of issuance of an undertaking, a demand for payment may be made in accordance with the terms and conditions of the undertaking, unless the undertaking stipulates a different time.
4. An undertaking is irrevocable upon issuance, unless it stipulates that it is revocable.

### *Article 8*

#### AMENDMENT

1. An undertaking may not be amended except in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7.
2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, an undertaking is amended upon issuance of the amendment if the amendment has previously been authorized by the beneficiary.
3. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, where any amendment has not previously been authorized by the beneficiary, the undertaking is amended only when the guarantor/issuer receives a notice of acceptance of the amendment by the beneficiary in a form referred to in paragraph 2 of article 7.
4. An amendment of an undertaking has no effect on the rights and obligations of the principal/applicant (or an instructing party) or of a confirmer of the undertaking unless such person consents to the amendment.

### *Article 9*

#### TRANSFER OF BENEFICIARY'S RIGHT TO DEMAND PAYMENT

1. The beneficiary's right to demand payment may be transferred only if authorized in the undertaking, and only to the extent and in the manner authorized in the undertaking.
2. If an undertaking is designated as transferable without specifying whether or not the consent of the guarantor/issuer or another authorized person is required for the actual transfer, neither the guarantor/issuer nor any other authorized person is obligated to effect the transfer except to the extent and in the manner expressly consented to by it.

*Article 10*

ASSIGNMENT OF PROCEEDS

1. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the beneficiary may assign to another person any proceeds to which it may be, or may become, entitled under the undertaking.

2. If the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, in a form referred to in paragraph 2 of article 7, of the beneficiary's irrevocable assignment, payment to the assignee discharges the obligor, to the extent of its payment, from its liability under the undertaking.

*Article 11*

CESSATION OF RIGHT TO DEMAND PAYMENT

1. The right of the beneficiary to demand payment under the undertaking ceases when:

(a) The guarantor/issuer has received a statement by the beneficiary of release from liability in a form referred to in paragraph 2 of article 7;

(b) The beneficiary and the guarantor/issuer have agreed on the termination of the undertaking in the form stipulated in the undertaking or failing such stipulation, in a form referred to in paragraph 2 of article 7;

(c) The amount available under the undertaking has been paid, unless the undertaking provides for the automatic renewal or for an automatic increase of the amount available or otherwise provides for continuation of the undertaking;

(d) The validity period of the undertaking expires in accordance with the provisions of article 12.

2. The undertaking may stipulate, or the guarantor/issuer and the beneficiary may agree elsewhere, that return of the document embodying the undertaking to the guarantor/issuer, or a procedure functionally equivalent to the return of the document in the case of the issuance of the undertaking in non-paper form, is required for the cessation of the right to demand payment, either alone or in conjunction with one of the events referred to in subparagraphs (a) and (b) of paragraph 1 of this article. However, in no case shall retention of any such document by the beneficiary after the right to demand payment ceases in accordance with subparagraph (c) or (d) of paragraph 1 of this article preserve any rights of the beneficiary under the undertaking.

*Article 12*

EXPIRY

The validity period of the undertaking expires:

(a) At the expiry date, which may be a specified calendar date or the last day of a fixed period of time stipulated in the undertaking, provided that, if the expiry date is not a business day at the place of business of the guarantor/issuer at which the undertaking is issued, or of another person or at another place

stipulated in the undertaking for presentation of the demand of repayment, expiry occurs on the first business day which follows;

(b) If expiry depends according to the undertaking on the occurrence of an act or event not within the guarantor/issuer's sphere of operations, when the guarantor/issuer is advised that the act or event has occurred by presentation of the document specified for that purpose in the undertaking or, if no such document is specified, of a certification by the beneficiary of the occurrence of the act or event:

(c) If the undertaking does not state an expiry date, or if the act or event on which expiry is stated to depend has not yet been established by presentation of the required document and an expiry date has not been stated in addition, when six years have elapsed from the date of issuance of the undertaking.

#### CHAPTER IV. RIGHTS, OBLIGATIONS AND DEFENCES

##### *Article 13*

###### DETERMINATION OF RIGHTS AND OBLIGATIONS

1. The rights and obligations of the guarantor/issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions or usages specifically referred to therein, and by the provisions of this Convention.

2. In interpreting terms and conditions of the undertaking and in settling questions that are not addressed by the terms and conditions of the undertaking or by the provisions of this Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

##### *Article 14*

###### STANDARD OF CONDUCT AND LIABILITY OF GUARANTOR/ISSUER

1. In discharging its obligations under the undertaking and this Convention, the guarantor/issuer shall act in good faith and exercise reasonable care having due regard to generally accepted standards of international practice of independent guarantees or stand-by letters of credit.

2. A guarantor/issuer may not be exempted from liability for its failure to act in good faith or for any grossly negligent conduct.

##### *Article 15*

###### DEMAND

1. Any demand for payment under the undertaking shall be made in a form referred to in paragraph 2 of the article 7 and in conformity with the terms and conditions of the undertaking.

2. Unless otherwise stipulated in the undertaking, the demand and any certification or other document required by the undertaking shall be presented,

within the time that a demand for payment may be made, to the guarantor/issuer at the place where the undertaking was issued.

3. The beneficiary, when demanding payment, is deemed to certify that the demand is not in bad faith and that none of the elements referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 are present.

#### *Article 16*

##### EXAMINATION OF DEMAND AND ACCOMPANYING DOCUMENTS

1. The guarantor/issuer shall examine the demand and any accompanying documents in accordance with the standard conduct referred to in paragraph 1 of article 14. In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit.

2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer shall have reasonable time, but not more than seven business days following the day of receipt of the demand and any accompanying documents, in which to:

- (a) Examine the demand and any accompanying documents;
- (b) Decide whether or not to pay;
- (c) If the decision is not to pay, issue notice thereof to the beneficiary.

The notice referred to in subparagraph (c) above shall, unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, be made by teletransmission or, if that is not possible, by other expeditious means and indicate the reason for the decision not to pay.

#### *Article 17*

##### PAYMENT

1. Subject to article 19, the guarantor/issuer shall pay against a demand made in accordance with the provisions of article 15. Following a determination that a demand for payment so conforms, payment shall be made promptly, unless the undertaking stipulates payment on a deferred basis, in which case payment shall be made at the stipulated time.

2. Any payment against a demand that is not in accordance with the provisions of article 15 does not prejudice the rights of the principal/applicant.

#### *Article 18*

##### SET-OFF

Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer may discharge the payment obligation under the undertaking by availing itself of a right of set-off, except with any claims assigned to it by the principal/applicant or the instructing party.

*Article 19*

EXCEPTION TO PAYMENT OBLIGATION

1. If it is manifest and clear that:
  - (a) Any document is not genuine or has been falsified;
  - (b) No payment is due on the basis asserted in the demand and the supporting documents; or
  - (c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis,  
the guarantor/issuer, acting in good faith, has a right as against the beneficiary, to withhold payment.
2. For the purposes of subparagraph (c) of paragraph 1 of this article, the following area are types of situations in which a demand has no conceivable basis:
  - (a) The contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;
  - (b) The underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking indicates that such contingency falls within the risk to be covered by the undertaking;
  - (c) The underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;
  - (d) Fulfilment of the underlying obligation has clearly been prevented by wilful misconduct of the beneficiary;
  - (e) In the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter-guarantee relates.
3. In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph 1 of this article, the principal/applicant is entitled to provisional court measures in accordance with article 20.

CHAPTER V. PROVISIONAL COURT MEASURES

*Article 20*

PROVISIONAL COURT MEASURES

1. Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 is present, the court, on the basis of immediately available strong evidence, may:
  - (a) Issue a provisional order to the effect that the beneficiary does not receive payment, including an order that the guarantor/issuer hold the amount of the undertaking, or
  - (b) Issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked, taking into account whether the absence of such an order the principal/applicant would be likely to suffer serious harm.

2. The court, when issuing a provisional order referred to in paragraph 1 of this article, may require the person applying therefore to furnish such form of security as the court deems appropriate.

3. The court may not issue a provisional order of the kind referred to in paragraph 1 of this article based on any objection to payment other than those referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19, or use of the undertaking for a criminal purpose.

## CHAPTER VI. CONFLICT OF LAWS

### *Article 21*

#### CHOICE OF APPLICABLE LAW

The undertaking is governed by the law the choice of which is:

- (a) Stipulated in the undertaking or demonstrated by the terms and conditions of the undertaking; or
- (b) Agreed elsewhere by the guarantor/issuer and the beneficiary.

### *Article 22*

#### DETERMINATION OF APPLICABLE LAW

Failing a choice of law in accordance with article e21, the undertaking is governed by the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued.

## CHAPTER VII. FINAL CLAUSES

### *Article 23*

#### DEPOSITARY

The Secretary-General of the United Nations is the depositary of this Convention.

### *Article 24*

#### SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL, ACCESSION

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 11 December 1997.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

*Article 25*

APPLICATION TO TERRITORIAL UNITS.

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declared that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend, this place of business is considered not to be in a Contracting State.

4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

*Article 26*

EFFECT OF DECLARATION

1. Declarations made under article 25 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State which makes a declaration under article 25 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

*Article 27*

RESERVATIONS

No reservations may be made to this Convention.

*Article 28*

ENTRY INTO FORCE

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of the deposit of the fifth instrument ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to undertakings issued on or after the date when the Convention enters into force in respect of the Contracting State referred to in subparagraph (a) or the Contracting State referred to in subparagraph (b) of paragraph 1 of article 1.

*Article 29*

DENUNCIATION

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

*Done* at New York, this eleventh day of December one thousand nine hundred and ninety-five, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

*In witness thereof* the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

**B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations**

1. FAO-ILO-OECD-UNEP-UNIDO-WHO: MEMORANDUM OF UNDERSTANDING CONCERNING ESTABLISHMENT OF THE INTER-ORGANIZATION PROGRAMME FOR THE SOUND MANAGEMENT OF CHEMICALS. SIGNED AT STOCKHOLM ON 11,17, 31 JANUARY AND 13 MARCH 1995.<sup>12</sup>

Memorandum of Understanding concerning Establishment of the Inter-Organization Programme for the Sound Management of Chemicals

The parties to this Memorandum,

Noting the endorsement by the United Nations General Assembly, in resolution 47/190 of 22 December 1992, of Agenda 21 as adopted by the United Nations Conference on Environment and Development in Rio de Janeiro on 14 June 1992, and in particular its chapter 19, and

Taking into account the resolutions adopted at the International Conference on Chemical Safety in Stockholm on 29 April 1994,

Have agreed as follows:

## 1. *Parties*

1.1 This Memorandum of Understanding shall be open to signature by the following Organizations:

the United Nations Environment Programme  
the International Labour Organization  
the Food and Agriculture Organization of the United Nations  
the World Health Organization  
the United Nations Industrial Development Organization and  
the Organization for Economic Cooperation and Development

1.2 The organizations listed in paragraph 1.1 which have become parties to this Memorandum of Understanding shall be known as Participating Organizations.

1.3 Other intergovernmental organizations may also become Participating Organizations upon the unanimous consent of the Participating Organizations and after fulfilment of the provisions of paragraph 10.2.

## 2. *Establishment and purpose of Programme*

2.1 The Inter-Organization Programme for the Sound Management of Chemicals is hereby established.

2.2 The purpose of the Programme is to promote coordination of the policies and activities pursued by the Participating Organizations, jointly and separately, to achieve the sound management of chemicals in relation to human health and the environment.

2.3 The areas in which coordination shall be sought are the following:

- (a) International assessment of chemical risks;
- (b) Harmonization of classification and labeling of chemicals;
- (c) Information exchange on chemicals and chemical risks;
- (d) Establishment of risk reduction programmes;
- (e) Strengthening of national capabilities and capacities for management of chemicals;
- (f) Prevention of illegal international traffic in toxic and dangerous products;
- (g) Other areas as agreed by the all Participating Organizations.

## 3. *Inter-Organization Coordinating Committee (IOCC)*

3.1 There shall be an Inter-Organization Coordinating Committee (IOCC), composed of one representative of each Participating Organization, which shall perform the functions identified in paragraph 5 below.

3.2 These representatives may be assisted by advisors, as appropriate.

3.3 The IOCC may agree to invite observers to attend its meetings.

3.4 The IOCC may agree to set up advisory bodies, if necessary.

3.5 The IOCC shall adopt its rules of procedure.

3.6 The IOCC shall elect its Chairperson, and, as necessary, Vice-Chairpersons, serving on a rotational basis unless otherwise agreed by the IOCC.

#### 4. *Meetings*

4.1 The IOCC shall normally hold two regular sessions every year. The IOCC shall determine the date, time and place of each regular session.

4.2 An extraordinary session of the IOCC may be called at the request of at least two of the Participating Organizations. The date, time and place of an extraordinary session shall be determined by the Chairperson in consultation with the Secretariat and the Participating Organizations.

4.3 Each Participating Organization shall make its own arrangements for bearing the cost of attending meetings of the IOCC.

4.4 The IOCC may agree to meet from time to time with the representatives of other organizations, programmes and intergovernmental meetings and arrangements.

#### 5. *Functions*

5.1 The Functions of the IOCC shall be the following:

(a) To consult on the planning, programming, funding, implementation and monitoring of activities undertaken jointly or individually by the Participating Organizations with regard to the sound management of chemicals;

(b) To identify gaps and areas of overlap in such activities and recommend ways to reduce or eliminate them;

(c) To make recommendations on the distribution of work among the Participating Organizations with regard to the sound management of chemicals;

(d) To recommend common policies to be pursued by the Participating Organizations;

(e) To encourage the Participating Organizations to undertake joint programmes for the sound management of chemicals;

(f) To endorse specific activities planned or undertaken by one or more of the Participating Organizations as being within the framework of the Programme;

(g) To exchange information about the activities undertaken and planned to be undertaken, jointly or separately, by the Participating Organizations with regard to the sound management of chemicals;

(h) To review actions taken, and to consider recommendations made, by other organizations, programmes and intergovernmental meetings and arrangements (such as the Intergovernmental Forum on Chemical Safety) concerning matters within the scope of the Programme, as well as to consider possible follow-up which might be given by the Participating Organizations;

(i) To make recommendations to such organizations, programmes and intergovernmental meetings and arrangements;

(j) To consider and approve the budget of the Secretariat;

(k) To determine the work to be carried out by the Secretariat.

5.2 The IOCC may be given additional functions as agreed by all the Participating Organizations.

## 6. *Recommendations and Decision-making*

Except as otherwise provided in this Memorandum of Understanding, and subject to advance notice of the provisional agenda of the meeting, recommendations and decisions of the IOCC shall be taken by consensus among the representatives of the Participating Organizations who are present at a meeting of the IOCC.

## 7. *Secretariat*

7.1 There shall be a secretariat providing the IOCC with services, including the following:

- (a) Organizing meetings of the IOCC;
- (b) Collecting and analyzing information for the preparation of documents for such meetings;
- (c) Preparing and circulating the minutes of each meeting and the report referred to in paragraph 9.1;
- (d) Performing other intersessional work as necessary for such meetings;
- (e) Drawing up a draft budget of the Secretariat for consideration by the IOCC.

7.2 The Secretariat shall carry out its work in accordance with the guidance of the IOCC.

7.3 To the extent that corresponding resources are made available, the Secretariat of the Programme may also provide secretariat services for other intergovernmental meetings and arrangements if so decided by the IOCC. For this purpose, that part of the Secretariat providing such services shall be functionally distinct from that part of the Secretariat under the direction of the IOCC.

7.4 The Secretariat shall be located at the administering organization.

7.5 Until agreed otherwise by the Participating Organizations, the administering organization for the Secretariat shall be the World Health Organization.

7.6 The Participating Organizations shall review the designation of the administering organization five years after the date on which this Memorandum of Understanding entered into force and periodically thereafter.

7.7 To the extent that resources are made available to so provide, the Secretariat shall be composed of such staff as deemed necessary by the IOCC.

7.8 The loan or secondment of a staff member to perform work for the Secretariat shall be subject to agreement between the organization releasing the staff member and the administering organization of the Secretariat.

7.9 The Executive Head of the administering organization shall designate the head of the Secretariat upon the consensus recommendation of the IOCC attended by all the Participating Organizations.

## 8. *Budget*

8.1 The Participating Organizations shall share the costs of the Secretariat, taking into account resources provided under paragraphs 8.3 and 8.4.

8.2 The budget of the Secretariat shall state the amount of its budgetary needs and the resources envisaged to meet them.

8.3 The resources of the Secretariat, as approved by the IOCC, may be provided as follows:

(a) Voluntary monetary and in-kind contributions from the Participating Organizations and Governments;

(b) Voluntary monetary and in-kind contributions from other inter-governmental sources;

(c) Secondment or loan of staff members from the Participating Organizations as a contribution in kind.

8.4 Contributions from other sources may also be approved by the IOCC attended by all the Participating Organizations.

8.5 No Participating Organization shall be required to provide financial support for the Secretariat beyond what that Organization has pledged.

#### 9. *Reporting*

9.1 The Secretariat shall submit a report of activities and the use of budgetary resources to the IOCC for its adoption at least once a year.

9.2 The adopted report shall be sent to the executive heads of the Participating Organizations and be forwarded through the appropriate channel to the Inter-Agency Committee on Sustainable Development and to any other bodies the IOCC may deem appropriate.

#### 10. *Entry into force*

10.1 This Memorandum of Understanding shall enter into force upon signature by four of the organizations mentioned in paragraph 1.1 above.

10.2 It shall enter into force for any other intergovernmental organization mentioned in paragraph 1.3 upon the date of the written acceptance by that organization of the Memorandum of Understanding, including any amendments thereto.

#### 11. *Amendments*

This Memorandum of Understanding may be amended by consensus of all Participating Organizations. An amendment shall enter into force upon written acceptance by all the participating organizations

#### 12. *Withdrawal*

12.1 Any participating Organization may withdraw from this Memorandum of Understanding by written notification to the head of the Secretariat of the IOCC, who shall immediately inform the Participating Organization of such notification.

12.2 The withdrawal shall take effect upon the expiration of six months from the date on which the written notification has been received by the head of the Secretariat of the IOCC or at any later date indicated in the notification.

#### 13. *Duration and Termination*

This Memorandum of Understanding may be terminated only by consensus of all Participating Organizations or whenever the number of the Participating Organizations is less than four, unless the remaining Participating Organizations agree otherwise.

2. WORLD INTELLECTUAL PROPERTY ORGANIZATION/  
WORLD TRADE ORGANIZATION: AGREEMENT BETWEEN  
WIPO AND WTO. DONE AT GENEVA ON 22 DECEMBER  
1995.<sup>13</sup>

Agreement between the World Intellectual Property Organization and  
the World Trade Organization

PREAMBLE

The World Intellectual Property Organization and the World Trade Organization,

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

*Article 1*

ABBREVIATED EXPRESSIONS

For the purposes of this Agreement:

- (i) “WIPO” means the World Intellectual Property Organization;
- (ii) “WTO” means the World Trade Organization;
- (iii) “International Bureau” means the International Bureau of WIPO;
- (iv) “WTO Member” means a party to the Agreement Establishing the World Trade Organization;
- (v) “the TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;
- (vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised;
- (vii) “emblem” means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and in the case of international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

*Article 2*

LAWS AND REGULATIONS

(1) [*Accessibility of laws and regulations in the WIPO Collection by WTO Members and their nationals*] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and

regulations, and copies of translations thereof, that exist in its collection, on the same terms as apply to the Members of WIPO and to nationals of the States Member of WIPO, respectively.

(2) [*Accessibility of the computerized database*] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the States Members of WIPO and to nationals of the States Members of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

(3) [*Accessibility of laws and regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS*] (a) Where, on the date of its initial notification of a law or regulation under article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

(b) Furthermore, if for the purposes of carrying out its obligations under article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

(c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to States Members of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

(d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

(4) [*Laws and regulations received by the WTO Secretariat from WTO Members*] (a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

(5) [*Translation of laws and regulations*] The International Bureau shall make available to developing country WTO Members which are not States members of WIPO the same assistance for translation of laws and regulations for the purposes of article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

### Article 3

#### IMPLEMENTATION OF ARTICLE 6 OF THE PARIS CONVENTION FOR THE PURPOSES OF THE TRIPS AGREEMENT

(1) [*General*] (a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under article 6 of the Paris Convention (1967).

(b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under article 6 of the Paris Convention prior to 1 January 1996, or, where that State became a WTO Member after 1 January 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6 of the Paris Convention by the said State.

(2) [*Objections*] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objections which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

(3) [*Information to be provided to the WTO Secretariat*] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

### Article 4

#### LEGAL-TECHNICAL ASSISTANCE AND TECHNICAL COOPERATION

(1) [*Availability of legal-technical assistance and technical cooperation*] The International Bureau shall make available to developing country WTO Members such as are not States Members of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to States members of WIPO which are developing countries. The WTO Secretariat shall make available to States Members of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

(2) [*Cooperation between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

(3) [*Exchange of information*] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange confidential information.

#### Article 5

#### FINAL CLAUSES

(1) [*Entry into force of this Agreement*] This Agreement shall enter into force on 1 January 1996

(2) [*Amendment of this Agreement*] This Agreement may be amended by common agreement of the parties to this Agreement.

(3) [*Termination of this Agreement*] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

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#### NOTES

<sup>1</sup>United Nations, *Treaty Series*, vol. 729, p.161.

<sup>2</sup>Entered into force 5 March 1970.

<sup>3</sup>Document NPT/CONF. 1995/32 (Part I).

<sup>4</sup>Not yet entered into force.

<sup>5</sup>A/CONF. 164/37; see also A/50/550, annex I.

<sup>6</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.

<sup>7</sup>*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

<sup>8</sup>United Nations document S/1995/951, annex.

<sup>9</sup>Entered into force on 15 January 1996.

<sup>10</sup>To enter into force on 1 January 2000.

<sup>11</sup>General Assembly resolution 50/48 annex; also available as a United Nations sales publication, Sales. No. E.97.V.12.

<sup>12</sup>Entered into force on 13 March 1995.

<sup>13</sup>Entered into force on 1 January 1996.

## 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. 690 (21 JULY 1995): CHILESHE V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>3</sup>

*Non-promotion to D-1 post—Review of a discretionary decision  
Question of end-of-career promotion—Delay in selection process was unfair*

The Applicant, who was at the P-5 level, applied for the D-1 post of Director, Trade and Development, Finance Division, at the Economic Commission for Africa, a post he had occupied as Officer-in-Charge with effect from 21 December 1990. The Applicant also requested a special post allowance (SPA) at the D-1 level with effect from that date. After a second round of advertising the post, on 5 December 1991 the names of eight candidates including the Applicant's were forwarded to the Acting Executive Secretary. However, discussions as to the restructuring of ECA commenced in December 1991, resulting in the postponement of a decision on the selection of a candidate for the post. Although the Applicant was eventually recommended for the promotion by the Ad Hoc Committee on Professional Staff Careers, on 6 May 1992 the Acting Executive Secretary informed the Applicant that he would not be promoted because he was approaching retirement age—at the end of October 1992, which was extended three months to 31 January 1993.

The Applicant appealed the decision of the 16 July 1993 not to promote him retroactively to the D-1 level post. Instead, in accordance with the recommendation of the Joint Appeals Board, the Secretary-General decided that the Applicant following his retirement should be paid an indemnity equal to a special post allowance to the D-1 level for the period from 1 April 1991 until the date of the Applicant's separation from service. The Applicant appealed the decision to the Tribunal.

The Tribunal, relying on consistent jurisprudence holding that its review of discretionary decisions with respect to promotion was extremely limited, concluded, however that the Respondent's decision not to promote the Applicant retroactively was flawed. There was no wrongful motivation or mistake involved. In the view of the Tribunal, the decision not to make an end-of-career promotion was premised on a rational policy expressed in the Manual for Appointment and Promotion Committees. The Tribunal also observed that in a similar situation the International Labour Organization had stated:

“...promotion is at the discretion of the Organization, which must be free to grant or withhold it in accordance with objective working requirements. It follows that any grants of promotions at the time of retirement is inher-

ently contrary to the Organization's interests because by then there can no longer be any question of taking on the higher level of responsibility that promotion entails. The Tribunal therefore holds that the Organization is right to follow the policy of refusing its staff promotion, which would have the sole effect of laying a burden of social costs on the institution as a whole without conferring on it any benefit in return." *In re Heritier*, ILOAT Judgement No. 1388 (1995).

At the same time, the Tribunal was of the opinion that there was an element of unfairness present in the treatment of the Applicant that was not adequately remedied by the grant of an SPA to him. The unfairness consisted of allowing nine months to elapse after readvertisement of the D-1 vacancy without selecting the best qualified candidate, who evidently was the Applicant. This was quite harmful to the Applicant as the Tribunal pointed out, because by the time the potential restructuring had been considered the Applicant was close enough to retirement to cause his likely promotion to fall by the wayside.

In view of the foregoing, the Tribunal awarded the Applicant \$7,000 and rejected all other pleas.

2. JUDGEMENT NO. 692 (21 JULY 1995): WHITE, LE STER, MAROUF, BEN FADHEL, DODINO AND ATAR V. THE SECRETARY-GENERAL OF THE INTERNATIONAL MARITIME ORGANIZATION<sup>4</sup>

*Salary deduction for participation in a work stoppage—Staff rule provision must be interpreted in the context of the entire staff rule and not looked at in isolation—No entitlement to pay for a period a staff member does not work—Leave must be authorized*

Upon recommendation of the Federation of International Civil Servants' Associations (FICSA), of which the International Maritime Organization Staff Association was an affiliate, the IMO Staff Assembly scheduled a one-half day work stoppage for Friday morning, 6 November 1992. The Applicants had half a day's pay deducted from their salaries as a result of their absenting themselves without leave for the period in question. Subsequently, they appealed this measure, contending that staff rule 105.1(d) applied in this case, and annual leave should have been deducted for the absence, rather than pay. The further ground put forward by the Applicants was that the deduction of salary was not only contrary to the staff rule, but also a disguised disciplinary sanction and so constituted an infringement of the Applicant's terms of appointment. The Applicants had contended that strikes could not be considered to be illegal and could not, in principle, result in disciplinary action; that the Administration could have properly deducted annual leave for the period of the strike under staff rule 2105.1(d), and only if the staff member concerned had no accrued annual leave could pay be withheld for the period of "unauthorized absence".

The Tribunal noted that staff ruled 105.1(d) stated:

"Any absence from duty not specifically covered by other provisions in these rules shall be charged to the staff member's accrued annual leave, if any; if the staff member has no accrued annual leave, it shall be considered as unauthorized and pay and allowances shall cease for the period of such absence."

While agreeing with the Applicant's interpretation of the staff rule—that persons who had annual leave had the right to have the absence charged against such annual leave—the Tribunal considered that the interpretation could not be taken in isolation in resolving the situation. In that regard, the Tribunal noted that staff rule 105.1(d) appeared under the heading "Annual Leave" and was preceded by the words contained in staff rule 105.1(b) "Leave may be taken only when authorized" and therefore it would be unrealistic to suggest that this stricture did not also apply to the absence from duty referred to in staff rule 105.1(d)

Therefore, the Tribunal concluded that the Respondent could not be faulted for acting as he had even though the specific wording of the rule may have been regarded as ambiguous. For that reason, the Tribunal found that the deduction of salary could not be regarded as a disciplinary sanction.

Moreover, the Tribunal recalled the position adopted in *Smith* (Judgement No. 249 (1975)), in which it was held:

"... that staff regulation 1.2 provides that 'the whole time of staff members shall be at the disposal of the Secretary-General. The Secretary-General shall establish a normal working week'... It is therefore apparent that 'work' is the fundamental obligation of staff members. Receipt of salary is, moreover, the essential counterpart to work performed."

"The unauthorized absence from work or attendance at the place of work while failing to perform duties removes the basis for payment of salary."

Although the staff rules were silent on the matter of work stoppages, Smith recognized that there was no general principle of law to provide any entitlement to pay for a period during which an employee did not work. Furthermore, the Tribunal found that leave could be taken only when authorized. The Tribunal concluded that the unauthorized leave of 6 November should not be compensated, and therefore rejected the Applicant's pleas.

### 3. JUDGEMENT NO. 696 (21 JULY 1995): DE BRANDT-DIOSO V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>5</sup>

*Reimbursement for theft while on mission—Question of acting within the scope of official duties—Special risks at United Nations missions—Question of negligence on the part of the staff member*

The Applicant, who had been employed with the Organization since 1975, filed a claim for her loss, which occurred while on mission in Haiti, with the United Nations Headquarters Claims Board. The loss had occurred towards the end of her assignment with the United Nations Observer Group for the Verification of Elections in Haiti (ONUVEH). On 28 January 1991, the Applicant had withdrawn, in cash, the balance of her account with a bank in Haiti and had cashed her last mission subsistence allowance (MSA) cheques. She then parked her car in a busy market area in Port-au-Prince and a local youth who had accompanied her went to fetch wrapping materials, apparently leaving the door unlocked on the passenger side when he left the vehicle. The Applicant's handbag, containing approximately US\$ 4,000 and 2,000 Haitian gourdes and an 18-carat-gold man's signet ring (with a value of approximately \$1,800), was taken off the passenger seat by an unknown individual who had quietly opened the door of the car.

The Applicant's claim was denied and she appealed, contending that she was on official business and was not negligent when conducting it. The Respondent had maintained that the loss was a matter of common theft.

The Tribunal agreed with the applicant that she had been acting within the scope of her official duties when the theft occurred. The Applicant was using an official ONUVEH vehicle and was in the process of making final travel arrangements to leave the duty station after having closed her local bank account and cashed her last MSA cheques. As the Tribunal noted, staff members were required to close their bank accounts before leaving and therefore it was appropriate for the Applicant to be carrying a substantial amount of cash at the time of the theft.

The Tribunal considered that the steps undertaken by the Applicant at the time of the theft resulted from her being assigned to Haiti.

Hence, those steps were taken in connection with official duties. The Claims Board, in its recommendations, did not take sufficiently into consideration local conditions and special circumstances which placed the Applicant at a greater than normal risk. The Tribunal noted that not only the ONUVEH Notes for Guidance of Election Observers appeared to consider that staff assigned to Haiti should exercise great caution during their stay, but also the statement of the then Chief Administrative Officer of ONUVEH that the Applicant's loss was "the result of theft while being in a risky United Nations mission areas".

Regarding the issue of any negligence on the part of the Applicant, the Tribunal was of the view that the Applicant should have been more vigilant. Knowing that she was carrying a substantial amount of cash with her, she should have been more sensitive to her surroundings and made sure that once the local youth who had accompanied her had left the car, the door was firmly locked. Therefore, the Tribunal held that the Applicant was partly at fault for her loss, but, under the circumstances, it did not necessarily follow that she should have been precluded from obtaining any compensation.

With regard to the loss of the jewelry, the Applicant was not entitled to any compensation as administrative instruction ST/AT/149/Rev.3 plainly barred such a recovery. Concerning the loss of cash due to the particular circumstances at the duty station and the special provisions regarding financial arrangements for staff assignments for staff assigned to Haiti, the Tribunal was of the opinion that Consideration should be given by the Respondent to waiver of the \$400 limit under the administrative instruction on reimbursement for cash, taking into account that the Applicant had already received some money from her insurance company. Therefore, the Tribunal remanded the case to the Claims Board for further consideration based on the above. All other pleas were rejected.

4. JUDGEMENT NO. 707 (28 JULY 1995): BELAS-GIANOU V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>6</sup>

*Non-renewal of fixed-term appointment—Claxton judgement—What constitutes sexual harassment—No entitlement to engage in rude or inappropriate behaviour—Scope of witness testimony within reasonable discretion of the Joint Appeals Board—Review of non-renewal decision—Question of retaliation—Question of dissenting opinion*

The Applicant, a national of Algeria and Canada, had been in the service of the United Nations Population fund for Population Activities since 6 January 1990 as a Programme Officer at the P-3 level on a two year fixed-term appointment. Her appointment was extended for six months and for a further two months through 5 September 1992, when she was separated from the Organization. The Applicant appealed the decision to allow her fixed-term appointment to expire, contending that her non-renewal was in retaliation against her complaints that she had been sexually harassed by her superior. She also asserted that the Organization had failed to investigate her allegations appropriately and had violated her rights to due process. The Respondent contended that the Applicant had no right to or legal expectancy of, further employment with UNFPA upon the expiration of her fixed-term appointment, and that their performance reports were the subject of a full rebuttal process.

As the Tribunal noted in Judgement No. 560, *Claxton* (1992), allegations of sexual harassment and related retaliation were viewed by it with the utmost seriousness. In *Claxton*, the Tribunal had also indicated the essentiality of an investigation to determine what had occurred and whether it constituted sexual harassment. The Tribunal had also noted that it was the responsibility of the person alleging sexual harassment or related retaliation to produce convincing evidence to support of the allegations. In the present case, the Tribunal concluded that the Applicant had not sustained her burden of proof.

Considering the definition of sexual harassment, as contained in administrative instruction ST/AI/379 of 29 October 1992, the Tribunal observed that a finding of sexual harassment must be predicated on one or more of three elements: (a) either an unwelcome sexual advance, (b) unwelcome request for sexual favours, or (c) other unwelcome verbal or physical conduct of a sexual nature. In support of her allegations, the Applicant related a number of incidents involving her supervisor's engaging in verbal and physical conduct of a sexual nature, none of which she expressed to him as being unwelcome at the time they occurred or thereafter. The supervisor had denied the allegation, providing an explanation of various events referred to by the Applicant significantly different from hers, and the individuals she allegedly told did not agree that any claim of sexual harassment was brought to their attention or discussed by them with the Applicant. The Tribunal further observed that before the Organization could address claims of sexual harassment it had to be aware of them. Moreover, in the absence of some indication that the person whose conduct was drawn into question was either on notice or should reasonable have realized from the circumstances that the conduct was unwelcomed, might have been viewed as being of a sexual nature and as creating an offensive working environment, the Tribunal would have difficulty in finding that the individual involved had engaged in sexual harassment. This was especially true where conduct was described in vague terms or was ambiguous, may not have been motivated by improper intentions, and might well have ceased altogether upon request.

Having said that, the Tribunal was of the opinion that, within the meaning of ST/AI/379, there was insufficient evidence of "verbal or physical conduct of a sexual nature" to have created an intimidating or hostile work environment. The incidents described by the Applicant in support of her claim were at most either ambiguous, or the possibility of a relationship between them and conduct of a sexual nature was both tenuous and remote, and in the opinion of the Tribunal, not the sort of conduct that appeared to the Tribunal to constitute sexual harassment contemplated by administrative instruction ST/AI/379.

In the view of the Tribunal, while some of the conduct of the Applicant's supervisor, as described by her and reported by others, as professionally belittling or insulting, while not tantamount to sexual harassment, doubtless reflected poor judgement, and was rude or inappropriate. Such incidents would surely warrant counselling and disciplinary measures, if repeated. For in the opinion of the Tribunal, no official was entitled to be disrespectful or rude or to engage in inappropriate conduct. At the same time, however, the Tribunal reiterated that it was important for a staff member who was aggrieved by any such behaviour to make a clear and unequivocal complaint promptly, if unable to have it stopped immediately by less formal measures. The Tribunal recognized that some burden was thus imposed on the aggrieved party, but unless problems of that nature were brought to light quickly and dealt with at an early stage, they would likely become worse and more difficult to deal with later.

The Tribunal also noted that the Joint Appeals Board report had reached the same conclusion that there was no sexual harassment.

Regarding the Applicant's contention that JAB had chosen not to hear from all the witnesses sought to be presented by the Applicant, the Tribunal pointed out that JAB, in the reasonable exercise of its discretion, might decide on the witnesses it wished to hear. It did so in the present case.

With respect to the non-renewal of the Applicant's fixed-term appointment, the Tribunal noted that, contrary to the Applicant's contentions, the expiration of a fixed-term appointment and its non-renewal were not tantamount to termination and therefore did not involve the same procedural or substantive requirements as a termination. The Tribunal had repeatedly held that it would not interfere with a decision by the Respondent to permit a fixed-term appointment to expire in the absence of proof that the decision was tainted by prejudice or other extraneous factors or that the staff member had a legal expectancy of a further appointment. In the present case, the Tribunal found no showing of any legal expectancy of a further appointment.

As to the question whether it was the Applicant's allegations or her performance that motivated the non-renewal decision, the Tribunal had reviewed the responses to numerous questions put by the Tribunal to the Applicant and some 20 persons, as well as the related communication from the Rebuttal Panel dissenting member and found no evidence that any of the Applicant's supervisors or second reporting officers during her first and second year were part of a conspiracy or a coincidental desire by each to retaliate against her for complaining about sexual harassment.

Furthermore, the Tribunal had reviewed the report of the Rebuttal Panel majority and dissent regarding the Applicant's performance and found no reason to conclude that the Panel majority had not fairly and objectively reviewed the performance evaluations. It was clear from a response to questions put by the Tribunal that it had taken into account the Applicant's description of her supervisor's use of the terms "dear" and "darling" and his discussion of personal problems with her, which had influenced the view of the dissenting member. That the majority disagreed with those views was not a reason for the Tribunal to conclude either that the majority was motivated by evil intentions or that it otherwise erred in its conclusions. The dissent had simply evaluated the Applicant's performance differently and was convinced that the issue of sexual harassment should have been given more attention.

The Tribunal reached the same conclusion as the JAB panel, namely that the evidence did not show that the non-renewal of the Applicant's contract had been motivated by retaliation for her complaint of sexual harassment. For the foregoing reasons, the application was rejected.

5. JUDGEMENT NO. 712 (28 JULY 1995): ALBA ET AL FERNDANDEZ-AMON ET AL. V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>7</sup>

*Non-consideration for career appointment—Question of financial constraints—No distinction between regular and extrabudgetary posts regarding consideration for career appointments*

A number of staff and former staff of the Economic Commission for Latin America and the Caribbean filed appeals. The Tribunal ordered the joinder of the cases as they shared significant common issues of fact and law, and considered the case of the Applicant Alba as a representative case. The Applicant, who was a fixed-term appointment had more than five years of good service with ECLAC, contended that the Respondent had not carried out his obligations under Article 101, paragraph 1, of the United Nations Charter of the United Nations and General Assembly resolution 37/126 to grant him reasonable consideration for, and the opportunity of obtaining, a career appointment. The Respondent, on the other hand, contended that there was much evidence that Applicant had been accorded every reasonable consideration for a career appointment, but the lack of available funds had precluded the possibility of awarding career appointments.

The Tribunal noted that, after a suspension of the granting of permanent appointments owing to the critical financial situation, the staff rule which implemented General Assembly resolution 37/126 had been amended; the phrase "taking into account all the interests of the Organization" had been added. The Respondent had interpreted this provision to mean that reasonable consideration for a career appointment necessarily included whether the Organization had need of the staff member on a career appointment, and that need included whether there was a reasonable prospect of funding.

The Tribunal agreed that financial constraints of the Organization might be one of the factors to be considered in the granting of career appointments. However, in agreement with the Applicant, the Tribunal stated that within these financial constraints, there should be no distinctions, which ECLAC had made, between staff members based on whether or not a staff member's post was funded from the regular budget or was extrabudgetary. In the Tribunal's view, the practice of excluding all the staff on extrabudgetary posts even from consideration for career appointments was unfair and, as the Tribunal further pointed out, the General Assembly resolution had made no distinction among staff members in that regard. While the general framework might ultimately determine whether or not career appointments could be granted, the source of funding for an individual staff member's post could not justify the failure to even consider him or her for a career appointment after years of good service, if career appointments were being granted by the Organization.

The Tribunal, therefore, concluded that the Applicant and other similarly situated Applicants should be given every reasonable consideration for career appointments, in accordance with a system which did not distinguish between staff members on regular and extrabudgetary posts. For the Staff Members whose posts had already been abolished, they should be paid appropriate compensation. Had they been granted career appointments, their termination indemnity would have been based on length of service and therefore the Tribunal awarded them one month salary for each two years of their service, less the indemnities they had already received.

6. JUDGEMENT NO. 713 (28 JULY 1995): PIQUILLOU V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>8</sup>

*Receivability of appeal—Definition of “exceptional circumstances”—Reasons put forth by Applicant for waiver of time-bar must be given due consideration—Issue of administrative difficulties*

The Applicant, a former national of China, entered the service of the Organization “on secondment from the Governments of China”, for a fixed-term period of five years, expiring on 30 December 1989, at the P-2 level as an Associate Translator in the Chinese Translation Section of the United Nations Office at Geneva. She was promoted to the P-3 level as a Translator, effective 1 December 1986. The Applicant’s performance, from 1 November 1986 to 29 February 1988, was rated “a good performance”, and she received the same rating for her performance from 1 March 1988 to 31 December 1989. The Applicant signed the former performance report “with reservations”, and rebutted the latter report. The rebuttal proceedings were completed on 21 June 1990, after the Applicant’s separation from service.

On 1 August 1989, the Applicant wrote to the Personnel Officer inquiring into the renewal of her contract, which was to expire on 30 December 1989, and was informed on 21 September 1989 that her appointment would not be renewed. She would have worked for the Organization no less than five years by the end of the year and the retrenchment plan called for the abolition of one P-3 post in her section. In the meantime, the Applicant had married a Swiss/French citizen and had relinquished her Chinese nationality, and had acquired a master’s degree in management. Moreover, no other post could be identified for her outside the Chinese Section.

On 6 February 1990, the Applicant wrote to the Secretary of the Joint Appeals Board inquiring as to the procedures to be followed before that body, and on 3 March 1990, after obtaining counsel from the United Nations Panel of Counsel, she requested review of the decision not to extend her appointment. The Joint Appeals Board Panel ultimately concluded that her appeal was not receivable because the time limits for filing an appeal had not been observed and there did not appear to be any exceptional circumstances for the waiver of those limits.

The Administrative Tribunal observed that, according to the practice followed by the Secretary-General, pursuant to staff rules 111.2(a) and 111.2(b), a waiver of time-bar in requests for re-examination of administrative decisions

contested by staff members of the Organization might be granted in “exceptional circumstances”. According to the Tribunal’s practice, those circumstances were defined as follows: “any circumstances beyond the control of the Appellant which prevent the staff member from submitting a request for review and filing of an appeal in time, may be deemed exceptional circumstance” (cf. Judgement No. 372, *Kayigamba* (1986)). The Tribunal further observed that the Applicant had been prevented from presenting her request in a timely manner, partly because of her status as a staff member on secondment subject to the system of rotation applied to seconded staff members by the Chinese Government, and partly because of the negligence of her counsel who was, notwithstanding, picked from among the members of the United Nations Panel of Counsel.

The Tribunal also considered that the time-bar would not preclude the examination of specific cases in the light of their respective merits. In the present case, the Secretary-General had not undertaken such an examination, and the Tribunal should not take the place of the Secretary-General in deciding whether the reasons given by the Applicant were sufficient for the waiver of the time-bar by virtue of “exceptional circumstances”. However, it must make sure that her reasons were given due consideration.

In the present case, the non-renewal of the Applicant’s contract had been motivated by the fact that no proposal for the renewal of her contract had been made by the Translation Service. According to the Chief of the Chinese Translation Section, preference had to be given, on account of the reduction of the number of posts, to two other Chinese staff members and thus the Applicant’s employment would be terminated when her contract expired. In fact, at the time when his proposal was made, the Applicant had lost her Chinese nationality as a result of marrying a Swiss citizen. She had also ceased to be on secondment from the Government of her country of origin. In the opinion of the Tribunal, these facts could lead one to believe that the preference given to other Chinese staff members, those on secondment, was motivated less by consideration of the merits and performance of the candidates for renewal of their contracts than by their respective nationalities and administrative situations. However, the Tribunal could not determine with certitude what the result would have been if the Secretary-General, or the joint review group constituted following the rendering of Tribunal Judgement No. 482, *Qiu, Zho and Yao* (1990)—a case with similar issues as those in the present case—had examined the Applicant’s case. The Tribunal, therefore could not order the reinstatement of the Applicant, whose contract had expired (cf. Judgement No. 559, *Vitkovski* (1992)).

Moreover, the Tribunal could not order that the Applicant’s case be considered by the joint review group set up following the rendering of Judgement No. 482. The tribunal endorsed the Respondent’s view that referring one case, that of the Applicant, to the review group would create insurmountable administrative difficulties. However, the Tribunal also noted that the Applicant’s case was prejudiced by its not having been examined as it should have been, given the particular circumstances of her separation.

The tribunal fixed the amount of compensation to be paid to the Applicant for the prejudice that she suffered at 12 months’ net base salary and rejected all other pleas.

7. JUDGEMENT NO. 715 (28 JULY 1995): THIAM V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>9</sup>

*Non-renewal of fixed-term appointment—Failure to take all aspects of staff member's circumstances into account—Claim for consequences of accident while on official mission—Importance of Advisory Board on Compensation Claims preparing a proper report—Claim for loss of personal effects—Staff rule 107.4(b)*

The Applicant, who had been in the service of the Office of the United Nations High Commissioner for Refugees since 4 September 1978, at the P-3 level, had been given a positive evaluation and three of his supervisors had recommended him for an indefinite appointment.

However, as the Tribunal noted, he was not able to obtain such an appointment, in particular because of the unfavourable report drawn in October 1981 by the UNHCR representative in Cameroon. The report covered the Applicant's performance on the mission in June-September for the repatriation of Chadian refugees living in Cameroon. The Tribunal noted that the author of the report, like the Applicant, held an appointment at the P-3 level and was not the Applicant's supervisor.

When the Applicant's case came up again for the consideration before the Appointment and Promotion Board, in view of the discrepancies among various performance evaluation reports on the Applicant, the Board called on the Head of the Regional Bureau for Africa, for which the Applicant worked, to provide additional information on the Applicant. He recommended that the Applicant be extended for one year, on the grounds that the Applicant was unsuitable for an indefinite appointment. On the basis of that report, the Board recommended separation from service. The Applicant's contract was extended to 8 January 1985 for humanitarian reasons so as to enable him to benefit from his sick leave entitlement in consequence of his health problems.

The Applicant appealed the above decision and the Joint Appeals Board recommended compensation for unwarranted termination, which the Administration accepted. However, the Applicant was not satisfied and applied to the Tribunal. In the Tribunal's view, the discrepancies in the Applicant's various performance evaluation reports should have led the Administration to be more circumspect in assessing his professional qualities. The Tribunal also noted the negative influence of the report of the UNHCR representative in Cameroon, and it was that report which had led to the recommendation of non-renewal of the Applicant's contract despite other favourable reports prepared by his supervisors.

The Tribunal fully endorsed the opinion of the JAB that the Respondent had failed to take into account the fact that the Applicant had an eye condition necessitating surgical intervention which could have saved his eye. On the basis of all these aspects, the Tribunal found that the Administration had not taken all the proper steps required in the particular circumstances of the Applicant's administrative situation, which led to his separation from service. The Tribunal found that the Applicant should receive compensation over and above what had already been granted to him.

The Applicant's second plea related to compensation for the consequences of the accident he sustained in Cameroon during his official mission. According to the Applicant, during his stay in Cameroon his right eye was hit by the door of his official vehicle. Ocular complications resulted, then a cataract and finally, a total loss of vision in the right eye. His claim for compensation was denied. The Respondent maintained that the Applicant's claim was time-barred because it was submitted in 1988 and therefore, had not been made within the four-month time limit specified in Appendix D to the Staff Rules. The Applicant had submitted his claim after a much longer period. The Tribunal, however, like JAB, believed that the Applicant should have been exempted from the time limits for humanitarian reasons, in view of the progression of the disease from which he suffered.

The Tribunal noted that the administrative appeals bodies had not made sufficient efforts to establish the causal link between the vehicular accident suffered by the Applicant during an official mission in Cameroon, the cataract he subsequently suffered and the blindness in his right eye which finally resulted. The Tribunal further noted the contradictory nature of the recommendation of the Advisory Board on Compensation Claims, which held that, on the one hand, the Claim for compensation was time-barred, and on the other, that the Applicant's accident was not service-incurred. The Tribunal considered that in declaring the claim time-barred, the Advisory Board on Compensation Claims had acted in an arbitrary manner and that this aspect of the case should be considered on its merits. The Tribunal found that the Advisory Board on Compensation Claims had not set forth its observation, conclusions and the reasons for its recommendations sufficiently clearly. For these reasons, the Tribunal remanded the case to the Advisory Board so that a proper report could be prepared, and if the results were not satisfactory to the Applicant, he could invoke the provisions of Appendix D to request the convening of a medical board.

The Applicant's third, and final, plea concerned compensation for the loss of his personal effects, following his separation from service and repatriation from Geneva to Dakar, Senegal, his country of origin. Because of the Applicant had not paid for storage costs of his personal effects awaiting shipment to Dakar, the moving company had sold some of his belongings and shipped the remainder to Vienna, where the Applicant subsequently had been authorized, on an exceptional basis, to ship them where he had new employment prospects, instead of Dakar. The Applicant never claimed his belongings in Vienna, but claimed payment of their value from UNHCR, which refused to grant any compensation. The Respondent contended that the Tribunal could not properly consider the issue since the Joint Appeals Board had not taken any position on the matter and it was time-barred.

The Tribunal found that the matter was receivable. The Applicant had submitted the claim to JAB, and subsequently to the Tribunal, within the prescribed time limits; the fact that the Board had not taken a position on the claim did not prevent the Tribunal from deeming it receivable.

On the merits, the Tribunal considered that the storage costs were his responsibility under staff rule 107.4(b) and that he had been warned by the moving company that his belongings would be sold if he declined to pay the charges. The Tribunal further considered that on his own accord the Applicant had not claimed his belongings on arrival in Vienna although he had been advised that

he would be responsible for the consequences of any delay in doing so. The Tribunal noted the fact that the Applicant had not personally instructed the company to ship and store his belongings, but that instead the shipment was made on the initiative of UNHCR did not preclude his responsibility. In the light of the foregoing, the Applicant must be held responsible for the loss of his personal effects, and his claim for compensation on this point was therefore rejected.

8. JUDGEMENT NO. 718 (21 NOVEMBER 1995): GAVSHIN V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>10</sup>

*Non-renewal of fixed-term appointment—Notice to staff member of proper performance evaluation—Entitlement to fair consideration for renewal and career appointment—Question of damages*

The Applicant entered the service of the United Nations on 10 April 1985, on secondment from the Government of the Union of Soviet Socialist Republics on a fixed-term appointment, at the P-3 level as a Law of the Sea Officer in Kingston, Jamaica. His contract was renewed, and subsequently on 2 November 1991, he was informed that a new fixed-term appointment would be subject to either written confirmation that he had severed ties with his Government, or that if he did not wish to sever such ties he should notify the Organization so that it might seek the concurrence of his Government for a renewal. The Applicant advised the Senior Personnel Officer that he had severed ties with his Government. He then was informed on 29 February 1992 that such severance did not place an obligation on the Organization either to retain his services at the end of his then current fixed-term appointment or to grant him a permanent appointment. On August 1992, the Applicant was further informed that his contract would not be extended beyond the end of 1992, one of the reasons being that the Organization was being restructured and there was a necessity to free up posts for this purpose. The Applicant appealed.

Upon review of the case, the Tribunal noted that a memorandum dated 13 December 1993 from the Director of the Division for Ocean Affairs and the Law of the Sea disclosed that performance evaluation reports (PERs) for Soviet nationals were always positive and favourable, but that this accurately reflected the situation only in some cases. The Director had stated that it did not do so in the Applicant's case, and that his PERs, which showed overall "a very good performance", were not justified by the quality of his performance. The Tribunal was of the view that any question relating to the Applicant's performance should have been brought to his attention when he was asked to sever his ties with his Government

Moreover, the Tribunal noted that the Applicant had not been informed until after he had severed relations with his Government of the Organization's views of its obligations to him in regard to reappointing him. He had thus lost any contractual rights or opportunity that he might have had to further employment in his Government. Furthermore, the Applicant was then told that his appointment would not be extended because of restructuring within his Division which was not the real reason, the real reason being disapproval of his performance. The Applicant had served the Organization faithfully for eight years and his PERs were, as far as he could tell, uniformly positive, and in view of the

Tribunal, he was entitled to receive fair consideration due to him. The Respondent conceded that proper procedures had not been followed, but there was no supposition that had proper procedures had been followed, with respect to the completion of his PERs and the consideration to which he was entitled for a career appointment, he would have been recommended for an extension of his fixed-term contract.

Acknowledging that it was not possible to know whether the Applicant would have obtained a further appointment or a career appointment after proper consideration, the Tribunal stated that the real point was that the Applicant, after having been misled, was never in a real sense afforded the opportunity to receive either appointment. Under those circumstances, the Tribunal considered that the Applicant's treatment by the Administration fell short of the standards to which it was required to adhere.

The Tribunal's independent assessment led it to conclude that the case presented a more extensive violation of the rights of the Applicant than the *Vitkovski* and *Rylkov* cases cited by JAB on the issue of damages. Here, the level of injury was considered by the Tribunal to be greater. The Tribunal awarded the applicant an amount equal to six months of his net base salary, at the rate in effect on the date of his separation from service, in addition to the 18 months he had already received in accordance with the earlier decision by the Secretary-General.

9. JUDGEMENT NO. 722 (21 NOVEMBER 1995); KNIGHT ET AL. V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>11</sup>

*Promotion to the Professional category—Legality of the competitive examination for promotion to the Professional category—Function of the Administrative Tribunal—General Assembly authority to promulgate conditions of service—Competitive examination consistent with the Charter of the United Nations*

The Applicants were staff members in the General Service category who filed an appeal from a decision of the Secretary-General dated 18 February 1994 rejecting their claims that they were unlawfully required to adhere to the competitive examination procedure, which was established pursuant to General Assembly resolution 33/143, in order to be eligible for promotion to the Professional category. They sought promotion to the Professional category on the basis of equity and merit.

Although the Applicants disclaimed any intention to assert that a specific General Assembly resolution contravened the Charter of the United Nations, in the view of the Tribunal this disclaimer as a practical matter contradicted the substance of the appeal. For the Tribunal to have held that the Applicants could be promoted without passing the competitive examination would have denied the General Assembly's power to mandate a competitive procedure, such as the competitive examination, which the General Assembly itself had recognized as the response to its resolution. It would have to have held further that the Respondent had acted unlawfully in implementing the General Assembly resolutions by establishing the competitive examination. Indeed, the Tribunal had upheld the legality of system in Judgement No. 266, *Capio* (1980).

The Applicants argued that promotion through the competitive examination was discriminatory vis-à-vis the General Service as a whole, that this category of staff instead of being judged on merit for career opportunities, had been treated unequally by comparison with other categories of staff and external candidates. However, the Tribunal considered that these contentions were of a policy nature and thus addressed to the wrong forum. The Tribunal's statute provides for the Tribunal to determine whether there had been non-observance of the terms of employment contracts, which included the competitive examination. The Applicant's sought a fundamental change in the system as a whole, i.e., in terms of their employment, but it was not the function of the Tribunal to substitute its views for those of the General Assembly or the Respondent on how best to manage the Organization.

In the view of the Tribunal, the General assembly had a rational basis for requiring a competitive examination procedure for promotion from the General Service to the Professional category, and equally rational was the differentiation between various categories of staff, such as Professional, Field Service categories and General Service. The Tribunal concluded that the General Assembly had the power to promulgate conditions of service for the staff. The International Court of Justice had so held in its advisory opinion of 20 July 1982, *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, International court of Justice Reports 1982*, p. 325, paragraph 68, which was entirely consistent with *Capio*.

Furthermore, the Tribunal considered that, since the competitive examination placed no improper restriction on the eligibility of any staff member for the competitive examination, it raised no questions under Article 8 of the United Nations. The Tribunal likewise saw no conflict between the competitive examination system and Article 101 of the Charter since the obvious purpose of a competitive examination was to seek the best qualified of the candidates being examined.

For the foregoing reasons, the application was rejected.

10. JUDGEMENT No. 742 (22 NOVEMBER 1995): MANSON V.  
THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>12</sup>

*Resignation treated as a summary dismissal—Requirement of notifying staff member if resignation is to be treated as such—Administrative responses to resignation of a staff member—Staff member must be given opportunity to respond to any charges against him or her before action is taken—Question of gross negligence—Question of an effective resignation*

The Applicant, who had served the Organization since 1962, took early retirement in 1986; and after serving as a consultant on missions to the Sudan, Finland and Afghanistan, in 1989, he again became a staff member serving in Afghanistan, Cambodia and Liberia. In 1993, he was appointed Chief Administrative Officer of the United Nations Operation in Somalia (UNOSOM II), where he served until his separation on 14 May 1994. On 14 April 1994, the Applicant reported a theft of US\$ 3.9 million from the premises of UNOSOM II. The cash had been kept in what was erroneously thought to be a secure drawer of a filing cabinet located in what was then being used as a cash office in Administration

Building B. The building was a prefabricated hut-like structure, in the main UNOSOM II compound (the United States Embassy compound). On 19 April 1994, a Headquarters investigation team was sent to investigate the theft. The team issued its report on 12 May 1994. In the meantime, on 11 May 1994, two Assistant Secretaries-General, during a telephone conversation, suggested to the Applicant that he tender his resignation, which the Applicant did on 12 May. The Under Secretary-General for Administration and Management accepted his resignation “on the understanding that your separation will be treated as though it had been affected as a summary dismissal”. The Applicant appealed the decision.

The Tribunal noted that there was no dispute that the Applicant was not told during that telephone conversation that his resignation might be treated as summary dismissal, but that he was apparently led to believe that his resignation would not be accepted and that he would remain in Somalia to assist in a continuing investigation of the episode; in fact, he did remain there until 31 May 1994. The Tribunal further noted that the Applicant seemed to have thought that tendering his resignation would be viewed as a honourable step in recognizing his ultimate responsibility for the loss since he was the senior civilian officer responsible for the UNOSOM II administration. The Applicant was not, prior to the receipt of the summary dismissal decision, notified of any allegation against him, or was there any submission of the matter to a Joint Disciplinary Committee.

The Respondent sought to justify the 12 May 1994 decision on the ground that the Applicant, for more than a year prior to the date of the theft, was “grossly negligent in failing to take the most basic measures to ensure safe handling of the substantial cash amounts received and disbursed by the Mission, even after an audit report of October 1993 had pointed out to him an intolerable lack of appropriate security measures and the immediate need to take corrective action”. The Respondent further contended that the resignation by the Applicant was an admission of the gross negligence referred to above and that, therefore, there was no need to adhere to staff rule 110.4(a) concerning disciplinary action.

In the view of the Tribunal, when a potential disciplinary measure was being considered and a resignation had been suggested, the staff member must be warned before the resignation was accepted that it would or might have a disciplinary consequence so that he or she could make an informed decision on how to respond, in order to comply with the requirements of staff rule 110.4 or administrative instruction ST/AI/371. The Applicant had argued and furnished evidence to support his contention that the Respondent’s decision was a reaction to political pressure and was aimed at deflecting criticism of the Organization by pinning the blame on a scapegoat. While the Tribunal would not speculate as to the Respondent’s motivation, it stated that there was nothing which realistically precluded the Respondent from selecting from a number of options a course of action in response to receipt of the Applicant’s resignation, i.e., (a) to accept the resignation as offered; (b) reject it; (c) to initiate termination proceedings for unsatisfactory performance under the Staff Rules; and (e) inquire of the staff member whether he wished to waive his rights under the Staff Rules, and was agreeable to the resignation being treated as a summary dismissal for serious misconduct.

The Tribunal further pointed out that the issue of whether there was justification for summary dismissal was clouded by the fact that such action was taken before the Applicant ever had an opportunity to see the report of the investigation team as it related to him. He could therefore not respond to it or to the conclusions drawn by the Secretary-General regarding audit observations, comments or recommendations. Thus, in the opinion of the Tribunal, it was impossible to know whether, if the Respondent had had the benefit of the Applicant's response before he acted, he would have reached the same conclusion and based a summary dismissal on it.

Concerning the question of whether the Applicant's conduct, taken as a whole, constituted gross negligence, resulting in the loss of \$3.9 million, the Tribunal considered that gross negligence involved an "extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk". In the present case, the Tribunal was unable to find gross negligence by the Applicant.

In this regard, the Tribunal noted that the Applicant had made two suggestions to relieve UNOSOM II of the responsibility and risk of transferring and holding large sums of money, but these suggestions were rejected by United Nations Headquarters. The Tribunal further pointed out that the audit team had left Somalia, because of dangerous fighting and looting, before the final discussions could take place and that if such a discussion had been held with the Applicant, the auditors would have learned that a strong room in a concrete structure was nearing completion and that it addressed their basic cash security issues. The Tribunal further noted that the cash was stored overnight in the insecure file drawer in the prefabricated Administration building as a result of the decision of the cashier and not the Applicant. This also was a practice inherited from the former Chief Financial Officer and continued by an individual serving as Acting Chief Financial Officer at the time of the theft, because it was believed that the daily movement of cash between the storage room and the cashier's office presented security problems. The Applicant claimed that he was not aware of this arrangement, nor was he informed of the size of the cash buildup of 16 April 1994, which was the result of a combination of unforeseeable circumstances, i.e., a large amount of unanticipated cash received from a departing military contingent, and an erroneous estimate of cash requirements made by an inexperienced individual who had served on an interim basis for about two weeks as Acting Chief Financial Officer, following the departure of the former Chief Financial Officer, and before his successor arrived on 9 April 1994.

Although the Applicant had stated that he was unaware that over \$4 million was being stored overnight in the insecure cashier's office, the Tribunal speculated that perhaps the Applicant should have established a reporting system to inform him directly of the levels of cash on hand, but that this was debatable in view of the presence of a Chief Financial Officer having primary responsibility for such details. In the view of the Tribunal, the Applicant's failure to do so did not constitute gross negligence. The theft was, in the opinion of the Tribunal, primarily attributable to wrong-headed decisions by others coupled with the fact that the Organization was attempting a very difficult mission in an extraordinarily adverse environment, without the number or the types of personnel required, the equipment required, and without the necessary military support, or essential infrastructure support.

As to the other relief sought by the Applicant, the Tribunal found that when the Applicant tendered his resignation to the Under Secretary- General for Peace-keeping Operations, he necessarily assumed the risk that it might be accepted, despite intimations to the contrary from those who suggested that he resign. However, in the present case, the resignation stood without the “understanding” that it represented a summary dismissal. The Tribunal also found no merit in the Applicant’s contention that since he was on loan from UNDP to the United Nations his resignation did not apply to UNDP.

The Tribunal held that the applicant was entitled to an award (\$10,000) for moral injury resulting from the consequences of the failure to accord him due process, and to the amount, with interest, to which the Applicant was entitled on resignation that was not previously paid to him. All other pleas were rejected.

11. JUDGEMENT NO. 744 (22 NOVEMBER 1995): EREN, ROBERTSON, SELLBERG AND THOMPSON V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>13</sup>

*Challenge to disciplinary measures—Imposing disciplinary measures based on issues not central to the case before the Joint Disciplinary Committee—Question of job performance being subject of a disciplinary proceeding—Suspension of staff members pending consideration of serious charges within reasonable discretion of the Organization*

The Applicants, in their respective posts, dealt with the procurement of air transportation services for the United Nations. In May 1993, a complaint was made by Evergreen Helicopters, Inc., a United States company, alleging irregularities in United Nations procurement practices which, it was claimed, had resulted in awards to companies which were not the lowest bidders. Evergreen further alleged that those awards had gone principally to one Canadian helicopter broker, Skylink. After a preliminary investigation by the Administration, it was concluded that practically all of the 52 contracts reviewed showed noncompliance with established procurement procedures. Consequently, on 9 July 1993, the Applicants were charged with misconduct and suspended from duty with full pay, with immediate effect. They were escorted from their offices by Security officers to the gates of United Nations Headquarters and ceremoniously stripped of their grounds passes. Their cases were subsequently referred to a Joint Disciplinary Committee (JDC) which focused on action allegedly taken by them to favour Skylink. The Applicants were accused of having concealed relevant information and of having submitted to the Headquarters Committee on Contracts incomplete, misleading or inaccurate information, allegedly to induce the Committee to recommend the award of contracts to Skylink.

The JDC adopted its lengthy reports on 21 September 1994 and exonerated the Applicants in all respects of the charges of misconduct against them. The Tribunal noted that the JDC had pointed out occasional instances in the invitation, evaluation and reporting of proposals from potential contractors where it would have been desirable for the staff members involved to have made a follow-up phone call, or written a note to the file regarding contact with a vendor, or prepared presentations to the Headquarters Contracts Committee in a less summary fashion, and that there had been occasional inaccuracies in their pre-

sentations to the Committee; however, the JDC had found no evidence of wrongful intent on the part of the Applicants. The Tribunal further pointed out that the lapses noted by the JDC were understandable, in the light of the circumstances, such as understaffing and the urgency of the requisitions involved for the United Nations peacekeeping missions. In no instance did the JDC find that the Outcome with respect to any particular contract would have been different had these lapses not occurred.

In spite of the unanimous recommendation of the JDC that no disciplinary measure should be taken against the Applicants, and while accepting the findings of the JDC that no wrongful intent on the part of the Applicants had been established, the Secretary-General decided to impose disciplinary measures, on the grounds that performance lapses noted by the JDC were not excused by the absence of wrongful intent, and that the errors and omissions identified by the JDC should be “regarded as culpable”. The disciplinary measures included a written censure, four steps-in-grade reduction and a two-year deferment of eligibility for within-grade-increment. The Applicants appealed the decision.

The central question before the Tribunal was whether the Secretary-General having accepted the factual findings of the JDC and its conclusion that Applicants were not guilty of the charges brought against them, could then validly impose disciplinary measures on the basis of incidental comments on what were essentially matters of performance.

In that regard, the Tribunal considered that the Secretary-General had imposed disciplinary measures on the Applicants on the basis of a charge not previously notified to them, that their performance was culpable because it was, in certain respects, below standard, which was fundamentally different from the charges before the JDC, i.e., wrongful intent to favour Skylink. It was true that the JDC had commented on what it apparently perceived as shortcoming in the Applicants’ performance, but had done so solely in the context of far more serious charges, which were virtually criminal in nature. Neither the Applicants nor the JDC had been called upon to consider whether the Applicants’ job performance, as such, was so deficient as to warrant disciplinary action, in the light of the extraordinary work circumstances prevailing and other mitigating factors, many of which were recognized by the JDC. Hence, in the opinion of the Tribunal, the Applicants were denied due process to which they were entitled under the Staff Rules of the United Nations. The disciplinary measures imposed on them were therefore unlawful.

The Tribunal considered that, in theory, the isolated comments of the JDC might have been the basis for new charges against the Applicants, and could have been referred to the JDC for consideration and for a recommendation as to whether they warranted disciplinary action. The Tribunal speculated that there might be instances when failures in performance were of such extreme dimension as to constitute misconduct for which disciplinary measures would be reasonable, but in the present case, the Tribunal did not find that the performance matters mentioned by the JDC were of this nature. This was particularly true in the present case where there appeared to be no evidence of any financial loss to the Organization, or that any outcome could have been different but for the Applicants’ performance.

The Tribunal also found that relevant matters relating to the work performance of the Applicants did not appear to have been taken into account in the determination that their conduct was “culpable”. Noting the absence of standards established for negotiated transportation service procurements, the Tribunal was of the view that legitimate questions arose as to whether and to what extent pressure-induced questions regarding procedural details in the procurement process could properly be deemed “culpable”. Furthermore, the Tribunal considered that the Under-Secretary-General had urged rapid decision-making in emergency situations such as the ones relating to human rights, humanitarian affairs and peacekeeping and that it appeared to the Tribunal that the Applicants had acted in keeping with those views. In other words, what he later considered lapses in their performance could well have resulted directly from his sensible advice. The Tribunal therefore concluded that, in addition to the failure of due process, the disciplinary measures taken by the Respondent were not justified.

With regard to the suspension of the Applicants, pending the disposition of charges against them, the Tribunal found that such action was plainly within the reasonable discretion of the Respondent under the circumstances, considering the seriousness of the charges. The Respondent was entitled, at that state, to decide that retaining the Applicants in their posts might have posed a danger to the Organization.

In conclusion, the Tribunal found that the Applicants had been unfairly and improperly treated by the Respondent when he penalized them, despite the finding of their innocence by the JDC and his own acceptance of this finding. The Applicants had been deprived of the due process to which they were entitled and subjected to a serious irregularity of procedure. The Applicants had been harmed thereby, and their harm had been aggravated by the highly public nature of the Respondent’s actions. In the light of the foregoing, the Tribunal rescinded the decisions of the Respondent and fixed compensation to be paid to each of the Applicants in the amount of one year’s net base salary if the Secretary-General decided, in the interest of the United Nations, not to rescind the decisions which imposed, or would have imposed, disciplinary measures. It also ordered as compensation for the harm suffered by the Applicants that the Respondent pay the Applicants Eren, Robertson, and Thompson and the estate of Sellberg, who had passed away in the interim, (a) the sum of \$20,000; and (b) the difference in remuneration and other emoluments between what was actually received by the Applicants and what they would have been entitled to, in the absence of disciplinary measures, from the date of their suspension from service to the date on which the Tribunal’s judgement was implemented by the Respondent.

## **B. Decisions of the Administrative Tribunal of the International Labour Organization<sup>14</sup>**

### **1. JUDGEMENT NO. 1383 (1 FEBRUARY 1995): IN RE RIO RUMBAITIS V. WORLD HEALTH ORGANIZATION<sup>15</sup>**

*Non-selection to post—Eligibility to file an appeal—A candidate must meet minimum requirements of any notice to qualify for selection—Question of a fatally flawed appointment to a post which was subsequently abolished—Question of damages for material and moral injury*

The complainant had been employed by the Regional Office for the Americas of the World Health Organization in Washington, DC since June 1988. In March 1990, she was working as a "Temporary Adviser" in the Health Situation and Trend Assessment Programme (HST) in the Health Promotion Unit under a one-month contract, which was extended by two months, when on 30 March, she applied for a vacancy for a grade P.4 post as AIDS education methodologist with HST. The notice gave as a minimum requirements, inter alia, a postgraduate degree in behaviour or social sciences. The Section Committee recommended three candidates, of which the complainant was not one and Dr. Rafael Mazin, who had a medical degree, was ultimately selected. When she appealed this decision to the regional Board of Appeal, the Board made a recommendation in her favour, but the Regional Director rejected it. On 7 May 1992, she appealed to the headquarters Board of Appeal. The Tribunal noted that both boards of appeal had held that she had the right of appeal and that the selected candidate did not have the minimum education qualifications required for the post, whereas she did. The Director-General rejected the recommendation of the headquarters Board on the grounds that the complaint did not have the right to appeal given the nature of her status with WHO and, in any event, the post in question was among 46 posts being abolished owing to cuts in the budget for the Global Programme on AIDS for the biennium 1994-1995.

The Organization had contended that the complainant was not a staff member, but rather a "temporary adviser" under the Staff Rules and therefore not eligible to file an internal appeal. However, the Tribunal considered that under staff rule 1230.1 a "temporary adviser" was invited for short periods of not more than 60 consecutive days to give advice or assistance to the Organization, and that the complainant's contract had been extended resulting in her serving for over 90 days. Therefore, the Tribunal concluded that she was not a "temporary adviser" but held at the material time a temporary short term appointment as a consultant, and therefore qualified as a "staff member" and was eligible to avail herself of the internal appeal procedures.

As to the merits of the case, the Tribunal noted that the Selection Committee and both boards of appeal had taken the view that the selected candidate's medical degree did not meet the minimum educational qualification of a postgraduate degree in any of the behavioral or social sciences. The Organization did not dispute that but argued instead that a medically qualified candidate was more suitable and that Dr. Mazin was the best qualified for the Post. In the opinion of the Tribunal, however, it was axiomatic that a candidate who did not fulfil the minimum requirements set out in a vacancy notice did not qualify for the selection. The impugned appointment was therefore fatally flawed in that respect.

Under those circumstances, the Tribunal would ordinarily set aside the selection process, but the Organization had abolished the post. The complainant pleaded that such abolition was just a manoeuvre to frustrate her complaint; that the unit had continued under a different name; and that the selected candidate had continued to work in a new position that was more suitable for a medical doctor. The Organization explained that programme changes and budget cuts required not only the abolition of the disputed post, but also the reassignment of many staff in the Professional category, that having abolished the post it had to apply the reduction-in-force procedure, and that the outcome was the appoint-

ment of Dr. Mazin to a new post. The Tribunal noted in that regard that the complainant herself had admitted that the Health Promotion Unit had lost almost all its credits for educational activities and her supervisor had been left with so few functions that she had to be reassigned to Brasilia. Therefore, in the Tribunal's view, a fresh process of selection for the disputed post being no longer possible, no useful purpose would then be served by quashing the impugned decision.

The complainant had requested damages for material and moral injury on account of the travesty of the irregularities and the humiliation she had suffered by not being fairly considered. However, the Tribunal considered that the complainant had been asked to draft a description of the post and admitted that she had drafted the description to fit her own qualifications and experience. Thus, while the gravamen of her complaint was that the proceedings of the Selection Committee were flawed because the aim was the selection of an unqualified candidate, she was on her own admission endeavouring from the outset to pervert the process to secure her own appointment. Further, she was not even Selection Committee's third choice. In the circumstances, the Tribunal was of the view that she was not entitled to any damages at all. However, since the complainant had established that the impugned decision was flawed, she was awarded US\$ 2,000 in costs.

2. JUDGEMENT NO. 1384 (1 FEBRUARY 1995): IN RE WAIDE V.  
WORLD HEALTH ORGANIZATION<sup>16</sup>

*Non-renewal of fixed-term contract—Question of reason for non-renewal—Burden of proof in misconduct cases—Right to defend oneself against adverse charges—Injury called for reinstatement*

The complainant had been employed as a clerk at grade EM.05 in Distribution and Sales in the World Health Organization's Regional Office for the Eastern Mediterranean (EMRO) at Alexandria, Egypt, when his two-year fixed-term appointment was not renewed when it expired on 31 August 1991.

As a result of the theft of some computer equipment in November 1990, the Regional Office conducted an investigation and in March 1991 initiated disciplinary proceedings against the complainant. By letter dated 27 May 1991, the Regional Personnel Officer had informed him that the Organization was satisfied "beyond reasonable doubt" that he had committed the theft, and that he would be dismissed from 29 May with one month's pay in lieu of notice.

The complainant appealed first to the regional Board of Appeal, and then to the headquarters Board of Appeal. The headquarters Board of Appeal's report, finding "a high degree of contradiction in the statements" made in connection with the matter, disagreed with the finding of misconduct, which it held was "based on presumptive evidence only," and further held that the dismissal decision was "probably not the wisest and fairest decision". It recommended that the dismissal be converted to termination at the end of the complainant's appointment, i.e., 31 August 1991, on the grounds of loss of confidence in the complainant's suitability for employment in WHO. In a letter of 4 August 1993 to the complainant, the Director-General stated that although guilt had been established beyond a reasonable doubt, he accepted the recommendation. The complainant appealed the decision.

The Tribunal considered that though the impugned decision purported to “convert” the complainant’s dismissal into the non-renewal of his fixed-term appointment, the Tribunal had consistently held, more recently in Judgement 1317 (in re *Amira*), that an organization was required to give a reason for non-renewal, and WHO had unequivocally stated that termination the present instance for “serious misconduct, which had led to loss of confidence”. And in the opinion of the Tribunal, the finding that the complainant was guilty of theft could not stand.

In that regard, the Tribunal recalled its Judgement 635 (in re *Pallicino*), which stated that the complainant’s denial of the alleged misconduct shifted the burden of proof to the organization. Although the Tribunal would not require absolute proof, it would accept a set of precise and concurring presumptions of the complainant’s guilt. Upon review of the present case, the Tribunal recalled that both boards of appeal had recognized that there was at most mere suspicion that the complainant might have been involved in the theft, and that in view of the many discrepancies and omissions in the case against him the headquarters Board of Appeal had been unable to determine the relevant issues of fact.

Moreover, the Tribunal noted the many flaws in the procedure the Organization had followed in investigating the theft. Neither directly nor indirectly had the complainant been confronted with his accusers, and he had been deprived of the opportunity to press the points in his favour or to explain those against him. The Tribunal, citing Judgement 999 (in re *Sharma*), concluded that the complainant had been denied his right to defend himself before an adverse decision was taken.

Based on the foregoing, the Tribunal determined that the decision not to renew the complainant’s contract could not stand and that the plea of loss of confidence which the Organization had based thereon must be rejected. The Tribunal noted that as the complainant’s performance had been rated good to very good and as on 18 March 1990 he had been recommended for promotion the Organization, but for the wholly mistaken conclusion that he had been involved in theft, would have extended the complainant’s fixed-term contact beyond August 1991 as a matter of course.

Moreover, the decision not to renew his contract, based as it was on a finding of theft, must have seriously harmed his moral and social standing and his prospects of finding other employment. And the flagrant disregard of his right of defence had caused him further moral injury. In the opinion of the Tribunal, the damage to the complainant’s career and reputation was so grave that nothing short of reinstatement and the grant of further contract of employment would suffice. The Tribunal ordered that he be granted an appointment for a period of two years starting at the date of delivery of the judgement and an award of damages for moral injury of US\$ 6,000. He was also awarded \$4,000 in costs.

3. JUDGEMENT NO. 1385 (1 FEBRUARY 1995): IN RE BURT V.  
INTERNATIONAL LABOUR ORGANIZATION<sup>17</sup>

*Non-selection to post—Entitlement to a fixed-term appointment under rule 3.5 of Short-term Rules—Contract to be applied in accordance with intention of the parties*

The complainant, who was of British nationality, first served the International Labour Organization on a short-term contract from October to December 1987 to work on the *International Labour Organization Review*. He subsequently applied for the post of editor of the publication *Social and Labour Bulletin*, which would have afforded him a fixed-term contract of two years with a chance of renewal. Pending the outcome of the selection process, he accepted another short-term contract to serve as English-language editor of the *Bulletin* at grade P.4, from 4 March to 31 October 1991. On expiry of that contract he returned to the United Kingdom and on 6 April 1992, he resumed the editorship of the *Bulletin*, that short-term contract to expire on 31 March 1993.

In the meantime, he learned that the Selection Board had recommended appointing the complainant the English-language editor, but that the Director-General had decided to “suspend all action” in the appointment of an editor pending review of the *Bulletin*. By a letter of 13 December 1993, after he had lodged a complaint with the Tribunal, the complainant was informed that the selection process had been cancelled.

The Tribunal learned from a confidential minute of 19 March 1993 that the complainant, as well as his French-language counterpart, had been given short-term contracts with the appropriate breaks in service in order that staff rule 3.5 could not be applied, which would have meant that the terms and conditions of a fixed-term appointment would apply to the complainant as from the effective date of the contract which created one year or more of continuous service. In that regard, as ILO wished work on the *Bulletin* to continue without break until August 1993, the complainant had been given an “external collaboration contract” for the period from 5 to 30 April 1993, and from 3 May to 31 December 1993 the complainant continued to serve the Organization under short-term contracts, with no extension after 31 December 1993. The Tribunal noted that the complainant had carried out the same duties under the extension collaboration contract as under his short-term contracts.

On 17 August 1993, the complainant lodged an appeal, claiming that he had ranked first in the competition for the English-language editorship of the *Bulletin* and should have been granted a fixed-term appointment for two years. He maintained that in spite of the interposition of the extension collaboration contract he was entitled to the benefit of rule 3.5 of the Short-term Rules.

The Tribunal considered that the suspension and later cancellation of the competition for the English-language editor post was proper. The Director-General had reviewed the *Bulletin* in relation to another ILO publication, *Review*, and ultimately decided to eliminate the *Bulletin*, including a new section in the *Review* containing the kind of material previously published in the *Bulletin*. In other words, the post advertised for English-language editor of the *Bulletin* had ceased to exist, so that the complainant’s claim to a two-year appointment to that post must fail.

As to the complainant’s contention that as from 5 April 1993 he had become entitled to the terms and conditions of a fixed term appointment under rule 3.5 of the Short-term Rules, the Tribunal recalled that in Judgement 701 (in *re Bustos*) it was required to interpret and apply a contract in accordance with the intentions of parties. In the present case, the Tribunal concluded that the interruption of the complainant’s appointment by the extension collaboration contract had merely been a device to deny him the protection of rule 3.5 without

forfeiting the benefit of his services. There being no change in the actual conditions of employment, the real intention was that he should continue to do the same work.

The Tribunal concluded that the external collaboration contract must be treated like any other of the complainant's short-term contracts, and that therefore his "total continuous contractual service" amounted to one year by 5 April 1993 and he thus became entitled under rule 3.5 to the terms and conditions of a fixed-term appointment. Since the complainant had succeeded on that count, the Tribunal awarded him 4,000 Swiss francs in costs.

4. JUDGEMENT NO. 1386 (1 FEBRUARY 1995): IN RE BREBAN V.  
EUROPEAN PATENT ORGANIZATION<sup>18</sup>

*Non-confirmation of appointment at end of probation—Decision to confirm such appointment is discretionary—Requirement of notification of precise description of duties—Question of personal supervision—Requirements of proper notice of criticism of job performance*

The complainant was the successful applicant for a vacant post of clerk, and was given a probationary appointment at the B2 grade with the European Patent Organization (EPO), effective 1 January 1992. On 27 May 1992, a probation report was issued on the complainant which recommended not confirming his probation. His performance was found wanting and his relations with his colleagues were described as rigid and uncooperative. On 10 June 1992, the Principal Director of Patent Information informed the complainant that the President of the Office had decided in accordance with article 13(2) of the Service Regulations, not to confirm his appointment when the probation ended on 30 June 1992. The complainant requested a three-month extension of his probation but this was denied, and he appealed.

At the outset, the Tribunal recalled that the administrative authority had the widest measure of discretion in confirming the appointment of a probationer, and that the purpose of such discretion was to ensure that the Organization might choose staff in full freedom and independence. The Tribunal would not intervene in the Administration's choice except in the event of abuse of authority or a clear mistake of law or fact. On the other hand, the probationer had every right to expect of the Administration that it would provide proper conditions for probation, and in that regard, the Tribunal noted several facts which had come to light in the internal appeal hearings and which had not been challenged which raised serious doubts as to whether that was the case.

The Tribunal first pointed out that the complainant had never been given a precise description of his duties. The Administration's explanation that the job specifications were in the notice of vacancy for the post was not considered sufficient by the Tribunal. In the Tribunal's view, since a vacancy notice had to be in general enough terms to attract a wide variety of applicants, it could not be regarded as specific enough job description to be of use to the official.

The Tribunal also pointed out that the complainant had lacked personal supervision, and in this regard, noted that his main tutor had admitted to the Appeals Committee that he did not feel fully qualified to give the complainant guidance.

Furthermore, in the opinion of the Tribunal, the Administration was also at fault for not giving the complainant sufficient warning that there had been criticism of him and the success of his probation was in jeopardy. The Organization contended that he had received several oral warnings, but the Tribunal noted that contrary to the requirements of due administrative process, the file contained no evidence of such warnings or their date or substance, therefore, preventing the Tribunal from assessing their scope. There was a note, dated 28 February 1992, from the Administration to the complainant; however, the Tribunal was of the opinion that its cryptic nature could not be regarded as a valid administrative document, let alone a warning which might have carried weight in assessing the outcome of probation. The Tribunal pointed out that the only written and specific criticism was a note of 21 May 1992, which had not been communicated to the complainant, until after his appointment was terminated. The result of the administrative procedures followed in the present case was that the complainant had been impaired from his right of defence, and therefore the impugned decisions must be set aside.

The complainant had sought reinstatement in his post; however, in the view of the Tribunal, reinstatement, which could only mean reinstatement for a further probationary period, in the present case would have raised insurmountable practical difficulties because of the time that had elapsed since the date of his dismissal on 1 July 1992. The complainant was entitled to full compensation for the material and moral injury he had sustained. As regards material damages, the Tribunal ordered EPO to pay him an amount equivalent to the emoluments he would have earned from the date of dismissal until the end of the month in which the Tribunal delivered the present judgement. Furthermore, because of the moral injury in relation not only to his family and private life but also to his career prospects, the Tribunal awarded him 25,000 French francs. He was also awarded 25,000 French francs in costs.

5. JUDGEMENT NO. 1390 (1 FEBRUARY 1995): IN RE MORE V. EUROPEAN ORGANIZATION FOR SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY)<sup>19</sup>

*Non-selection to post—Career promotion versus selection to a higher-level post—Reasons for rejection of internal candidate's application must be plausible—Notification of reasons for rejection of internal candidate's application*

The complainant, who was a junior administrative assistant in the General Accounts section of the European Organization for Safety of Air Navigation (Eurocontrol Agency), had applied for the post of senior administrative assistant, at grade B2/B3, and under certain circumstances, at grade B4 or B5. There were two parallel application procedures for the post, one for staff members and one for non-staff members, and the complainant was the only internal candidate. His application was rejected, and an external candidate was chosen. He appealed his non-selection.

In considering the merits of the case, the Tribunal recalled its Judgment 1223 (in re *Kirstetter No. 2*) and more recently Judgment 1359 (in re *Cassaiguau No. 4*) that the distinction between the two application procedures had the effect of debarring Eurocontrol officials from any possibility of having their applications considered by a Selection Board in accordance with articles 30 and 31 of the Staff Regulations. In the present case, as the Agency admitted, the

complainant's application had been considered and discarded by his supervisors before the official selection procedure and in secrecy. The Agency's contention was that the quota of promotions for the current year had been exhausted and there was thus no need for the Promotion Board to meet. However, as the Tribunal noted, the vacancy notice offered Eurocontrol officials the possibility of specific promotion to an advertised post, as against career promotion for which there was a set quota. In that regard, what was required was a meeting not of the Promotion Board but of the Selection Board, in accordance with the Staff Regulations, since the complainant was applying for a vacant post.

In the view of the Tribunal, the complainant was correct in protesting that his qualifications had not been properly examined and that the reasons given for the decision rejecting his application were implausible. The Tribunal noted that by advertising the post at grade B2/B3 the Administration was clearly seeking high proficiency in accountancy and data processing. But by reserving the right to appoint some at grade B4—the complainant's grade—or grade B5 it showed that it was nevertheless willing to be rather less demanding if need be. In any event, it had no reason to reject the complainant on the ground that he lacked academic qualifications since the vacancy notice mentioned no such requirement and stated that practical experience would suffice. Nor might it properly contend that he lacked professional experience: he was already working in what the Agency itself termed "the highly specialized field of accountancy".

In answer to the question to what extent must an administration substantiate its decisions, the Tribunal was of the view that in the present situation a distinction must be drawn between the rejection of an external application, particularly where a competition had attracted many candidates, and the rejection of an application by a serving official. In the latter case, the Organization had a duty to maintain the relations of trust it had with the staff member, and although it must remain free to choose how it would notify the reasons to him, it must be wary of damaging his career prospects.

For the reasons set forth above, the Tribunal concluded that the whole selection procedure must be quashed, including the individual decisions rejecting the complainant's applications and the decision to appoint the external candidate, with the Agency taking steps to ensure that the unit continued to function in the meantime and to protect the external candidate from any injury she might suffer for the quashing of an appointment she had accepted in good faith. The Tribunal ordered that the case be sent back to Eurocontrol for resumption of the selection procedure in keeping with the rules.

6. JUDGEMTN NO. 1391 (1 FEBRUARY 1995): IN RE VAN DER PEET  
(NO. 18) V. EUROPEAN PATEN ORGANISATION<sup>20</sup>

*Complaint against disciplinary action—Freedom of speech in the context of judicial proceedings—Questions of a staff member's abuse of process or perversion of the right of appeal*

The complainant, a national of the Netherlands, who had been employed by the European Patent Organization (EPO) in its Directorate-General 4 in Munich as a patent examiner at grade A3, had already filed 17 complaints, on the first of which the Tribunal ruled, in Judgement 568, in 1983. In the present case, he sought the quashing of a disciplinary decision by EPO that he be rel-

egated in step by 12 months for breach of article 14(1) of the Service Regulations, requiring a staff member to conduct himself solely with the interests of the Organization in mind.

The Disciplinary Committee had held in its report of 11 February 1992 that the complainant had failed to comply with article 14(1): three statements made by him in a letter of appeal dated 22 February 1989 to the Netherlands State Council and nine in pleadings to the Tribunal in his fifteenth complaint were “unacceptable” in that they “impugned the honesty, honour and integrity of people carrying out their duties” and in making them he had “exceed the level of what reasonably can be accepted in the circumstances”.

On appeal, the Appeals Committee referred also to article 16(1), which required an employee to “abstain from any act, and in particular any public expression of opinion which may reflect on the dignity of his office”. The Committee held that in its report of 1 December 1993 he had failed to exercise care over the language of his pleadings; that it was damaging to the dignity of the international civil service in general and to the reputation of the Organization in particular; and that the “expressions used were incompatible with the decorum appropriate to his status as an international civil servant”. It recommended dismissing his appeal, and by letter of 13 January 1994 the complainant was informed that the President had decided to dismiss his appeal. The complainant appealed to the Tribunal.

The Tribunal considered that decisions taken by the Organization were subject to review on grounds such as bias, bad faith, malice and abuse of authority. In the present case, the Tribunal noted that the complainant was entitled to allege and attempt to establish such grounds when defending his interests. A fair decision could not be reached upon such matters by an internal appeals body or by the Tribunal if witnesses, parties and their representatives were unable to speak candidly and without the risk of incurring a penalty for what they may say, and especially if one party was unduly inhibited by the fear that failure to prove his case might make him liable to disciplinary action by the other party. Accordingly, the view of the Tribunal, the question at issue was the extent of the freedom of speech that the litigant should enjoy and of the immunity that attached to judicial proceedings.

The Tribunal noted that the test applied by the Disciplinary Committee placed an undue burden on the complainant, in that if he was to avoid the risk of disciplinary action he must prove the truth of his allegations. In the opinion of the Tribunal, the mere failure to prove the truth of his allegations did not mean that he had either abused his freedom of speech or forfeited the immunity for privilege of judicial proceedings. Furthermore, a litigant whose submissions contained language that was unacceptable, or ill-chosen, or damaging, or unseemly, did not thereby lose the immunity that attach to statements made in judicial proceedings, however much the breach of good taste may be deplored.

In the view of the Tribunal, disciplinary action would be justified only if the staff member’s conduct amounted to abuse of process or to a perversion of the right of appeal. In that regard, the Tribunal noted that in Judgement 1065 the Tribunal had held that the complainant’s language was “offensive” and “inadmissible” but not that it was an abuse of process, and the Disciplinary Committee in the present case too had found his language “unacceptable” but not an abuse of process. The Tribunal concluded that in absence of a finding of abuse

of process the disciplinary sanction imposed on the complainant must be set aside. The Tribunal made no award for moral damages, which the complainant had requested, but did award him 500 German marks in costs.

7. JUDGEMENT NO. 1403 (1 FEBRUARY 1995); IN RE TEJERA HERNANDEZ V. EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY)<sup>21</sup>

*Request for a typist allowance—Question of receivability—Principle of equal treatment—A practice may become enforceable*

The complainant joined the staff of Eurocontrol on 1 December 1992 as an assistant clerical officer, and on 13 January 1993 she applied for the “typist’s allowance” under article 4a, section 2a of rule No. 7 concerning remuneration. This allowance was granted not only to grade C typists and secretaries but also to grade C “clerical officers”, whose duties included the use of a typewriter for 60 per cent or of a computer keyboard for 50 percent of their working time. When she received no answer from administration, she appealed, claiming allowance as from 1 December 1992 plus interest on the arrears; and on 10 June 1994, the Director General decided to pay her the allowance from 1 December 1992. That prompted the complainant to state in her rejoinder that she was withdrawing her claim to payment of the allowance but pressing her claims to interest and moral damages. The Organization retorted that her complaint was irreceivable, insofar as it concerned those two claims, since they were not part of her internal “complaint”.

As to the Organization’s claim of irreceivability regarding the issue of moral damages on account of that not being part of her internal “complaint”, the Tribunal explained that Eurocontrol was mistaken. The complainant was attributing moral injury to its failure to answer her original claim of 13 January 1993 to the allowance or the internal “complaint” she had lodged on 11 August 1993, which she claimed had left her with no explanation of its refusal and no idea about how to plead her case, leaving her helpless and disheartened. In other words, she obviously could not have claimed damages on that account in her internal “complaint”.

The Organization had also contended that the complainant’s claim for payment of interest on arrears was irreceivable. Citing a previous judgement and article 92 of the Staff Regulations, which requires a litigant to first submit his claim to the Administration before lodging an internal “complaint”, the Tribunal pointed out that the complainant had done this but that Eurocontrol had not answered her. And equal treatment required that an organization should pay interest on any arrears of the allowance. The tribunal concluded that her appeal was receivable on that score, too.

Eurocontrol objected to the merits of her claim to interest on the grounds that it had no rule requiring such payment. This plea failed, for as the Tribunal recalled above, the principle of equal treatment embodied in the Staff Regulations meant in the present case that Eurocontrol must pay interest on the arrears so as to restore parity between those who received the allowance at the due dates and those who received it much later. Furthermore, that there was delay in paying the complainant the allowance did not preclude the payment of interest whether Eurocontrol was the cause of the delay or not, which Eurocontrol had claimed it was not.

The Tribunal noted that Eurocontrol recognized that it granted the allowance also to clerical officers on their application, whenever they fulfilled the requirement spending three fifths of their working time typing or half of it using a computer keyboard, and the Tribunal was satisfied that Eurocontrol's practice regarding grant of the allowance to clerical officer depended on the fulfilment of objective criteria. The Tribunal, citing earlier judgements, further noted that an organization might be bound where a practice was one that the staff had come to rely on, and the practice would be enforceable if it was intended to have a contractual effect. In the present case, the Tribunal concluded that the practice had become part of personnel policy and it was common ground that Eurocontrol followed it wherever a clerical officer put in a claim to the allowance.

The decision to suspend payment of the allowance in January 1992, in the view of the Tribunal, did not affect the validity of the obligation that the practice of payment to clerical officers placed on the Organization, there being no decision duly taken by the competent authority to extinguish that obligation.

The Tribunal concluded that payment of the allowance to the complainant was a matter, not of discretion, but of obligation, and Eurocontrol's delay in discharging it entitled her to interest. Her claim to an award of damages for moral injury was not granted, since Eurocontrol had paid her the allowance on 10 June 1994. But since her main claim succeeded, she was awarded 5,000 Belgian francs in costs.

8. JUDGEMTN NO. 1407 (1 FEBRUARY 1995): IN RE DIOTALLEVI (NO. 3) V. WORLD TOURISM ORGANIZATION<sup>22</sup>

*Complaint against title change—Ranking of “Assistant” over “Secretary” was consistent practice—Question of covert disciplinary action*

The complainant had served the World Tourism Organization since 1984 and had the title of “Assistant” when she applied for a transfer in September 1991. The complainant subsequently was transferred from Press and Publications to Regional Representation, with no change in her appointment, grade or salary. From a staff list issued on 15 May 1993, she discovered that the title of her post was “acting secretary for Technical Cooperation”. The complainant requested that her title be changed back to assistant and when the request was refused, she appealed.

After declaring the appeal receivable, the Tribunal noted that the complainant, in support of her claim, alleged a difference, commonly acknowledged in national and international administrations alike, between “secretary” and “assistant”: what each did and the levels of training and competence required of each was different. The complainant observed that the title she received under her original contract in 1984 was “clerk”, a post at the time graded higher than “secretary”. The reforms in 1986 had replaced the title of “clerk” with “assistant”, a title which she then held for eight years until her temporary assignment on 26 May 1992 as “acting secretary”.

The Organization contended that the complainant's distinction between “secretary” and assistant” was mere quibbling, that a title was not a legal concept. In consideration of the matter, the Tribunal's review of the list appended to the Secretary-General's circular of 11 August 1982 about the structure of the staff and bodies showed that in every department there were three distinct cat-

egories of post: “assistant”, “clerk” and “secretary,” in that order. The “assistant” posts were assigned only to senior officers, and the “clerks” were ordinarily listed above the “secretaries”. Such ranking was, as the Tribunal further observed, maintained in the reforms of 25 August 1986: though the “clerk” title was replaced by “assistants” they were above “secretaries” whenever there were both in the same unit, whether the assistant’s grade was higher than the secretary’s or even the same.

The Tribunal was satisfied based on the foregoing evidence, that even though there was no formal text laying down the precedence of “assistant” over “secretary” such ranking was a practice of the Organization so consistent as to bear out the existence of a general rule. In the Tribunal’s view, therefore, the complainant could properly plead that for eight years without break she had performed the duties and had held the title of “assistant” and that only with her consent or by virtue of disciplinary action might she suffer such change in status.

Regarding the complainant’s charge of covert disciplinary action against her, the Tribunal disagreed. Though the Organization described her behaviour as “irritating”, there was no reason to impute to it any desire to punish her for proper exercise of her rights. She herself had applied for the transfer and it had caused her no loss of pay or grade or responsibility.

The Tribunal concluded that the impugned decision could not stand. Although, as stated above, the decision had not caused her material injury, it did cause her moral injury which warranted compensation. In that regard, the Tribunal observed that the Joint Appeals Committee seemed to acknowledge as much in its comment that to treat “secretary” and “assistant” as interchangeable titles might be confusing to people outside the Organization and that her new title might prove damaging to her, and that the Organization admitted that by implication: it did not mention her title in the certificates it had given her after the charge, whereas the earlier ones did. She was awarded 5,000 French francs and 5,000 French francs in costs.

9. JUDGEMENT NO. 1419 (1 FEBRUARY 1995): IN RE MEYLAN, SJOBERT, URBAN AND WARMELS V. THE EUROPEAN SOUTHERN OBSERVATORY<sup>23</sup>

Complaint against partial adjustment of salary—Duty to abide by the general principles of the international civil service—Question of assumption of a duty by an Organization to its staff—The safeguards of objectivity and stability afforded by administrative arrangements for staff cannot be removed because of prevailing circumstances

The complainants were officials at grades 7 to 9 and belonged to the international staff of the European Southern Observatory (ESO). On 2 December 1982, the ESO Council had decided to base periodic adjustments in the salaries and allowances of international staff on the procedures for adjustment followed in the coordinated Organizations, which was codified with the adoption of article R IV 1.01 of the Staff Regulations. The coordinated Organizations decided to give effect to an adjustment of salaries on 1 July 1992, but on 1 April 1993 the Council took the decision to grant only two-thirds of the adjustment because of opposition to implementing the full adjustment by the Finance Committee. The complainants lodged appeals against their pay slips for April 1993 and in

letters dated 4 August the Administration gave them leave to bring their case directly before the Tribunal. The complainants submitted that the impugned decision was in breach of article R IV 1.01 of the Staff Regulations. In their view, the Council was not freed to scuttle a policy it had previously adopted without an express amendment to that effect.

After declaring the appeal receivable, the Tribunal addressed the merits of the case. The Observatory contended that its governing body, the Council, had “supreme authority” to set staff pay. In addressing this contention, the Tribunal, citing an earlier judgement, stated that though an international organization might freely determine conditions of service and the structure of its secretariat, it had a duty as employer once its structure had been established. ESO further contended that having never actually joined the Coordinated Organizations, it had no external obligation to comply with their decisions. However on 2 December 1982, as the Tribunal recalled, the Observatory had decided that it would in future adjust staff pay in keeping with the procedure followed in the Coordinated Organizations, thereby assuming a duty to its staff which, in the absence of rules of its own, was now one of the safeguards of their administrative position.

The Organization further claimed that article R IV 1.01 of its Staff Regulations afforded a mere “guide” and as such was not binding. However, the Tribunal rejected this plea, which in its view was an attempt to render void in law ESO’s decisions on staff pay and to refuse its staff the safeguard of stability they might properly expect from their status and contracts of service. The Tribunal further stated that the article could not weaken the force of the policy decision that had been taken in 1982. The words “shall use as a guide” in the first clause of the article, while allowing some latitude inasmuch as a decision by the Coordinated Organizations, was to be incorporated *mutatis mutandis* into ESO’s own salary scales, but according to the Tribunal, they could not be read as leaving the ESO free to adopt such a decision only in part, or not at all. Making reference to earlier judgements, the Tribunal made the point that so long as the current arrangements held good, its staff were entitled to safeguards of objectivity and stability which they afforded. ESO might not remove such safeguards because of prevailing circumstances or a mere wish to do so.

The Tribunal concluded that the Council had acted arbitrarily in lowering by one third the amount of the adjustment that the staff were entitled to by virtue of decision of the Coordinated Organizations. The case was sent back to ESO so that it might take new decisions granting the complainants, and interveners, as from 1 July 1992, the difference between the sums they were actually paid and the sums they would have earned had the adjustment been applied in full. The complainants were also awarded 25,000 French francs in costs.

10. JUDGEMENT No. 1432 (6 JULY 1995): IN RE ABOO-BAKER V.  
WORLD HEALTH ORGANISATION<sup>24</sup>

*Complaint against non-extension of appointment—Sick leave requests from the staff member’s doctor cannot postpone expiry of short-term appointment—Question of a legally binding employment contract—Effect of an ultra vires decision to recruit*

The complainant joined the staff of the World Health Organization in 1985 as a consultant. In 1986, WHO granted her a two year fixed-term appointment at grade P.5 at Brazzaville, first as a medical officer, then as a "technical adviser to the Regional Director" of its Regional Office for Africa. She became ill and was transferred to a post at headquarters in Geneva, effective 1 January 1989. By letter of 27 September 1991, the Director of Personnel informed her that for budgetary reasons her appointment would be terminated on 31 December 1991. She requested to be placed on the list of staff available for any vacancies. She underwent end-of-service medical examination on 5 November 1991 and was granted leave in December to go on holiday, and went to her country of birth, Mauritius. Because she was to return to Geneva for several days' work after the holiday, she had not yet gone through the end-of service formalities. While in Mauritius, 23 December 1991, she sent an application for leave without pay which the Organization received on 22 January 1992 and on 24 December 1991 she received a doctor's certificate recommending one month's sick leave. By a second certificate, the doctor recommended an extension of the sick leave until 24 January 1992.

On 29 January 1992, the complainant received an offer from the WHO Regional Director for Africa of reassignment to a post at Brazzaville, which she accepted subject to medical clearance in Europe. She returned to Geneva in late February for medical tests, which showed that it would have been unwise for her to go to any tropical climate. At about the same time, in circumstances on which the evidence did not shed light, she received an invitation, seemingly from the Regional Director, to take up a post at Windhoek. With airline tickets issued by order of the Regional Office, she set off for Windhoek on 8 March 1992, and received written confirmation of the offer in Windhoek. She fell ill after one month and was sent back to Geneva on 10 April 1992.

She soon learned that, despite the Regional Office's backing, Personnel were refusing to acknowledge her appointment in Namibia, and took the view that she had no contract of service with the Organization. After her appeals to both the regional and the headquarters Board of Appeal, the Director-General authorized the recovery of any sums paid to her on account of her stint in Namibia but granted her the pay and travel allowance to which she would have been entitled as a short-term consultant at grade P.5 over the period she was in Namibia.

The complainant submitted that she was to be treated as having been on leave up to 7 March 1992 and from 8 March held an appointment in Namibia which was binding on WHO. WHO responded that her contract of service had ended on 31 December 1991 and therefore she had no entitlement to leave thereafter. On this issue, the Tribunal agreed with WHO; there was no doubt but that her assignment to the division of Mental Health at headquarters, ended on 31 December 1991: she was given due notice of non-renewal and had undergone the end-of-service medical examination. The certificates from her doctor could not postpone the scheduled date of expiry of her contract.

The complainant also had requested that if she could not receive sick leave she should at least be treated as having been on leave without pay, from 1 January to 7 March 1992, in accordance with staff rule 470.1, which stated that a staff member who was re-employed within one year of the termination of his/her appointment might at the option of the Organization be reinstated, the intervening absence being charged to annual leave and leave without pay. WHO had

contended that staff 470.1 did not apply because the Organization had not re-employed her: it had not signed a contract with her; there was no agreement, not even an oral one about the essential terms of any appointment; she had not unconditionally accepted its initial offer of the post; and medical clearance was a prerequisite of any contract.

The Tribunal, on the other hand, was satisfied that even though there was no formal written agreement between the Organization and the complainant, all the conditions that the case law required were met for the existence of a legally binding contract. First, a personnel officer had given the complainant notice by a memorandum of 29 January 1992 of the decision by the Regional Director for Africa to reassign her to a post at Brazzaville, which she acknowledged. Secondly, on her return to Geneva, she had been given airline tickets on the instructions of the Regional Office for Africa, and that was what had induced her to go to Namibia. While in Windhoek, the personnel officer had sent her a memorandum dated 13 March 1992 expressly referring to the appointment to post 3.3789 and attaching a post description. Moreover, the evidence showed that she had accepted the post and that the Organization had treated her as a staff member.

In the view of the Tribunal, it was immaterial to the fact of recruitment that the decision to recruit her might have been taken *ultra vires* or might not have followed the necessary formalities. The Organization must bear the consequences of any decision taken by someone it had itself appointed for the purpose, in this case, the Regional Director for Africa. Furthermore, the lack of prior medical clearance for a new post did not amount to a fatal flaw in the mutual agreement between the WHO agents and the complainant, and in any event she had undergone a medical examination on 5 November 1991.

From the foregoing, the Tribunal concluded that the Organization had re-employed her, and therefore she should have been granted leave without pay from 1 January to 7 March 1992 in accordance with staff rule 470.1. She was further entitled to pay from 8 March to 7 March 1994, plus interest from the date at which each sum fell due, and she was reinstated in her pension rights for the same period. The Tribunal also concluded that WHO's attitude towards her amounted to a moral injury, and set the amount *ex aequo et bono* at 10,000 Swiss francs. She was also awarded 7,500 Swiss francs in costs.

### **C. Decisions of the World Bank Administrative Tribunal<sup>25</sup>**

#### **1. DECISION NO. 142 (19 MAY 1995): WINSTON CAREW V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>26</sup>**

*Termination based on serious misconduct—Question of due process in investigation of overtime claims fraud—Proportionality in offence and disciplinary measure imposed—Consistent imposition of disciplinary measures versus case-by-case basis*

The Applicant was a Production and Control Assistant in the Printing and Graphics Division Services Department, at level 14. As part of his job, the Applicant was responsible for photocopying in the Print Shop and was available for overtime work on the Photocopying machines for jobs needed on a rush

basis. In November 1992, the Print Shop Supervisor had cautioned the Print Shop staff about overtime abuse; and, in May 1993, an investigation of allegations of abuse of overtime was carried out. The Respondent, having concluded that the Applicant had engaged in serious misconduct, terminated the Applicant's services as of 29 October 1993, later extended to 30 November 1993. The Respondent claimed that the Applicant on numerous occasions between November 1992 and April 1993 had submitted false overtime claims and led the Respondent to pay him more than that to which he was entitled. The Applicant denied the charges and appealed the termination decision.

The Applicant's principal ground of contention was that there was no sufficient evidence that the Applicant had intentionally defrauded the Bank and that the entry-and-exit logs, which were compared to his overtime claims, were neither a reliable nor a complete reflections of the overtime actually worked by him. The Tribunal observed that there were considerable discrepancies between the number of hours that the Applicant had claimed as overtime and the security logs for his early arrival and late departure times, all of which were itemized in the memorandum dated 6 July 1993 from the Ethics Officer to the Applicant. The memorandum documented that the Applicant claimed and received from the Bank overtime pay for a number of hours in which he could not have been on the Bank's premises. The Tribunal further noted that the Applicant's attempts to explain the discrepancy to the Ethics Officer and the Director, Personnel Management Department, both of whom were able to observe his demeanor, found his explanations unacceptable. Furthermore, the Appeals Committee considered lengthy submissions made on his behalf and concluded that the explanations were implausible. And in his application and reply to the Tribunal the Applicant reiterated his twice-failed explanations for the discrepancies between his overtime claims and the security logs.

The Applicant contended that the security logs were unreliable; however, upon review of the matter the Tribunal concluded that the logs offered a sufficiently accurate measure of recorded time spent on the Bank premises, which in the present case did not match the claims for overtime. The Tribunal also concluded that the Applicant's assertions that he worked additional overtime were not reflected in the Bank's logs—because, principally, of his parking outside the Bank premises and his entry and departure through unmonitored entrances—were outweighed by evidence to the contrary and were therefore not to be credited. Accordingly, the Tribunal found that the Applicant had defrauded the Respondent and, consequently, that the Respondent's finding of misconduct against the Applicant was warranted.

The Applicant also contended that his right of due process had been infringed because he had not been confronted with the evidence on which the adverse conclusion against him had been reached. The Tribunal observed that the record contradicted that contention. The Applicant had been confronted with the 18 discrepancies between his overtime claims and the security logs and had been allowed to proffer explanations both orally and in writing to the formal memorandum dated 6 July 1993 from the Ethics Officer. The Tribunal further observed that after the Applicant had responded at some length to the queries in the memorandum he had provided additional information upon consultation with the Staff Association. The Tribunal concluded from the foregoing that the Applicant had been afforded due process.

Concerning the proportionality between the Applicant's wrongdoing and the Bank's decision to terminate his services, the Tribunal considered that, in accordance with rule 8.01, section 4.01, the imposition of disciplinary measures was to be determined on "a case-by-case basis", taking into account, inter alia, the seriousness of the matter extenuating circumstances the situation of the staff member and the frequency of conduct for which disciplinary measures might be imposed. The Tribunal considered that fraud was always a most serious matter. That was particularly true where, even if the amounts improperly claimed as compensation were not large, the conduct consisted of repeated acts of unethical behaviour. However, in the Tribunal's view, if other elements envisaged in the relevant staff rule were taken into account the disciplinary measure imposed by the Bank was significantly disproportionate to the misconduct in the present case. Here, the Tribunal noted the long service of the Applicant as a staff member of the Bank for a period of 14 years, his diligent performance in the discharge of duties and the positive performance reviews and evaluations he had received. Moreover, the Tribunal noted as well that the amount of money improperly claimed for alleged overtime work was modest and that the Applicant's employment was not one involving higher management responsibilities.

The Tribunal therefore concluded that termination of employment, in those circumstances, was not proportionate to the Applicant's misconduct. This conclusion was further reinforced by the Tribunal's examination of staff rule 8.01, section 4.02, which set forth a wide range of possible disciplinary sanctions, of which termination of service was obviously the most severe. The Respondent had asserted that, despite the severity of termination, such had been the discipline which in earlier instances had been consistently imposed upon staff members found guilty of fraud. Although it would be appropriate in many cases to terminate the employment of a staff member who had committed fraud, a mechanical and uniform imposition of this discipline was inconsistent with the obligation that staff rule 89.01, section 4.01, imposed upon the Bank to impose disciplinary measures "on a case-by case basis", taking into account the various factors listed there.

For the above reasons, the Tribunal decided to quash the decision of the Respondent terminating the employment of the Applicant; and, in the event that no further action was to be taken by the Respondent in the case, the Applicant was to be compensated by a sum equivalent to six months' net pay. He was also awarded costs of US\$ 2,000.

2. DECISION NO. 145 (9 NOVEMBER 1995): DOMINIQUE SJAMSUBAHRI V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>27</sup>

*Complaint against oral reprimand—Case of "interpersonal" misconduct—Question of due process observed in the case*

The application arose out of complaints made against the Applicant, a level 24 staff member, by another staff member, "the complainant". The complaints against the Applicant were lodged in conjunction with a complaint against the Bank regarding what the complainant saw as an improper failure on the part of the Bank to grant him a promotion. The complaint led to an extended investigation by the Bank's Ethics Officer, who submitted a lengthy report to the Vice President, Management and Personnel Services, who ultimately decided that the Applicant should receive the disciplinary penalty of an oral reprimand for her behaviour, which was noted in a memorandum dated 9 February 1993.

The Applicant requested from the Director, Personnel Management Department, a copy of the Report of the Ethics Officer. The request was denied. The Applicant initiated the procedure for administrative review, requesting the reversal of the adverse decision. That request having been denied, the Applicant approached the Appeals Committee, which recommended the withdrawal of the oral censure; but, this recommendation was not accepted by the Vice President, Management and Personnel Services. The Applicant appealed to the Tribunal, claiming that due process had not been observed in the investigation by the Ethics Officer and thereafter.

The Tribunal noted that under the relevant rules, a complaint by a staff member of what might be called "interpersonal" misconduct could not automatically trigger proceedings. The Bank would have to decide whether there was sufficient substance to the complaint in terms of both evidence and gravity to warrant taking the matter further. In the present case, the Tribunal further noted that the Bank appeared simply to have accepted the complaints made by the complainant as a proper basis for starting a full-scale disciplinary investigation without considering whether there was sufficient prima facie evidence and, if there were, whether the seriousness of the matter alleged was likely to justify the extended degree of examination that then followed.

In that regard, the Tribunal observed that the Bank had failed to consider that the Applicant had served in her department for some seven years with an unblemished record, and that the Bank had not appeared to have attributed any significance to the fact that the complaints made against the Applicant were evidently closely connected with the complainant's dissatisfaction at not having been promoted. The Tribunal further observed that there was no justification for the Director, Internal Audit Department, to have requested, the Ethics Officer to have agreed, that only witnesses currently employed at the Bank should be interviewed.

A serious procedural defect in the process, pointed out by the Tribunal, was the refusal of the Vice President Management and Personnel Services to give the Applicant a copy of the Ethics Officer's Report of the investigation, until her initiation of proceedings before the Appeals Committee on 4 August 1993. In that connection, the Tribunal explained that the fact that staff rule 8.01 did not expressly require the Ethics Officer to provide an applicant with a copy of his report did not mean that there was no such requirement, and the failure to communicate the report meant that the requirements of due process had not been satisfied.

From the foregoing, the Tribunal concluded that the proceedings against the Applicant had been flawed at a number of significant points, and therefore the report of the Ethics Officer dated 10 November 1992 must be treated as nullity, as must all measures flowing from it.

As regards the question of the Applicant's claims for damages for loss of career opportunity for which she claimed she had been slated, adverse effects on her health and legal fees, the Tribunal first noted that there was no evidence that the question of the Applicant's promotion had been effected by the investigation or by any other challengeable reason. The Tribunal also noted that the Applicant had not produced any evidence of damages to her health specifically attributable to the manner in which the investigation had been conducted. However, the Tribunal was of the view that the Applicant should be compensated for

the distress to which she had undoubtedly been exposed by proceedings so significantly flawed as was the case here. The Tribunal therefore awarded her \$70,000 and legal costs of \$5,000.

3. DECISION NO. 146 (9 NOVEMBER 1995): VALORA ADDY V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPEMENT<sup>28</sup>

*Claim for re-employment on a regular appointment—Question of application of amended rule to existing staff—Effect of after-the-fact reasons for non-consideration for appointment*

The Applicant had left the Bank in 1988 and rejoined as a consultant in 1992. After an initial six-month appointment as a consultant, the Applicant was given a 12-month appointment, which was extended for 6 months to expire on 2 August 1994 and another 6 months expiring on 31 January 1995. On 21 January 1994, the Applicant applied for a regular position with the Bank and was informed that she was not entitled to be considered for such a position because she had left the Bank's employment in 1988 with financial assistance under staff rule 7.01. The Bank again informed her, by letter dated 8 April 1994, that a new policy had been introduced under which she could not be rehired to a regular staff position because she had earlier left the Bank with a financial package.

The Tribunal noted that the relevant rule 4.01, section 8.03, in effect prior to April 1994, provided that any re-employment of a staff member required the written authorization of the departmental director or vice-president of the hiring unit. In April 1994, the Bank amended staff rule 4.01, section 8.03, to preclude persons whose contracts had been terminated pursuant to staff rule 7.01 from being considered for a regular appointment.

The Tribunal considered that the legal issue was whether the Bank could apply the new rule to the Applicant, and recalled Decision No. 1, *de Merode* (1981), wherein the Tribunal had held that the Bank might not apply an amended rule to existing staff if that rule changed conditions of employment which were fundamental and essential. In the present circumstances, the Tribunal was of the view that the right to be considered for a regular appointment was not a fundamental or an essential element of the terms of employment of the Applicant, the reason being that any employee of the Bank who chose to leave with a separation package was hardly likely to be anticipating re-employment or the conditions that the Bank would have placed upon such re-employment. In other words, the circumstances and terms under which a departing staff member was to be re-employed were too peripheral, speculative and remote to be regarded as fundamental and essential elements of his or her terms of employment.

However, the Tribunal observed that the Bank, in declining to consider the Applicant for a regular position, had invoked a rule which was not in force in January and was going to be effective only in April. Furthermore, this breach was not affected by the Bank's later argument that the Applicant had not been considered because she lacked the skill, qualifications and experience required for the regular position concerned.

In view of the above flaw, the Tribunal decided that it would be improper to quash the Bank's decision both because its refusal to consider her for a regular appointment could not practicably be undone and because, even had she

been considered, the rehiring might not have materialized on other grounds. The Tribunal awarded the Applicant compensation in the amount of \$8,000 and legal costs of \$2,000 and dismissed all other pleas.

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#### NOTES

<sup>1</sup>In view of the large number of judgements which were rendered in 1995 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 four Tribunals, namely, judgements Nos. 688 to 746 of the United Nations Administrative Tribunal, judgements Nos. 1377 to 1463 of the Administrative Tribunal of the International Labour Organization and decisions Nos. 141 to 146 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/688 to 476; *Judgements of the Administrative Tribunal of the International Labour Organization: 78<sup>th</sup> and 79<sup>th</sup> Ordinary Sessions*; and *World Bank Administrative Tribunal Reports, 1995*.

<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 accordance 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>Jerome Ackerman, President; and Mikuin Leliel Balanda and Mayer Babay, Members.

<sup>4</sup>Samar Sen, Vice-President, presiding; and Hubert Thierry and Francis Spain, Members.

<sup>5</sup>Jerome Ackerman, President; and Francis Spain and Mayer Gabay, Members.

<sup>6</sup>Ibid.

<sup>7</sup>Samar Sen, Vice-President, presiding; and Hubert Thierry and Francis Spain, Members.

<sup>8</sup>Ibid.

<sup>9</sup>Samar Sen, Vice-President, presiding; and Mikuin Leliel Balanda and Hubert Thierry.

<sup>10</sup>Jerome Ackerman, President; and Francis Spain and Mayer Gabay, Members.

<sup>11</sup>Jerome Ackerman, President; and Hubert Thierry and Mayer Gabay, Members.

<sup>12</sup>Jerome Ackerman, President; and Francis Spain, and Mayer Gabay, Members.

<sup>13</sup>Jerome Ackerman, President; and Hubert Thierry and Francis Spain, Members.

<sup>14</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 1995, 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 Organization, 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 Organization for International Carriage by Rail, the International Centre for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization Interpol, the International Fund for Agricultural Development, the International Union for the Protection of New Varieties of Plants, the Customs Cooperation Council, the Court of Justice of the European Free Trade Association and the Surveillance Authority of the European Free Trade Association. 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/her employment has ceased, to any person on whom the official's rights have devolved on his/her death and to any other person who can show that he/she is entitled to some right under the terms of appointment of a deceased official or under provision of the staff regulations upon which the official could rely.

<sup>15</sup>Sir William Douglas, President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Sir William Douglas, President: Edilbert Razafindralambo and Pierre Pescatore, Judges.

<sup>19</sup>Ibid.

<sup>20</sup>Sir William Douglas, President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

<sup>21</sup>Sir William Douglas, President; Edilbert Razafindralambo and Pierre Pescatore, Judges.

<sup>22</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

<sup>23</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Pierre Pescatore, Judges.

<sup>24</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

<sup>25</sup>The World Bank Administrative Tribunal is competent to hear and pass judgment 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>26</sup>A. Kamal Abul-Magd, President; Elihu Lauterpacht and Robert A. Gorman, Vice-Presidents; and Fred K. Apaloo, Francisco Orrego Vicuna, Thio Su Mien and Prosper Weil, Judges.

<sup>27</sup>A. Kamal Abul-Magd, President; Elihu Lauterpacht and Robert A. Gorman, Vice-Presidents; and Bola A. Ajibola, Francisco Orrego Vicuna, Thio Su Mien and Prosper Weil, Judges.

<sup>28</sup>Ibid.

## CHAPTER VI

### SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANISATIONS

#### A. Legal opinions of the Secretariat of the United Nations (Issued or prepared by the Office of Legal Affairs)

##### PRIVILEGES AND IMMUNITIES

1. LICENSING FEES LEVIED AGAINST THE UNITED NATIONS FOR THE ALLOCATION OF RADIO FREQUENCIES—SECTIONS 7 AND 34 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Director and Deputy to the Assistant Secretary-General for Support Services, Office of Conference and Support Services*

With reference to your memorandum of 14 December 1994, our comments are as follows:

1. Pursuant to the Agreement between the United Nations and [the State] regarding the Headquarters of the United Nations Environment Programme,<sup>1</sup> the Convention on the Privileges and Immunities of the United Nations<sup>2</sup> adopted by the General Assembly of the United Nations on 13 February 1946, to which [State] has been a party since 1965, is ipso facto applicable to the United Nations Environmental Programme.

2. Pursuant to article II, section 4(b), of that Agreement, “the Government shall, upon request, *grant* to UNEP for official purposes appropriate radio and other telecommunication facilities in conformity with technical arrangements to be made with the International Telecommunication Union” (emphasis added).

3. Under the International Telecommunications Convention,<sup>3</sup> there is no requirement to pay for registration or use of radio frequencies. In addition to the aforementioned Convention, section 4(b) above provides that [State] shall grant to UNEP appropriate radio and other telecommunications facilities for official purposes. The allocation of frequencies would seem a precondition or an integral part of such facilities and must be deemed to be covered by the grant referred to in this section. Thus, the term “grant” shall be understood as providing such radio frequencies without charge.

4. Furthermore, it could be argued that the licensing fee in question constitutes a direct tax from which the United Nations is exempt under article VIII, section 17(a), of the UNEP Headquarters Agreement and under article II, section 7(a) of the Convention on the Privileges Immunities of the United Nations. Section 17(a) of the Agreement provides that “UNEP, its assets, income and other property, shall be exempt from all direct taxes...” Section 7(a) of the Convention provides that “United Nations, its assets, income and other property shall be exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility service”.

5. Although the fee at issue might be perceived to be in payment for a service rendered by the host Government, the service being the allocation of the radio spectrum and frequencies and its protection from interference by other radio operators, the United Nations has consistently maintained a narrow definition of the expression “charges for public utility services” used in section 7(a). In particular, “charges for public utility services” must relate to concrete services that can be specifically identified, described, itemized and calculated according to some predetermined unit. As far as the fee in question is concerned, it is difficult to clearly identify and itemize the service being rendered by allocating radio-electric spectrum and frequencies. Moreover, the charge which is levied bears no relation to the amount of services rendered. Therefore, it appears that a fee for the use of radio-electric spectrum and frequencies does not constitute a charge for public utility services under section 7(a) of the Convention, but rather a direct tax from which the United Nations is exempt.

6. In addition to being advised of the foregoing, the Government of [the State] should be informed that, under section 34 of the Convention on the Privileges and Immunities of the United Nations, it has a legal obligation to “be in a position under its own law to give effect to the terms of this Convention” and that any interpretation of the provisions of the Convention on the Privileges and Immunities of the United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision.

9 January 1995

2. ENTITLEMENT TO DIPLOMATIC PRIVILEGES AND IMMUNITIES OF A MEMBER OF A PERMANENT MISSION WHO DOES NOT HAVE THE NATIONALITY OF THE SENDING OR RECEIVING STATE—ARTICLES 7 AND 8 OF THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS

*Memorandum to the Chief of Protocol, Executive Office  
of the Secretary-General*

1. This is with reference to your memorandum of 13 December 1994, seeking legal advice in connection with the refusal by the United States Mission to the United Nations to extend diplomatic privileges and immunities to an official (hereinafter “Mr. X”) who joined the permanent mission of a State of which he is not a national as Special Adviser. We have the following views on the matter.

2. In its letter of 2 December 1994, the United States Mission advises that it is “unable to accede to the request to extend privileges and immunities to Mr. X” since “he is neither a (State of permanent mission) national nor does he carry a (State of permanent Mission) passport”. As such, according to the letter, “he does not meet all the Department of State’s criteria for the extension of diplomatic privileges and immunities”. The letter also stated that “[s]hould the Permanent Mission of [name of State] elect to engage Mr. X as a full-time, salaried non-diplomatic staff member, the United States Mission will request a change in his visa status”. In our view, the above-mentioned observations touch upon, as a matter of principle, at least the following three main and interrelated issues: the right of Member States to freely appoint the members of the staff of their missions; nationality of the members of a permanent mission; and, finally, the entitlement to privileges and immunities.

*The right of Member States to freely appoint the members of the staff  
of their permanent missions to the United Nations*

3. Neither the 1946 Convention on the Privileges and Immunities of the United Nations (the General Convention) nor the 1947 United Nations/United States of America Headquarters Agreement<sup>4</sup> contains any explicit restrictions on the choice by the Member States of non-nationals as representatives to the United Nations. The rules and norms of diplomatic law in this area were codified and developed in the 1961 Vienna Convention on Diplomatic Relations (the 1961 Vienna Convention).<sup>5</sup> Article 7 of the 1961 Vienna Convention provides that, “[s]ubject to the provisions of articles 5, 8, 11, the sending State may *freely* appoint the members of the staff of the mission” (emphasis added). According to the definition in paragraph (c) of article 1 of the Convention, the expression “members of the staff of the mission” includes “the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission”. It should also be noted that the same principle of freedom of appointment of mission members has been reflected in article 9 of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character<sup>6</sup> (not yet in force).

*Nationality of the members of a permanent mission*

4. Neither the General Convention nor the Headquarters Agreement provides the representatives of Member States may only be of the nationality of the sending States. Article 8 of the 1961 Vienna Convention states that “[m]embers of the diplomatic staff of the mission should *in principle* be of the nationality of the sending State” (emphasis added). Thus, the Vienna Convention does not exclude the possibility that certain members of a mission, including the diplomatic staff, could be of a nationality different from that of the sending State. The 1975 Vienna Convention reflects the same approach as contained in the 1961 Vienna Convention. Paragraph 1 of article 73 of the former Convention stipulates:

“The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation, the head of the observer delegation, other observer delegates and members of the diplomatic staff of the observer delegation should in principle be of the nationality of the sending State”.

5. However, in article 8, paragraph 2 of the 1961 Vienna Convention foresees that the consent of the receiving State is necessary when the sending State wishes to appoint a member of the diplomatic staff from among persons who have the nationality of the receiving State. According to article 8, paragraph 3 “[t]he receiving State *may reserve the same right* with regard to nationals of a third State who are not also nationals of the sending State” (emphasis added).

6. The 1975 Vienna Convention, which codifies various aspects of representation of States their relations with international organizations, does not reflect the principle in accordance with which the consent of the host State is required when a national of a third State is being appointed by a State member of the organization as a member of the diplomatic staff of its permanent mission. Such right is explicitly reserved in the 1975 Vienna Convention only with regard to appointments of persons having the nationality of the host State. Paragraphs 2 and 3 of article 73 dealing with this subject matter provide as follows:

“2. The head of mission and members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn at any time.”

“3. Where the head of delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other observer delegate or any member of the diplomatic staff of the observer delegation is appointed from among persons having the nationality of the host State, the consent of that State shall be assumed if it has been notified of such appointment of a national of the host State and has made no objection.”

7. Apparently, one of the reasons why the principle foreseeing the consent of the host State was not included in the 1975 Convention in the context of the question of nationality of the diplomatic staff of missions is that the repre-

representatives of member States are accredited not to the host State to exercise in any form and in any sense, control over appointments by a member State unless the latter chooses nationals of the State itself. In this connection, it could be recalled that in his statement to the Sixth Committee, on 6 December 1967, the Legal Counsel, inter alia, stated: “the Secretary-General in interpreting diplomatic privileges and immunities would look to provisions of the Vienna Convention [on diplomatic relations] so far as they would appear relevant mutatis mutandis to representatives to United Nations organs and conferences. It should of course be noted that some provisions, such as those relating to *agrément*, *nationality* (emphasis added) and reciprocity have no relevancy in the situation of representatives to the United Nations”. We believe that these observations remain relevant in the case under consideration.

*Entitlement to diplomatic privileges and immunities*

8. In view of the above observations, the States Members of the United Nations are entitled to appoint members of the diplomatic staff of their missions freely, including those having the nationality of third States, with the sole exception of nationals of the host State, for the appointment of whom the consent of the host State is required. As to the scope of their privileges and immunities, members of the diplomatic staff are entitled to such privileges and immunities as are accorded to diplomatic envoys, pursuant to article IV of the General Convention and article V of the Headquarters Agreement. The privileges and immunities of diplomatic envoys have been codified in the 1961 Vienna Convention and are applicable to the representatives of Member States in their entirety. Only one exception in this respect is relevant, namely, that contained in section 15 of the General Convention, stating that the privileges and immunities 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.”

11 January 1995

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3. QUESTION OF WHO CAN DETERMINE WHETHER THE ACTS OF UNITED NATIONS OFFICIALS ARE PERFORMED IN THEIR OFFICIAL CAPACITY—SECTION 20 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Letter to the Minister Counsellor, United States Mission  
to the United Nations*

As you will recall in connection with the above-referenced case, I addressed to you a copy of my letter of 8 August 1994 to the New York City Commission on Human Rights.

By that letter, the United Nations notified all concerned that insofar as it purported to express a cause of action against Mr. X, the Verified Amended Complaint must be dismissed since Mr. X, being an official of the United Nations,

“is immune from suit pursuant to the provisions of article V, section 18(a) of the Convention on the Privileges and Immunities of the Nations (the General Convention), adopted on 13 February 1946, and acceded to by the United States on 29 April 1970, 21 U.S.T. 148 (1970), T.I.A.S. No. 6900”.

Recently, a copy of your letter dated 11 January 1995 addressed to Mr. A, Attorney Trainee of the New York City Commission on Human Rights, has been brought to my attention. The letter correctly states that “[a]s a United Nations official, Mr. X enjoys, pursuant to section 18(a) of the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148), immunity from legal process in respect of words spoken or written and all acts performed (by him) in (his) official capacity”.

However, the United Nations cannot accept, as a matter of principle, the assertion contained in your letter that “[w]hether the alleged acts by Mr. X giving rise to this suit were performed in his official capacity is a question for the court or other appropriate adjudicative entity. Defendants enjoying official acts immunity must assert that the acts alleged were performed in their official capacity and participate in the process insofar as issues relate to the determination of immunity. If the court or other adjudicative entity finds that the acts complained of were performed in the defendant’s official capacity, the defendant is immune from the litigation”.

As you know, according to the provisions of Article 97 of the Charter of the United Nations, the Secretary-General “shall be the chief administrative officer of the Organization”. Furthermore, under section 20 of the Convention on the Privileges and Immunities of the United Nations, the Secretary-General has been granted “the right and the duty to waive the immunity of any official in any case where, *in his opinion*, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations” (emphasis added). Based on these provisions, it has been a long-lasting and uncontested practice that the competence to determine what constitutes an “official” or “unofficial” act performed by a staff member is vested solely in the Secretary-General.

In view of the foregoing observations, the United Nations has never recognized or accepted that courts of law or any other national authorities of Member States have jurisdiction in making determinations in these matters.

24 January 1995

4. EXEMPTION OF THE UNITED NATIONS DEVELOPMENT PROGRAMME FROM VARIOUS TAXES LEVIED BY A STATE-AGREEMENT BETWEEN UNDP AND A MEMBER STATE—ARTICLES II AND V OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Chief, Legal Section, Division of Personnel,  
United Nations Development Programme*

With reference to your memorandum of 30 January 1995 concerning the five [name of State] taxes mentioned in a facsimile of 15 December 1994, you may be advised as follows:

1. Pursuant to paragraph 1 of article IX of the Agreement between the Government of [the State] and the United Nations Development Programme, “the Government shall apply to the United Nations, and its organs, including the UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations”.

2. Furthermore, pursuant to paragraph 1 article X of that Agreement, “the Governments shall take any measures which may be *necessary to exempt* the 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:

“...(b) prompt issuance *without cost* of necessary visas, licences or permits;

“...(d) free movement within or to or from the country, to the extent necessary for proper execution of UNDP assistance...” (emphasis added)

3. Article II, section 7, of the Convention on the Privileges and Immunities of the United Nations provides that “the United Nations, its assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restriction on imports and exports in respect of articles imported or exported by the United Nations for its official use...”

Article II, section 8, of the Convention provides that, “while the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.”

4. Article V, section 18(b), of the Convention provides that “officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations”.

5. Based on the foregoing, the [name of State] taxes may be classified as follows:

(a) The Commercial Transactions Levy is charged and collected in respect of transactions involving the sale and rendering of service. While the seller or performer of the service is liable to pay the levy, he may require the purchaser of the service to bear the amount of the levy payable in respect of any transaction. Accordingly, the levy is not a charge for services but a tax on the sale or rendering of such services. The levy is therefore an indirect tax subject to the provisions of article II, section 8, of the Convention. While section 8 does not provide for an explicit exemption, it does oblige the Governments of [the State], whenever possible, to make appropriate administrative arrangements for the remission or return of the amount of levy.

(b) The registration fee is an amount payable by the United Nations to register and licence official vehicles. Pursuant to paragraph 1(b) of article X of the aforementioned Agreement, the Governments of [the State] shall grant prompt issuance without cost of necessary visas, licences or permits. The Government therefore has a legal obligation to grant registration and licences for official vehicles at no cost to the United Nations. The Organization is therefore exempt from paying the registration fee.

(c) The road toll is an amount payable by the United Nations on trucks transporting United Nations imported equipment. To the extent that the road toll is levied directly upon the United Nations, it is, within the meaning of the Convention, a direct tax from which the United Nations is exempt under article II, section 7(a), of the Convention. Furthermore, to the extent that it is levied on the transportation of articles imported by the United Nations for its official use, it constitutes a customs duty from which the United Nations is exempt under article II, section 7(b), of the Convention.

(d) The airport service charge is an amount payable by members of the United Nations upon their departure from [the State's] International Airport. The United Nations has consistently sought exemption from taxes of this nature on the ground that they are direct taxes from which the Organization is exempt under article II, section 7(a), of the Convention. Furthermore, pursuant to paragraph 1(d) of article X of the Agreement, the Governments of [the State] shall grant free movement to or from the country. The term “grant” is understood to mean at no expense to the Organization.

(e) The Graduated Tax is deducted from the salaries and wages of all employees. Pursuant to article V, section 18(b), of the Convention, United Nations officials, irrespective of their nationality, are clearly exempt from the payment of this tax on all salaries and emoluments paid to them by the United Nations.

6. Finally, it should also be pointed out that, under section 34 of the Convention on the Privileges and Immunities of the United Nations, the Government of [the State] has a legal obligation to “be in a position under its own law to give effect to the terms of this Convention”. Furthermore, any interpretation of the provisions of the Convention on the Privileges and Immunities of the

United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular, Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision.

2 February 1995

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5. PRIVILEGES AND IMMUNITIES AND FACILITIES FOR CONTRACTORS SUPPLYING GOODS AND SERVICES IN SUPPORT OF UNITED NATIONS PEACEKEEPING OPERATIONS

*Memorandum to the Assistant Secretary-General  
for Peacekeeping Operations*

1. This is with reference to your memorandum 14 June 1995, referring to certain difficulties recently encountered by contractors supplying goods and services in support of United Nations peacekeeping operations (hereinafter “the Contractors”).

2. We understand that these difficulties prompted certain Member States to inquire whether the Contractors could be considered “experts on mission” pursuant to the Convention on the Privileges and Immunities of the United Nations (“the Convention”). Furthermore, and in order to resolve difficulties encountered by the Contractors, you specifically requested our views on whether privileges and immunities provided for under the Convention could be extended to such Contractors in future agreements regulating the status of United Nations peacekeeping operations (“SOFA/SOMSA”). Our views on the above are set out below.

*Privileges and immunities for Contractors*

3. Although the Convention does not define the term “experts on mission,” the term is understood to apply to persons who are charged with performing specific and important functions or tasks for the United Nations. As indicated by the International Court of Justice in its advisory opinion of 15 December 1989, on the applicability of article VI, section 22, of the Convention, experts on mission “have been entrusted with mediation, with preparing reports, preparing studies, investigations or finding and establishing facts”.<sup>7</sup> The Court’s description of the scope of functions of experts on mission conforms in a general sense to the United Nations and State practice.

4. The functions performed by the Contractors in the context of United Nations peacekeeping operations are commercial in nature and range from the procurement of goods and the supply of services to construction and catering services. As such the functions and tasks performed by the Contractors do not fall within the scope of the understanding of the expression “experts on mis-

sion”, which has evolved within the Organization and among its Member States. Therefore, the Contractors do not qualify for the status of “experts on mission”.

5. As to privileges and immunities which you propose to be granted to the Contractors, it should be pointed out that the categories of persons to whom privileges and immunities are granted under the SOFAs/SOMAs include those specifically provided for in the Convention, i.e., diplomats, officials of the Organization and experts on mission for the United Nations. Additionally and in accordance with customary law applicable to United Nations peacekeeping operations, SOFAs provide for privileges and immunities to be granted to military personnel contributed by Member States.

6. As the contractors and their employees do not constitute a category of personnel under the Convention, States parties to the Convention are therefore under no obligation to grant them any privileges and immunities.

#### *Facilities for the Contractors*

7. As a result of the expansion and growth of peacekeeping operations, the United Nations has had to rely increasingly on commercial firms to provide services and perform tasks which traditionally were performed by military personnel made available to the Organization by Member States. The difficulties recently experienced by the Contractors in the context of peacekeeping operations has led this Office to examine whether those difficulties could be resolved by extending to the Contractors certain facilities which would enable them to carry out their assigned tasks.

8. Facilities which may be necessary for the Contractors in the performance of their functions would include freedom of movement for the proper performance of the services; prompt issuance of necessary visas; exemption from immigration restrictions and alien registration; prompt issuance of licences or permits, as necessary, for required services, including for imports and for the operation of aircraft and vessels; repatriation in time of international crisis; right to import for the exclusive and official use of the United Nations, without any restriction, and free of tax or duties, supplies, equipment and other materials.

9. For the purpose of inserting in future SOFAs/SOMAs the above-mentioned facilities, this Office is currently engaged in drafting pertinent clauses, which will be duly forwarded to you for your consideration.

10. We would, however, wish to caution that the willingness of this Office to consider extending such facilities to the Contractors would not of itself result in their obtaining them since Governments have in the past expressed reservations on including the Contractors in the SOFAs/SOMAs. The consent of the Government concerned to grant such facilities cannot therefore be presumed, but this Office is ready to espouse the need for those facilities despite the anticipated difficult negotiations.

23 June 1995

6. QUESTION OF WHETHER UNITED NATIONS LAISSEZ-PASSER CAN BE ISSUED TO INDIVIDUALS ENGAGED ON SPECIAL SERVICE AGREEMENTS—ARTICLE VII OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Director and Deputy to the Assistant Secretary-General, Office of Conference and Support Services*

1. This is with reference to your memorandum of 20 June 1995, seeking our comments as to whether the United Nations laissez-passer should be issued to 30 judges and lawyers engaged on special service agreements for rehabilitation of the criminal justice system in Rwanda.

2. As you know, according to article VII of the Convention on the Privileges and Immunities of the United Nations (the General Convention), the United Nations laissez-passer shall be issued to “United Nations officials”. Individuals engaged on special service agreements are not United Nations officials and are thus not entitled to United Nations laissez-passer. The repetitive issuance of the United Nations laissez-passer to non-entitled officials could undermine the trust placed by national authorities in that document and might be considered by them as derogation from the respective provisions of the General Convention.

3. It should be noted that the United Nations laissez-passer as a document does not provide by itself the appropriate protection, since holders thereof are entitled as a rule to functional immunities. Persons engaged on special service agreement are normally considered experts on mission within the meaning of article VI of the General Convention, and as such are entitled to the immunity from personal arrest and detention, as well as to some other quasi-diplomatic immunities. According to the existing guidelines specified in paragraph 27(a),<sup>8</sup> experts on mission may be issued the United Nations Certificate.

4. In the light of the foregoing observations, we do not find it appropriate to issue United Nations laissez-passer to the individuals in question.

7 July 1995

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7. PRIVILEGES AND IMMUNITIES OF UNITED NATIONS EXPERTS ON MISSION—SECTION 22 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Facsimile to the Acting Special Representative of the Secretary-General for Western Sahara*

Reference is made to your facsimile of 31 October 1995. You inquire in particular as to whether experts on mission should submit to the scanning control apparatus and whether any airport authority has the right to search their luggage, including hand luggage. The scope of the privileges and immunities of United Nations experts on mission is regulated by section 22 of the 1946 Con-

vention on the Privileges and Immunities of the United Nations (the General Convention) and other applicable international legal instruments as described below.

Section 22 of the General Convention 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 the 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 the 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.”

It should be noted that immunity from personal arrest or detention are the attributes attached to the notion of personal inviolability of a diplomatic agent codified in the 1961 Vienna Convention on Diplomatic Relations (Vienna Convention). Article 29 of that Convention provides as follows:

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

The commentary of the International Law Commission on the then draft articles of the Vienna Convention, in pertinent part, provides that “being inviolable, the diplomatic agent is exempt from measures that would amount to direct coercion”.<sup>9</sup> International law has no further direct norms on the matter of subjecting agents to screening through magnetometers (also known as metal detectors) or other electronic and mechanical devices.

As you will note from the General Convention, all official papers and documents of experts on mission are inviolable. Similar provisions are also found in the General Convention with respect to representatives of States. For the latter category, these provisions are codified in the 1961 Vienna Convention. Article

27 thereof in particular requires that official correspondence shall include "all correspondence relating to the mission and its functions". By analogy, one can argue that the scope of inviolability of experts on mission in this respect is equivalent to that pertaining to diplomatic agents. However, it is clear that the purpose of inviolability is to ensure the confidentiality of the contents and non-detention of such correspondence and documents. In a somewhat similar case, when United Nations pouches were subject to X-ray, we advised that this could infringe their inviolability and confidentiality, which would not be in accordance with the provisions of the General Convention.

As to personal baggage of United Nations experts on mission, under the General Convention, it should be accorded the immunity from seizure and enjoy the same other immunities and facilities as are accorded to diplomatic envoys in his respect. Immunities and facilities to be accorded to diplomatic envoys are specified in article 36, paragraph 2 of the Vienna Convention as follows:

"The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative."

In the absence of more specific norms in international law on matters referred to above, we believe the United Nations experts on mission should be accorded the same treatment as accorded by Governments to diplomatic envoys.

3 November 1995

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8. AUTHORITY OF THE UNITED NATIONS ENVIRONMENT PROGRAMME TO TAKE DIRECT LEGAL ACTION AGAINST PRIVATE ENTITIES OF STATES MEMBER OF THE UNITED NATIONS

*Memorandum to the Deputy Director, Environmental Law and Institutions, Programme Activities Centre, United Nations Environment Programme*

1. This is in response to your facsimile of 8 November 1995 wherein you seek the opinion of this Office concerning a reply which could be given to Mr. A, a lawyer. The latter suggests in his letter dated 21 September 1995 that UNEP should launch a lawsuit in one of the federal district courts in the United States against several large multinational chemical manufacturers alleging that their production of ozone-destroying chemicals has contributed to a serious deterioration of the ozone layer. He further proposes that grounds for the suit should

lie mainly in common-law public nuisance negligence. Mr. A claims that if successful, UNEP would be handsomely rewarded and expresses willingness to manage this case on behalf of UNEP together with four or five other attorneys on a contingent fee basis.

2. In responding negatively to the above proposal, UNEP, in our view, should inform Mr. A of the following.

3. UNEP is a United Nations programme established in 1972 by the General Assembly in its resolution 2997 (XXVII) of 15 December 1972. Under its mandate, as defined by the General Assembly, UNEP has been provided with the authority to take direct legal actions, in the form of court proceedings or otherwise, against private entities of States Members of the United Nations on the basis of allegations that their activities are detrimental to the global environment, in general, or are harmful to the ozone layer, in particular.

4. As a subsidiary body of the United Nations, UNEP does not have its own legal personality. Consequently, legal proceedings in the courts of Member States can be instituted by UNEP, acting on behalf of the United Nations, only on those occasions where UNEP is duly authorized to do so within the limits of its competence.

5. Pursuant to the provisions of article II, section 2 of the Convention on the Privileges and Immunities of the United Nations, the Organization enjoys immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. By filing a lawsuit, the Organization, acting through UNEP, would in effect waive its immunity and therefore would no longer be immune from counter claims which could be filed by defendants. The latter may, for example, claim that the Organization shares the responsibility for the depletion of the ozone layer inasmuch as it has failed to promulgate adequate international standards in this regard. Since court actions place at risk the privileges and immunities enjoyed by the Organization, any such action requires the approval of the Secretary-General. Given the circumstances of the case at hand, it would not be possible for UNEP to obtain the required approval.

6. The international regime for the protection of the ozone layer is regulated by the 1985 Vienna Convention for the protection of the Ozone Layer<sup>10</sup> and the 1987 Montreal Protocol.<sup>11</sup> Under those two instruments, the international community of States establishes world standards and approves control measures which are directed to eliminating emission of substances that can significantly deplete and otherwise modify the ozone layer. The United States and other industrialized countries are parties to both instruments and most of the industrialized countries have ratified the 1990 Amendment to the Montreal Protocol. Therefore, their multinational chemical-producing countries are bound by standards and measures adopted under the aforementioned instruments. Should there be any concern about manufacturing activities of multinational chemical-producing companies, it should be addressed by using the non-compliance procedures and mechanisms established by States parties pursuant to article 8 of the Montreal Protocol.

7. In addition, it is worthy of note that, notwithstanding the important role played by UNEP in assisting parties to the Vienna Convention and Montreal Protocol in realizing their objectives, from a legal point of view UNEP is not one of those organs or an element of the administrative structure established by

those instruments. Consequently, UNEP cannot be asked by parties to those instruments to undertake activities such as the institution of legal proceedings, which would be inconsistent with its status as subsidiary of body of the United Nations responsible primarily to the Economic and Social Council and the General Assembly.

17 November 1995

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## PROCEDURAL AND INSTITUTIONAL ISSUES

9. PARTICIPATION OF THE UNITED NATIONS DEVELOPMENT PROGRAMME AS AN IMPLEMENTING AGENCY IN THE RESTRUCTURED GLOBAL ENVIRONMENT FACILITY—ISSUE OF WHETHER LENDING TYPE ACTIVITIES ARE PERMITTED UNDER THE GEF INSTRUMENT—UNDP FINANCIAL REGULATIONS AND RULES 8.12, 13.5, 13.6 AND 13.7

*Memorandum to the Acting Treasurer, Bureau for Finance and Administration, United Nations Development Programme (UNDP)*

1. This is in response to your memorandum of 5 January 1995, with enclosures, by which you seek our views on a number of issues arising from the participation of UNDP, as an implementing agency, in the restructured Global Environmental Facility (GEF).

2. GEF, we understand, was originally established as a pilot programme by the International Bank for Reconstruction and Development (the World Bank), by resolution of the Executive Directors of the Bank in 1991, to assist in the protecting of the global environment and promote thereby environmentally sound and sustainable economic development. The resolution authorized the Bank to enter into appropriate arrangements between UNDP and United Nations Environment Programme for implementation of programmes under GEF. An inter-agency agreement among the Bank, UNDP and UNEP provided for cooperation among the parties for the implementation of programmes under GEF.

3. At a meeting in Geneva between 14 to 16 March 1994, representatives of 73 States participating in the pilot phase, as well as other States wishing to participate in the future, agreed on the restructuring of the GEF and accepted the Instrument for the Establishment of the Restructured GEF (hereinafter “the GEF Instrument”) for adoption by the governing bodies of the implementing agencies. The GEF Instrument, we understand, has been approved by the UNDP Executive Board.

4. The specific questions on which you seek our views are: (a) whether the audit and financial control provisions of the GEF Instrument are compatible with the UNDP Financial Regulations and Rules and with an Agreement between UNDP and the World Bank as Trustee of the Global Environment Trust

Fund (hereinafter “the UNDP/World Bank Agreement”), dated 24 April 1991; and (b) whether lending type activities are permitted under the GEF Instrument. Our comments and advice thereon are set out below.

*Audit and financial control provisions of the GEF Instrument, the Agreement and the UNDP Financial Regulations and Rules*

5. Paragraph 20(j) of the GEF Instrument provides the GEF Council shall, inter alia, “review and approve the administrative budget of the GEF and arrange for periodic financial and performance audits of the UNDP secretariat and implementing agencies with regard to activities undertaken for the Facility”. Paragraph 4(c), of Annex B to the GEF Instrument includes among the responsibilities of the World Bank, as Trustee of the GEF Trust, “the maintenance of appropriate records and accounts of the Fund, and providing for their audit, in accordance with the rules of the Trustee”.

6. You express your concern that these provisions may be inconsistent with the UNDP Financial Regulations and Rules, as they would purport to confer audit rights to an entity outside the UNDP auditing authorities. You thus inquired whether those provisions would be consistent with the UNDP/World Bank Agreement, which provides, in its article VI, that funds allocated to UNDP and transferred to it by the World Bank thereunder “shall be subject exclusively to the internal and external auditing procedures provided for in the financial regulations, rules and directives of the UNDP”.

7. We should like to respond first to your query as to “which agreement takes precedence” (i.e., the GEF Instrument or the UNDP/World Bank Agreement). We note in this connection that the UNDP/World Bank Agreement concerns the pilot programme and establishes the terms and conditions for, and the procedures whereby, the World Bank, as trustee of the Global Environment Trust Fund, allocates and transfers funds to UNDP for implementation of the GEF activities. However, it is clear from the GEF Instrument that the Global Environment Trust Fund is to be terminated, and a new GEF Trust Fund is to be established by the World Bank, upon the entry into force of the GEF Instrument. In this respect, paragraph 32 of the GEF Instrument reads as follows:

“The World Bank shall be invited to terminate the existing Global Environment Trust Fund (GET) on the effective date of the establishment of the new GEF Trust Fund, and any funds, receipts, assets and liabilities held in the GET upon termination, including the administration of any co-financing by the Trustee in accordance with the provisions of resolution NO. 91-5 of the Executive Directors of the World Bank, shall be transferred to the new GEF Trust Fund. Pending the termination of the GET under this provision, projects financed from the GET resources shall continue to be processed and approved subject to the rules and procedures applicable to the GET.”

8. In the light of the above, it is our view that, upon termination of the Global Environment Trust Fund, the object and purpose of the UNDP/World Bank Agreement will cease, and the Agreement will only continue in force for purposes of completing pending GET activities. We therefore, suggest that, once the conditions provided for in its article X, paragraph 1 are fulfilled, the UNDP/

World Bank Agreement should be formally renewed and made applicable to the GEF activities or a new agreement should be entered into concerning the terms and conditions under which GEF funds will in the future be administered by UNDP.

9. As regards your query as to whether the audit and financial control provisions of the GEF Instrument are compatible with the UNDP Financial Regulations and Rules, it is our view that neither paragraph 20(j) of the GEF Instrument nor paragraph 4(c) of its Annex B confers audit powers on the World Bank over the funds provided to UNDP for implementation activities. We believe that those provisions can be applied consistently with the UNDP Financial Regulations and Rules.

10. Paragraph 20 of the GEF Instrument requires that the GEF Council shall “*arrange* for periodic financial and performance audits of the UNDP Secretariat and Implementing agencies with regard to activities undertaken for the Facility” (emphasis added). It is assumed that the Council will authorize the Bank to conclude agreements such as the one between the Bank, UNDP and UNEP for implementation of GEF projects, in which the question of audit can be more expressly dealt with.

11. As you know, it is the established practice in the United Nations system that each agency applies its own rules for the financial management of the funds placed under its custody. An intention to depart from such practice cannot merely be implied; it has to be expressly stated. As this does not seem to be the case here, it is our view that paragraph 20 of the GEF Instrument does not require the GEF implementing agencies to apply rules other than their own financial regulations and rules in respect of funds entrusted to them to implement GEF activities.

12. As regards paragraph 4(c) of Annex B to the GEF Instrument, which provides that the World Bank is responsible for “the maintenance of appropriate records and accounts of the Fund, and providing for their audit, in accordance with the rules of the Trustee”, we are of the opinion that this provision relates to funds held by the Trustee and to the records and accounts kept by the Trustee, and not those of the implementing agencies.

*Lending-type activities under the GEF mandate*

13. With reference, inter alia, to paragraph 9(c) of the GEF Instrument, you request our views as to whether the GEF mandate would include lending type activities, “provided that their terms are in accordance with any instructions for such activities as produced by the GEF Council”. Paragraph 9(c) of the GEF Instrument, to which you refer in your memorandum, reads as follows:

“GEF concessional financing in a form other than grants that is made available within the framework of the financial mechanism of the conventions referred to in paragraph 6 shall be in conformity with eligibility criteria decided by the Conference of the Parties of each convention, as provided under the arrangements or arrangements referred to in paragraph 27. GEF concessional financing in a form other than grants may also be made available outside those frameworks on terms to be determined by the Council.”

14. It is clear from the above-quoted provision that lending-type activities, including loans and loan guarantees are authorized under the GEF mandate and may be undertaken by the implementing agencies in accordance with their respective mandates. But there is nothing in the GEF Instrument which would oblige an implementing agency to engage in such concessional financing activities, if such Agency does not otherwise have the mandate to do so.

15. In paragraph 10 and 11 above, we have indicated that the involvement of UNDP in the management of GEF funds would be governed by the UNDP Financial Regulations and Rules. Under its Financial Regulations and Rules, UNDP has been given only a limited capacity to invest its funds when they are not required immediately (see UNDP financial regulation 13.5), or to place it funds “in the form of participation in development loans by international or regional development banks or in loans provided under the terms and condition of the Reserve for Construction Loans to Government” (see UNDP financial regulation 13.6). UNDP financial regulation 13.7 further provides as follows:

“The specific advance approval of the Governing Council shall be required for any loan not clearly authorized under the provisions of these Regulations.”

16. We note in this respect that the UNDP Financial Regulations and Rules have been recently amended by, inter alia, the adoption of a new financial regulation 8.12, which reads as follows:

“The Administrator is authorized to incorporate microcapital grant support in association with technical cooperation programmes. Such microcapital assistance may be in the form of small grants, credit or loans *implemented through an intermediary*, which includes non-governmental or grass-roots organizations.” (emphasis added)

The wording of this provision is far from clear, but on the basis of the existing restrictions on granting loans, it is proper to say that this regulation alone does not confer the authority to directly grant loans for credits. We understand the regulation to have authorized, under rather strict conditions (e.g., “microcapital grant support in association with technical cooperation programmes”), to provide assistance in the form of small grants, credits or loans implemented through an intermediary.

17. In the light of the above, we conclude that the provisions of paragraph 9(c) of the GEF Instrument would not, in and of themselves, constitute sufficient legal basis for UNDP to engage in lending-type activities, which are not expressly authorized by its Financial Regulations and Rules. For this purpose, a decision of the UNDP Governing Council would be necessary, as provided in financial regulation 13.7.

14 February 1995

10. ORGANISATIONS AFFILIATED WITH THE UNITED NATIONS”—ESTABLISHMENT OF AN INTERNATIONAL FEDERATION OF TRADE POINTS

*Memorandum to the Senior Legal Officer, Executive Direction and Management, United Nations Conference on Trade and Development*

1. This is with reference to your telefax of 3 February 1995, in which you raise the following questions in connection with the ongoing discussion regarding the establishment of an international federation of trade points:

(a) Would an agreement with the United Nations be required in the case of the international federation?

(b) How is the status of affiliation granted by the United Nations?

(c) Would it be sufficient for UNCTAD Trade and Development Board and subsequently its parent body, the General Assembly, “to welcome” in a resolution the establishment of the international federation?

(d) Would it be necessary for the Board or the General Assembly to approve the articles of the agreement with the international federation before affiliation status is granted?

(e) Would it be sufficient if the Trade and Development Board “takes note” of the articles of the agreement?

You also seek our comments with regard to the two United Nations Secretariat non-papers, which are attached to your telefax, containing basic elements for an international federation of trade points and proposals for a decision by the Trade and Development Board.

2. With reference to your questions, I would like to point out that there is no such status as “an organization affiliated with the United Nations”. The United Nations has never established a procedure under which organization or other entities could apply and, if they meet certain criteria, should be granted the status of “organizations affiliated with the United Nations”, implying that they have special relations with the United Nations and in this regard enjoy particular rights and privileges. Thus, the United Nations does not grant the status of affiliation to international organization or other entities.

3. At the same time, it should be noted that there are several institutions which are independent from the United Nations, but which have been established in furtherance of important policy decisions taken by the principal organs of the United Nations and the activities of which are closely related to the work of the Organization. In order to highlight the close relationship these institutions enjoy with the United Nations and to underline the fact that their activities to a great extent are guided by decisions of the respective United Nations organs, such entities are sometimes referred to as “entities affiliated with the United Nations”. In the case of the Helsinki Institute for Crime Prevention and Control, the term “affiliated” has even been incorporated, at the suggestion of the Finnish authorities, into the title of that Institute. In other words, the term “affiliated” means that a particular entity is not established by the United Nations as its subsidiary organ or body and is not directly controlled by the United Nations, but rather merely assisted and to some extent generally guided by the United Nations in its activities.

4. It appears from the foregoing that an entity cannot be referred to as affiliated with the United Nations unless the United Nations enters into an agreement either with the host country, which is taking an active part in the work of that institution, or with the entity itself and unless this agreement leads to the establishment of special relations that could justify the use of the term “affiliated” in the case of that entity.

5. It is our understanding that in order to be registered under Swiss law and to obtain under that law legal personality, the international federation of trade points should have a statute. Since the federation is anticipated to be an autonomous institution, created outside the constitutional framework of the United Nations, formal approval of its statute on the part of the United Nations is not required. However, since the federation is expected to be closely linked to the United Nations and the latter would probably be asked to assume in this regard, certainly responsibilities and duties, the United Nations should be satisfied with the purposes, functions and organizational structure of the federation. Therefore, the Trade and Development Board may wish to consider expressing its views regarding the aforementioned issues prior to the establishment of the federation and the approval of its statute. The competent Swiss authorities should also be consulted regarding the requirements of Swiss law.

6. Once the federation is established and registered under Swiss law as an autonomous non-profit entity having its own legal personality, the United Nations and the federation would be able to enter into an agreement specifying the conditions of their cooperation. Should the agreement be consistent with the previous decisions of the Trade and Development Board and the General Assembly concerning the basic elements of cooperation between the United Nations and the prospective federation, then no formal approval of the agreement by any of these organs would be required and the agreement may be concluded by the United Nations Secretariat. Should, however, the agreement contain additional provisions implying responsibilities which have not been mandated so far by those organs, the agreement will have to be submitted to the Board and subsequently to the Assembly for approval.

17 February 1995

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11. QUESTION WHETHER MEMBERS OF THE BUREAU OF THE PREPARATORY COMMISSION FOR THE HABITAT II CONFERENCE WERE ELECTED AS REPRESENTATIVES SERVING IN THEIR PERSONAL CAPACITY OR AS STATES—RULE 103 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

*Memorandum to the Officer-in-Charge of the United Nations  
Conference on Human Settlements*

1. This is in reply to your memorandum of 6 February 1995 on the above-captioned subject. You inquire whether members of the Bureau of the Preparatory Commission for the Habitat II Conference were elected as representatives serving in their personal capacity or as States.

2. Preparatory bodies established by the General Assembly, such as that for the Habitat II Conference, are, pursuant to rule 161 of the rules of procedure of the General Assembly, subject to the rules applicable to committees of the Assembly unless the General Assembly or the preparatory body decide otherwise. The applicable rule concerning election of officers of committees is rule 103. That rule, as well as other rules dealing with officers of committees, such as rule 104, show that officers are elected in their personal capacity among the delegates accredited to the committee. Under rule 161, the preparatory body can decide to elect its officers in another manner. In a few cases, an open-ended body consisting of all Member States has decided to elect a large Bureau similar to that of the General Assembly, in which the Vice-Chairman were elected as States.

3. In the case of Preparatory Commission for the Habitat II Conference, the relevant part of its report, attached to your memorandum, lists the various officers by individual name, followed by an indication in parenthesis of the delegation from which they were elected. This indicates that the officers were elected in accordance with the standard practice, i.e., in their personal capacity and not as States. The only exception is the host country of the Conference which is listed as an ex officio member of the Bureau.

4. In view of the foregoing, if one or more of the officers cease to participate as representatives in the Preparatory Commission, it would be necessary for the Committee to replace them by electing new officers; they cannot automatically be replaced by another member of their own delegation.

21 February 1995

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12. CIRCULATION OF OFFICIAL DOCUMENTS TO INTERGOVERNMENTAL ORGANIZATIONS ACCORDED PERMANENT OBSERVER STATUS—RULE 74 OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL

*Memorandum to the Secretary, Commissions on  
Health rights, Fifty-first session*

1. This is in reply to your facsimile dated 27 February 1995, by which you request legal guidance on the question whether rule 74 of the rules of procedure of the functional commissions of the Economic and Social Council (or any other rule, decision, or practice, for the matter) entitles participating intergovernmental organizations, such as the Organization of the Islamic Conference (OIC), to have official documents circulated.

2. Rule 74 of the rules of procedure of the functional commissions of the Economical Social Council reads as follows:

“Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on a continuing basis by the Council or invited by the com-

mission may participate, without the right to vote, in the deliberations of the commission on questions within the scope of the activities of the organizations.”

3. As an intergovernmental organization accorded permanent observer status by the General Assembly, OIC pursuant to rule 74 may participate, without the right to vote, in the deliberations of the Commission on Human Rights.

4. According to the established practice of the Organization, the right to participate “in the deliberations” of meetings does not encompass the right to circulate documents. This is the practice not only of the functional commissions but also of Economic and Social Council, the parent organ of such commissions. Rule 79 of the rules of procedure of the Council provides that organizations such as OIC may participate “in the deliberations of the Council”. That rule has not, to our knowledge, ever been interpreted to include the right to distribute documents.

5. The right to circulate documents, which entails financial implications for the Organization, is reserved to the members of the Organization, unless otherwise decided by the competent intergovernmental organ. (See for example Economic and Social Council resolution 1296 (XLIV) of 23 May 1968 concerning non-governmental organization and General Assembly resolution 43/160 A of 9 December 1998 concerning the Palestine Liberation Organization.)

6. As you are aware, documents emanating from an intergovernmental organization may always be circulated upon requests by any State Member of the United Nations.

2 March 1995

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13. MEANING OF THE WORDS “AGREED CANDIDATE”—RULE 68 OF THE RULES OF PROCEDURE OF THE ECONOMIC AND SOCIAL COUNCIL—PARAGRAPH 16 OF ANNEX VI TO THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

*Letter to the Permanent Representative of a Member  
State to the United Nations*

I should like to reply to your letter of 8 May 1995 addressed to the Legal Counsel, by which you requested legal advice on certain aspects of rule 68 of the rules of procedure of the Economic and Social Council, which reads in relevant part as follows:

“All elections shall be held by secret ballot, unless, in the absence of any objection, the Council decides to proceed without taking a ballot on *an agreed candidate or slate...*” (emphasis added)

The general question you raised was: in the absence of consensus among the members of the Economic and Social Council, what is the legal interpretation of the phrase “agreed candidate” contained in rule 68? The phrase in question reflects the well-established practice in both the General Assembly and the

Economic and Social Council by which the requirement of a secret ballot for elections is waived when there is an “agreed candidate or slate” and when there is no objection to such a waiver. The meaning of the phrase is set out in paragraph 16 of annex VI to the rules of procedure of the General Assembly, which defines the practice of the Assembly as follows:

“The practice of dispensing with the secret ballot for elections to subsidiary organs *when the number of candidates corresponds to the number of seats to be filled* should become standard and the same practice should apply to the election of the President and Vice-Presidents of the General Assembly, unless a delegation specifically requests a vote on a given election” (emphasis added).

Thus, an agreed candidate or slate exists when the number of candidates corresponds to the number of seats to be filled. The threshold question of what constitutes the number of seats to be filled depends upon the particular election. In some cases, there is no official geographic distribution among the posts to be filled and thus it is the total number of vacancies to be filled which is the number at issue. In most other cases, the seats have been distributed among geographic regions by decision of the competent organ and thus the number of seats to be filled is per region.

Turning to your specific question, if three seats are to be filled by candidates from a particular region, that is the number of seats to be filled. Thus, a secret ballot may be waived only if there are three candidates from the region and there is no objection. If, as in your specific question, there are five candidates from the region for three seats to be filled and only one has been endorsed by the regional group, a secret ballot is still required among all five candidates for the three seats. The fact that a group has endorsed certain candidates, of whatever number, is irrelevant to ascertaining whether in fact, the number of candidates from the region corresponds to the number of seats to be filled.

12 May 1995

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14. SPONSORSHIP OF RESOLUTIONS BY ASSOCIATE MEMBERS OF THE ECONOMIC COMMISSION FOR ASIA AND THE PACIFIC—RESOLUTION 69 (V) ECONOMIC AND SOCIAL COUNCIL

*Memorandum to the Deputy Executive Secretary, Economic and Social Commission for Asia and the Pacific*

1. This is reply to your facsimile message of 12 May 1995, requesting advice and guidance on the question whether sponsorship of resolutions by associate members of ESCAP could be seen as conflicting with their non-voting status. You also expressed the hope that it could be found legally acceptable to allow them to co-sponsor resolutions.

2. As you note in your message, paragraph 6 of the terms of reference of ESCAP states that representatives of associate members are entitled to “participate without vote” in ESCAP meetings. The terms go on to state in paragraph 7 that such representatives are eligible for appointment as members of ESCAP subsidiary bodies, may vote in such bodies and may hold office therein. Neither the terms of reference nor the rules of procedures, however, address the question of associate members sponsoring resolutions or submitting proposals.

3. In order to address your query, it may be useful to refer to the legislative history of associate membership. In March 1947, the Economic and Social Council requested the then Economic Commission for Asia and the Far East (ECAFE) to appoint, at its first session, a Committee of the Whole to examine the question of making provision for associating with the work of the Commission territories in the area proposed by member Governments responsible for said territories’ international relations. It requested the Committee of the Whole to report directly back to the Economic and Social Council at its July 1947 session. The 1947 report of ECAFE to the Economic and Social Council<sup>12</sup> included the requested report of the Committee of the Whole and revealed differing views among the members of the Committee as to the kind of status that should be granted to such territories, ranging from full membership to consultations on questions of particular concern to them.

4. During the debate in the Committee, the Assistant Secretary-General in charge of the Legal Department concluded that: “while there was not explicit provision in the Charter of the United Nations on the subject, the Charter, in spirit and principle, envisaged a clear difference between Members and non-members and that this difference rested upon the fundamental principle that rights of membership should not be granted unless the obligations of membership were also assumed ... As for Non-Self-Governing Territories ... full membership would be contrary to the special regime prescribed for such Territories under Chapters XI, XII and XIII of the Charter”.

5. The Committee of the Whole eventually agreed on admitting Non-Self-Governing Territories as associate members of the Commission, as well as on the procedure for admitting them. The Commission also considered rights to be accorded to associate members. The Economic and Social Council adopted the text recommended by the Committee as resolution 69(V) of 5 August 1947, which reads in relevant part as follows:

*“The Economic and Social Council,*

*Resolves* that the following be added to the terms of reference of the Commission as article 3a:

...

- (ii) Representatives of associate members shall be entitled to participate without vote in all meetings of the Commission, whether sitting as Commission or as a committee of the whole;
- (iii) Representatives of associate members shall be eligible to be appointed as members of any committee, or other subordinate body, which may be set up by the Commission and shall be eligible to hold office in such body.”

During the debate on the report in the Council, no references were made to the specific issue of the rights to be accorded associate members.

6. While the report of the Committee of the Whole does not reveal whether the right of associate members to submit formal proposals was discussed, the following paragraph is highly instructive:

“The rights to be accorded to associate members were ... considered. *It was the general view of the delegations that associate members should participate as fully as possible in the work of the Commission and should enjoy all the privileges of membership short of the right to vote in meetings of the Commission.* Eligibility to hold office and the right to vote in any subordinate bodies were regarded as appropriate to associate membership. It was finally decided that associate members should not be given the right to vote when the Commission was sitting as Committee of the Whole” (emphasis added).

7. The legislative history summarized above points to clear intention on the part of both ECAFE and the Economic and Social Council, at the time of the adoption of resolution 69(V), to grant associate members wide rights of participation in the work of the Commission, while at the same time maintaining a clear distinction between their status and that of full members.

8. As a general rule, unless decided otherwise by the competent body, the submission of proposals and the sponsoring of resolutions is a prerogative of full membership in United Nations bodies. It is linked to the right to vote as it in fact initiates the decision-making process, culminating in voting or the taking of a decision; proposals are made with a view to their being acted upon by the body concerned. The same applies to other actions, such as explanations of vote, procedural motions and points of order, which, by their very nature are closely linked to the process of decision-making and thus are actions which remain solely within the prerogative of full members.

9. In certain circumstances, however, procedures have been devised to allow non-members of a body to submit proposals and draft resolutions, and yet not initiate a decision-making process. This is done by specifying that such a proposal may not be put to the vote unless so requested by a member of the body concerned (see, for example, rule 38 of the provisional rules of procedure of the Security Council). The parent organ of ESCAP has made such exceptions both for itself and for its functional commissions. States which are not members of the Economic and Social Council and specialized agencies are permitted to submit proposals which may be put to the vote on request of any member of the Council (rules 72(3) and 75(b) of the rules of procedure of the Economic and Social Council). The same applies, *mutatis mutandis*, in the functional commissions of the Council (rules 69(3) and 71(b) of the rules of procedure of the functional commissions of the Council).

10. It should be noted that, as in the case of ESCAP, many resolutions are adopted in the aforementioned bodies without a vote. In those circumstances, the requirements of the rule are met if any member of the body concerned requests that a decision be taken on the draft resolution proposed by a non-member. Such a request may be inferred by a member co-sponsoring the proposal of the non-member as well as by a presiding officer proposing its adoption.

11. In the case of ESCAP, it is consistent with the legislative history of resolution 69(V), as indicated above, for ESCAP to interpret its terms of reference broadly with regard to the rights of associate members, so as not to bar associate members from sponsoring resolutions or making substantive proposals in the Commission. However, in order to ensure that the decision-making process remains in the hands of full members, we would advise ESCAP to follow the model of the Economic and Social Council and, while allowing the submission and consideration of proposals by associate members, adopt the policy that such proposals may not be acted upon unless so requested by a full member of the Commission.

12. If ESCAP interprets its terms of reference as indicated above, in view of the silence on this matter in the ESCAP terms of reference, it would be appropriate in our view for ESCAP to inform the Economic and Social Council of such interpretation. ESCAP could submit to the attention of the Council its interpretation of the scope of rights of associate members, based upon the relevant legislative history. This would allow the Council to confirm, explicitly or implicitly, that understanding or to modify it should it so wish.

13. Alternatively, from a policy point of view ESCAP may prefer to have the matter squarely addressed in its terms of reference. It could thus recommend to the Economic and Social Council that paragraph 6 of its terms of reference should be amended to include a provision reading along the following lines: "Representatives of associate members may submit proposals which may be put to the vote on request of any member of the Commission".

30 May 1995

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15. RELATIONSHIP BETWEEN UNITED NATIONS AGENCIES AND ADVERTISING AGENCIES FOR FUND-RAISING ACTIVITIES AND PROGRAMMES—USE OF UNITED NATIONS NAME AND EMBLEM

*Memorandum to the Director, Mexico Regional Office, United Nations International Drug Control Programme*

1. This is in response to your facsimile of 13 June 1995. By your facsimile, you advised us that the Regional Office of the United Nations International Drug Control Programme in Mexico "has embarked on a relationship with commercial firms, in an effort to raise awareness of UNDCP's mandate in the region and to raise funds for activities and programmes". You sought our guidance on the appropriate procedures to be followed by UNDCP in its "contacts with commercial firms, and particularly with advertising agencies, for awareness-raising and fund-raising activities". Specifically, you sought our advice and comments on the following issues:

(a) Whether other United Nations agencies have concluded arrangements "with commercial firms, and particularly with advertising agencies, for awareness-raising and fun-raising activities;"

(b) The quantum and method of calculating the professional fees payable by United Nations agencies to advertising agencies;

(c) The Organization's policy and applicable restrictions in respect of associating the United Nations name and emblem with commercial firms "in addition to the prohibition of taking on sponsors that manufacture cigarettes, liquor, or which have poor environmental or labour records".

Our comments on your queries are set out below.

2. On the basis of your facsimile, it appears that the context giving rise to your inquiries is the celebration of International Day against Drug Abuse and Illicit Trafficking. We understand that, for purposes of the commemoration, an arts festival has been organized by UNDCP to take place on 26 June 1995 in Mexico City. You indicated that the arts festival will not have a fund-raising component and that "its sole purpose is to raise public awareness of [UNDCP's] work in the region". You further advise, however, that all expenses for this festival will be financed from funds raised from "commercial patrons (i.e., companies) that at this moment are still being lined up". It further appears that this fund-raising will not be undertaken by UNDCP, which "is not making direct contact with the companies," but by an advertising agency. As stated in your facsimile, UNDCP is "guiding" the advertising agency on, inter alia, "the appropriateness of certain companies sponsorship".

3. In the light of the above statements, we understand that the advertising agency will engage in fund-raising on behalf of the United Nations and will be using its name to obtain money from corporate sponsors to cover the expenses of the festival. As regards the details of the actual fund-raising, e.g., the amounts of the donations to be given by corporate sponsors, the manner of collecting and accounting for funds raised, the amounts to be retained by the advertising agency for expenses or whether any remaining balance of the funds, if any is left after expenses, would be turned over to the United Nations, no information has been made available to us on those issues.

4. We would urge the utmost caution before proceeding with this course of action. The advertising agency will raise funds by using the name of the United Nations and acting as agent for the United Nations. In return, the Organization allegedly will benefit from the funds raised. Our consistent experience with these schemes over the past 20 years is that, when problems arise during the course of the fund-raising activities (e.g., improper solicitation of funds, mismanagement of funds or difficulties with the taxation authorities of the State in which the agency is incorporated), the Organization is potentially vulnerable to resultant claims since donors or those supplying services will argue that they were induced to do so by the representations of the agency that it was acting for the Organization. Thus, the United Nations could be held responsible and thus, liable vis-à-vis the sponsors and donors for actions or omissions of the agency which will be acting on behalf of the United Nations.

5. In addition, and in view of the fact that the agency is subject to the national law and would be acting as an agent of the United Nations, the Organization runs the danger of being joined in any claims and/or judicial proceedings initiated against the agency by aggrieved sponsors and contributors, and this may lead to a questioning, and perhaps a denial by the courts, of the immunities of the Organization. There are no contract clauses in a contract with an advertis-

ing agency that can protect the United Nations since corporate sponsors and donors will be acting on the agency's representations and would not be party to the United Nations/advertising agency contract (on the assumption that one has been concluded) which would contain the clauses holding the United Nations harmless.

6. As regards your query on the Organization's policy and applicable restrictions in respect of associating the United Nations name and emblem with commercial firms "in addition to the prohibition of taking on sponsors that manufacture cigarettes, liquor, or which have poor environmental or labour records", it should be noted that the use of the United Nations name and emblem is reserved solely for official purposes in accordance with General Assembly resolution 92(I) of 7 December 1946. Furthermore, that resolution expressly prohibits any use of the United Nations name and emblem for commercial purposes or in any other way without the authorization of the Secretary-General, and recommends that States Members take the necessary measures to prevent the use thereof without the authorization of the Secretary-General. This Office has consistently opposed permitting the use of the United Nations name or emblem by private enterprises, even for the purpose of raising funds for the United Nations activities.

7. In the light of the foregoing, granting to an advertising agency and/or to commercial sponsors the right to use the United Nations name in return for financial contributions would constitute a departure from the accepted policies and practices of the Organization and, in particular, from the mandated obligation to avoid arrangements which countenance commercial benefits to firms through use of the United Nations name. Furthermore, authorizing such use of the United Nations name would endanger the continued protection enjoyed by the Organization in respect of the United Nations name, which is protected free of charge pursuant to the Paris Convention<sup>13</sup> but on the basis that it is not used for commercial purposes.

8. In our view, for the reasons given above, it would be necessary to obtain legislative approval to proceed with the activities outlined in your facsimile, in particular, because there is not legislative authority for the assumption of open-ended financial liabilities by the Organization through the use of the United Nations name for fund-raising purposes.

26 June 1995

16. ACCOUNTABILITY OF THE ADMINISTRATOR OF THE UNITED NATIONS  
DEVELOPMENT PROGRAMME VIS-À-VIS THE ACTIVITIES OF THE UNITED  
NATIONS OFFICE

*Memorandum to the Administrator, United Nations  
Development Programme*

1. This is in reference to the memorandum of 1 August 1995, requesting advice on the above-captioned subject matter. The delay in responding to that request is very much regretted; however this has been necessitated by the complex nature of the questions raised, entailing as they do a review of the complete history of the establishment of the United Nations Office of Project Services (UNOPS).

2. In the memorandum under reference, you requested "advice on the nature and extent of the Administrator's accountability on the activities of UNOPS and to whom," in his capacity as Administrator of UNDP, Chairman of the Management Coordination Committee (MCC) and member of MCC.

3. The question of the accountability of the UNDP Administrator on the activities of UNOPS, in my view, has to be examined in the light of the status of, and functions entrusted to, UNOPS by the Executive Board of UNDP, formerly the Governing Council, as well as the Administrator's overall responsibilities for the United Nations Development Programme, as provided by the General Assembly in its resolution 2688(XXV) of 11 December 1970 (also known as the "Consensus"), on the capacity of the United Nations development system.

UNOPS STATUS AND FUNCTIONS

*Status*

4. The Secretary-General proposed the separation of UNDP and the Office of Project Services (OPS), in the context of the restructuring of the economic and social sectors, to eliminate "the conflict inherent in UNDP exercising coordination responsibility in relation to the operational activities of the system while retaining, through OPS, its own implementation capability".<sup>14</sup>

5. In response to the Secretary-General's initiative, UNOPS was established pursuant to Executive Board decision 94/12 of 9 June 1994, and on the authority of General Assembly decision 48/501 of 19 September 1994. In paragraph 6 of its decision 94/12 the board recommended to the General Assembly, and the Assembly accepted, that UNOPS should become a "separate and identifiable entity in a form that does not create a new agency and in partnership with the United Nations Development Programme and other operational entities." The term "agency" in this context has to be understood in the sense of a subsidiary organ of the United Nations in terms of Article 22 of the Charter United Nations, rather than a specialized agency. The General Assembly is authorized to establish subsidiary organs, such as UNDP and the United Nations Children's Fund. The Board does not possess that power.

6. The Executive Board further decided, in paragraph 4 of decision of 94/12, to enhance its role vis-à-vis UNOPS and to retain overall policy guidance and supervision for its activities. In paragraph 8 of the decision, the Board decided that “subject to paragraph 6 of the present decision, the Executive Director of UNOPS will report to the Secretary-General and the Executive Board through the Management Coordinating Committee”.

#### *Functions*

7. The functions of UNOPS are described in paragraph 4 of the report of the Executive Director, on ways of establishing the Office as a separate and identifiable entity,<sup>15</sup> and consist of: comprehensive project management; implementation of project components; project supervision and loan administration; and management services.<sup>16</sup> However, these functions are to be carried out within the limitations established by the Board in its decisions 94/12 of 9 June 1994 and 94/32 of 10 October 1994, that UNOPS is to undertake implementation rather than funding activities, which remains the responsibility of UNDP within the United Nations development system. The Executive Board itself does not provide the distinction between implementing and funding activities, although some of its members did request clarification on this matter when considering the note by the Secretary-General, resulting in decision 94/12. However, it is safe to say in this context that UNOPS is authorized to provide services relating to implementation of already funded programmes and projects, and not to engage in the actual fund-raising to support such programmes and projects. UNDP was thus to retain its role as the main funding agency of United Nations system technical assistance activities, for which the specialized agencies essentially provide executing agency functions and UNOPS acts as implementing entity.

#### *Accountability*

8. On the question of accountability for UNOPS activities, the Executive Director had proposed in his report:<sup>17</sup> “UNOPS activities shall be considered separate and distinct from UNDP activities, and shall be reported as such. Consequently, the Executive Director, through MCC, and in accordance with delegated authority, *shall be fully responsible and accountable to the Executive Board for all phases and aspects of UNOPs activities*”. (emphasis added)

9. However, in its decision 94/32, the Executive Board, while taking note of the report of the Executive Director, found reason once again to underline the fact that “the United Nations Office for Project Services will undertake *implementation and not funding activities*”,<sup>18</sup> and reaffirmed, in paragraph 4, that “*UNOPS will operate with the United Nations development system and will not become a new agency* and that the requirements regarding accountability must be consistent with the decision not to establish a new agency as contained in paragraph 3 of decision 94/12”. (emphasis added)<sup>19</sup>

10. The question of accountability was again addressed in the UNOPS Financial Regulations which were submitted in a joint report to the Executive Board of the UNDP Administrator and the Executive Director.<sup>20</sup> The report was considered by the Board at its first regular session in 1995; by its decision 95/1 of 10 January 1995 the Board approved the Financial Regulations as an annex to the UNDP Financial Regulations and Rules.<sup>21</sup> UNOPS financial regulation

3.1 provides that “the Executive Director is accountable for UNOPS activities to the Executive Board and to the Secretary-General, and shall report to the Executive Board through the Management Coordination Committee, which shall provide operational guidance and exercise management direction”. This provision is consistent with Executive Board decision 94/12, which also provides that the Executive Board shall report to the Secretary-General and the Executive Board through MCC (see decision 94/12, para 8).

11. It is clear from the above analysis that while the various reports to the Executive Board make references to accountability, the Board itself only addresses it in its decision 94/32 by emphasizing that UNOPS is to operate within the development system and is not to become a new agency, and in the limited context of the UNOPS Financial Regulations. In this context, while MCC is to provide “operational guidance and management direction”, collectively, to the Executive Director, the latter remains accountable for the conduct of UNOPS activities.

12. Therefore, the responsibility and ultimate accountability of the Administrator in this case must also be examined in the broad context of the General Assembly resolution 2688(XXV).

#### ADMINISTRATOR’S ACCOUNTABILITY

##### *Operational activities*

13. Paragraph 37 of General Assembly resolution 2688(XXV) provides that “*in addition to the responsibilities to be delegated to him by the Governing Council, the Administrator will be fully responsible and accountable to the Governing Council for all phases and aspects of the implementation of the Programme*”.

14. The accountability of the Administrator is thus very broad and also encompasses the UNDP-funded and supported programmes implemented by UNOPS, as such implementation by UNOPS is one phase or aspect of the overall Programme, although the Executive Director remains accountable for the actual implementation of the particular projects entrusted to UNOPS.

15. It is important to note that in accepting to separate UNOPS from UNDP, “in order to strengthen the coordinating and central funding and roles of the United Nations Development Programme” and to “ensure that the Office for Project Services will undertake implementation rather than funding activities”, the Executive Board recommended to the General Assembly that the Office for Project Services, while becoming a separate and identifiable entity, should be established in “a form that does not create a new agency; and in partnership with the United Nations Development Programme and other operational entities”. (See Executive Board decision 94/12, para. 1 and 5, respectively). The General Assembly accepted the recommendation of the Board in its decision 48/501, acting also on the recommendation of the Economic and Social Council. While, therefore, in terms of financial regulation 3.1, the Executive Director is accountable to the Executive Board and the Secretary-General for the proper discharge of UNOPS activities, the Administrator retains certain responsibilities for the Programme derived from General Assembly resolution 2688(XXV).

16. In accordance with General Assembly resolution 2688(XXV), the Administrator has specific responsibilities and is accountable to the Executive Board, and the General Assembly, for the realization of the objectives of the United Nations Development Programme. In view of the fact that the Executive Board of the United Nations Development Programme also exercises authority over UNOPS, providing overall policy guidance and supervision for its activities, the Administrator, in the light of his overall responsibilities under resolution 2688(XXV), remains ultimately accountable for the activities of UNOPS, relating to the implementation of the Programme.<sup>22</sup> Furthermore, on the basis also of resolution 2688(XXV), the Administrator is responsible and accountable to the Executive Board for any other matters within the purview of the Board, which the Board may in its discretion delegate to him.

17. However, it is very clear that in the performance of his responsibilities vis-à-vis UNOPS, the Administrator is to take account of the authority entrusted to MCC to provide “operational guidance and management direction for UNOPS” (see paragraph 3 of decision 95/1 approving the UNOPS Financial Regulations and Rules). This is especially important, in view of the decision to establish UNOPS as a separate and identifiable entity albeit within the United Nations development system, and the role of MCC which resulted from the need to address certain perceived conflicts inherent in UNDP exercising coordinating responsibilities in relation to operational activities of the system while retaining, through UNOPS, its own implementing capability.<sup>23</sup>

18. Apart from the above, we have found no specific evidence in the documentation relating to UNOPS, for the view that the Administrator bears any individual responsibility for UNOPS in his capacity as Chairman of MCC. Paragraph 7 of Executive Board decision 94/12 provides that the membership of MCC shall consist of the following: “Chairman: Administrator of UNDP; Members: the Under-Secretary-General for Administration and Management and the Under-Secretary-General for Development Support and Management Services; Secretary: the Executive Director of UNOPS”. The role of the Chairman is not defined further and it does not seem that it was in any way intended to confer on him any more personal responsibilities for the functioning of MCC than the other members of that body, except those largely procedural responsibilities inherent in the Office of the Chairman. MCC has been given responsibilities by the Board and the Secretary-General and performs those functions collectively. We therefore do not see any individual role for the Administrator, except as part of the Committee, in the exercise of his functions as a part of MCC.

### *Personnel*

19. In respect of the personnel and financial aspects of UNOPS, however, the accountability of the Administrator is much clearer than in the case of the operational activities. In his note to the Executive Board (DP/1994/52) of 6 June 1994, the Secretary-General stated, in paragraph 10, that “the existing financial and personnel regime would be maintained”.

20. Accordingly, the delegation of authority by the Secretary-General to the Administrator, provided in personnel directive PD/2/65/Add.1 of 14 February 1966 as amended on 11 October 1971, in respect of the United Nations Staff Regulations and Rules, would seem to also be applicable to UNOPS.<sup>24</sup> There-

fore, although the Executive Director would clearly be responsible for managing the day-to-day personnel-related questions that may arise, the Administrator is ultimately accountable for such matters.

### *Finance*

21. As regards the financial regime, the Executive Board approved separate UNOPS Financial Regulations (in DP/1995/7/Add.1) by its decision 95/1 of 10 January 1995, as an annex to the UNDP Financial Regulations and Rules. Regulation 9.1 provides that the Secretary-General shall “act as custodian of UNOPS income and resources entrusted to the charge of UNOPS”. Regulation 9.2 provides that the Secretary-General may “delegate to the Administrator of UNDP such authority with respect to custody of funds as would facilitate the efficient and effective management of UNOPS income as well as resources entrusted to the charge of UNOPS, and such delegated authority may be accepted by the Administrator of UNDP in writing”. Thus, the Administrator under delegation from the Secretary-General is responsible for the custody of the UNOPS funds and is ultimately accountable to the Secretary-General and the Executive Board for their proper administration under the UNDP Financial Regulations and Rules.

### CONCLUSION

22. In summary, while UNOPS has been separate operationally from UNDP to avoid the perceived conflict mentioned by the Secretary-General, the UNDP Administrator retains certain overall responsibilities with regard to the activities of UNOPS. These responsibilities are derived from General Assembly resolution 2688(XXV), which makes the Administrator accountable to the Executive Board directly for all phases and aspects of the Programme and realization of its objectives, and upon delegation, for the other activities for which the Board retains overall policy guidance and supervision. Thus, while the UNDP Administrator remains accountable for the achievement of the overall objectives of the Programme, the Executive Director is accountable for the implementation of the particular projects for which he has operational responsibility.

23. In addition, the Administrator, under delegation from the Secretary-General, retains the ultimate responsibility for UNOPS in personnel and financial matters. As explained above, we see no basis for individual responsibility of the Administrator, for UNOPS activities as Chairman or part of MCC, except in regard to procedural matters inherent in the position of Chairman. The responsibilities of MCC have been entrusted to the Committee and are exercised collectively by that body in accordance with such directions as the Secretary-General or the Executive Board may provide with regard to the functioning of the Committee.

6 September 1995

## 17. THE SECRETARY-GENERAL'S AUTHORITY TO BORROW FUNDS

### I. *Note to the Under-Secretary-General for Legal Affairs*

#### THE UNITED NATIONS FINANCIAL REGULATIONS AND RULES

##### 1. Financial regulation 4.1 provides as follows:

“The appropriations voted by the General Assembly shall constitute an authorization to the Secretary-General to incur obligations and make payments for the purposes for which the appropriations were voted and up to the amounts so voted.”

This regulation stipulates that the Secretary-General can only “incur obligations and make payments”, which would bind the Organization financially, on the basis of previously approved appropriations by the General Assembly. Consistent with this plain meaning of the regulation, financial rule 110.1(a) requires the Under-Secretary-General for Administration and Management to be responsible for ensuring that the expenditures of the Organization remain within the limits of the appropriations approved by the General Assembly.

2. This Office has consistently interpreted these texts as excluding, *per se*, borrowing activities, because only appropriated funds (i.e., funds that are available within the budget, in accordance with the Financial Regulations and Rules) can be expended. In other words, it has never been doubted by this Office and, we understand, by past Controllers, that the United Nations Financial Regulations and Rules require that specific authority from the General Assembly would be required for the United Nations to borrow.

#### BORROWING BY THE ORGANIZATION

##### *Borrowing from the external sources*

3. Borrowing from sources external to the Organization with the authority of the General Assembly is exceptional.

4. In its resolution 1739 (XVI) of 20 December 1961, the General Assembly noting, in the context of a grave financial crisis, that “under the existing circumstances, extraordinary financial measures are required” but “that such measures should not be deemed a precedent for the future financing of the expenses of the United Nations”, authorized the Secretary-General to issue United Nations bonds in the amount of US\$ 200 million, to be repaid in 25 annual installments. The bonds were to be offered by the Secretary-General to States Members of the United Nations, the specialized agencies and the International Atomic Energy Agency, as well as to the official institutions of such members, and with concurrence of the Advisory Committee on Administrative and Budgetary questions, to non-profit institutions or associations.

5. In the few instances where the General Assembly granted borrowing authority, it made such borrowing subject to strict conditions, notably those mentioned below.

(a) *Sources of funds*

6. In the exceptional instances where the General Assembly has authorized borrowing from sources outside the Organization, such outside sources have been generally restricted to Governments, and governmental or intergovernmental institutions,<sup>25</sup> authorizing the Secretary-General to negotiate with the International Refugee Organization an interest free loan to finance the United Nations programme of assistance to Palestine refugees. We only found one instance where borrowing had been authorized from private, non-commercial sources, namely, “non-profit institutions or associations”, subject to the concurrence of the Advisory Committee on Administrative and Budgetary Questions<sup>26</sup> on United Nations bonds (also noted above). Our files indicate that borrowing from commercial sources or banks has never been authorized.

(b) *Other Conditions*

7. The General Assembly’s granting of borrowing authority has been on a case-by-case basis and, with one exception (resolution 1739(XVI) on the United States bonds), for short-term loans. Strict conditions are provided to guarantee that borrowing is utilized as a last resort, and to secure the availability of funds for repayment. In the only case where the Assembly authorized the issuance of bonds, it also decided to include annually in the regular budget of the organization an amount sufficient to cover the installments of principal, and the interest charges, on the bonds.

8. To our knowledge, the only authorization currently in effect for borrowing from sources external to the Organization is pursuant to financial regulation 5.10, which authorizes borrowing from Governments for the reimbursable seed operations of the United Nations Centre for Human Settlements (Habitat) Foundation, on the condition that payment of the principal of, and any interest on, such borrowing should be only the resources of the Foundation.

9. In the light of the above, it seems that the Secretary-General would need authorization from the General Assembly to borrow funds from any source external to the Organization, including the World Bank.

*Borrowing from United Nations funds*

10. The Secretary-General has been given limited authority to borrow from United Nations funds. General Assembly resolution 48/232 of 23 December 1993, authorized the Secretary-General, inter alia, to advance from the Working Capital Fund,” during the biennium 1994—1995, such sums as are necessary to finance budgetary appropriations pending receipt of contributions” and, in that connection, to “cash from special funds and accounts *in his custody*” (emphasis added). The latter provision reads as follows:

“Should [the amount of 100 million United States dollars] prove inadequate to meet the purposes normally related to the Working Capital Fund, the Secretary-General is authorized to utilize, in the biennium 1994—1995, cash from special funds and accounts in his custody, under the conditions approved in General Assembly resolution 1341(XIII) of 13 December 1958, or the proceeds of loans authorized by the General Assembly.”

11. The fact that such authority is reiterated in a General Assembly resolution for each biennium makes it clear that this is an exceptional arrangement requiring a specific authorization from the General Assembly.

#### STATUS OF THE WORLD BANK AND ITS LENDING AUTHORITY

12. Although it is not for this Office to advise on the capacity of the World Bank to extend loans for the temporary relief of budgetary deficits of intergovernmental organizations, the following observations are offered from our quick review of the World Bank's Articles of Agreement.

13. The International Bank for Reconstruction and Development, also known as the World Bank, provides assistance on technical and financial matters to developing countries.

14. Article I of the Articles of Agreement of IBRD provides that one of the World Bank's purposes is:

“to assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes ..., to promote private foreign investment by means of guarantees or participating in loans and ... to arrange those loans.”

15. The use of the resources of the World Bank is exclusively for the benefit of the members with equitable consideration to projects for development and reconstruction. World Bank loans are subject to a number of conditions, the most salient of which are the following:

(a) At the base of every request of a potential borrower must be a project that the World Bank should finance (the principle of “project financing”); and

(b) The Bank makes loans either to its member States or governmental authorities or private enterprises in the territories of its member States.

26 September 1995

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## II. *Note to the Secretary-General*

#### THE SECRETARY-GENERAL'S AUTHORITY TO BORROW FUNDS

1. This is in response to your request of yesterday to elaborate on certain aspects of our previous note on this subject [see note of 26 September 1995 above] with respect to those instances where, in the past, the Secretary-General was authorized by the General Assembly to borrow funds from sources external to the Organization.

2. The information set out below was gathered by the Office of Legal Affairs on the basis of information contained in our files and in consultation with the Office of the Controller, which would have had responsibility for overseeing these matters.

## SUMMARY

3. The present paper contains information concerning particular instances in which previous Secretaries-General were granted exceptional authority by the General Assembly to borrow monies from sources external to the Organization beyond that contained in our earlier note on borrowing authority of 26 September 1995.

4. The paper addresses four instances in which the General Assembly authorized the Secretary-General to borrow from an external source: two involved authorizations for short-term loans by Governments, one involved the issuance of bonds to Governments, members of the specialized agencies and, with the concurrence of the Advisory Committee on Administrative and Budgetary Questions, to non-profit organizations, and a fourth involved a loan from the host Government to construct the Headquarters.

5. As far as we can determine from the information available to us, the Secretary-General never exercised the authority to seek short-term loans from Governments. The Secretary-General did exercise the authority in 1961 to issue bonds, borrowing approximately \$170 million from Governments. The Secretary-General also borrowed \$65 million for the construction of Headquarters. Please note that, given the little time available for this review, we have limited ourselves to documentation available in the files of the Office of Legal Affairs, as well as to other documents published in the *Official Records of the General Assembly*.

### *Short-term loans authorizations*

6. In 1958, for the first time, the Secretary-General was authorized, by the General Assembly in its resolution 1341 (XIII) of 13 December 1958, subject to the conditions set out in paragraph 8 of his report (A/C.5/743) of 19 December 1958, and in case the Working Capital Fund proved to be inadequate, to borrow cash, on payment of normal current rates of interest, from special funds and accounts in his custody for purposes which normally relate to the Working Capital Fund (resolution 1341 (XIII), para. 4). Since that time, in the resolutions approving the Working Capital Fund for a specific financial period, that authorization has been extended.

7. In 1959 the Secretary-General in his report (A/C.5/809) pointed out the need for continuing the authorization to borrow from special funds and accounts under his custody and suggested, inter alia, that "consideration also be given to the desirability of removing the present restriction which limits such recourse to funds temporarily available in special accounts under the Secretary-General's custody". The Advisory Committee considered the Secretary-General's proposals and recommended, inter alia, that the Assembly should expand the authorization granted under paragraph 4 of resolution 1341 (XIII) "to cover also short term loans from Governments and, exceptionally, from commercial sources". The Advisory Committee on Administrative and Budgetary Questions recommendation, however, was only partially endorsed by the General Assembly, which, by its resolution 1448 (XIV) of 15 December 1959, extended the borrowing authority given to the Secretary-General under resolution 1341 (XIII) to "short-term loans from Governments", but not to loans from commercial sources.<sup>27</sup> The reference to "short-term loans from Governments" was repeated in General Assembly resolu-

tion 1586 (XV) of 20 December 1960. As for the current biennium, in its resolution 48/232 of 23 December 1993 the General Assembly authorized the Secretary-General to utilize “cash from special funds and accounts in his custody ... or the proceeds of loans authorized by the Assembly”.

8. The authority to borrow from funds under the Secretary-General’s custody has been frequently used. However, despite the authorization to seek “short-term loans from Governments” or the general reference to “loans approved by the General Assembly”, nothing in the documentation available in our files indicates that the Secretary-General’s ad hoc authority to seek such short-term loans was ever used. Indeed, no such loans are mentioned in a comprehensive review of prior financial crises contained in the Secretary-General’s report (A/C.5/40/16) of 3 October 1985. We have contacted the Controller’s Office, which after a quick review of its records, has confirmed that apparently no such short-term loans were ever sought by the Secretary-General. From our review of the matter, it appears that only instance where the Secretary-General actually borrowed funds from sources external to the Organization is the 1961 bond issue, which is briefly described below.

#### *The United Nations bond issue*

9. By its resolution 1739 (XVI) of 20 December 1961, the General Assembly, noting, in the context of a grave financial crisis, that “under the existing circumstances, extraordinary financial measures are required” but “that such measures should not be deemed a precedent for the future financing of the expenses of the United Nations”, authorized the Secretary-General to issue United Nations bonds in the amount of \$200 million, to be repaid in 25 annual installments. Of the total amount originally authorized by the General Assembly, bonds amounting to US\$ 169.9 million were sold. The bonds were to be offered by the Secretary-General to States Members of the United Nations, and members of the specialized agencies and of the International Atomic Energy Agency, as well as to the official institutions of such members, and, with the concurrence of the Advisory Committee on Administrative and Budgetary Questions, to non-profit institutions or associations. According to the limited information available in the files on this matter (doubtless archival files in the Controller’s Office would have more details concerning the bond issue), it seems that all bonds then issued by the Organization were subscribed by Governments.

10. Unlike public bonds issued by the World Bank and by regional development banks, which are explicitly made subject to the law of the country of issue, the United Nations bonds were truly international and were not explicitly, or by implication, made subject to any national law. The bonds were subject to the United Nations Bond Regulations No.1, which were printed on the reverse thereof. The bonds were issued in fully registered form, were payable to the named holder and could only be transferred to a Government or institution to which the bonds were authorized to be offered by General Assembly resolution 1739 (XVI). They were subject to prepayment at the election of the United Nations, as a whole at any time or in part from time to time, upon not less than 45 nor more than 60 days written notice to the holder. By its resolution 1739 (XVI) the General Assembly decided to include annually in the regular budget an amount sufficient to pay the interest charges on such bonds and the installments of principal due on the bonds. To our knowledge, the bonds were fully amortized in or around 1991.

*Loan to finance the construction of the permanent  
Headquarters of the United Nations*

11. As part of the arrangements for the construction of the United Nations Headquarters in Manhattan, the Secretary-General was authorized by the General Assembly in its resolution 182 (II) of 20 November 1947, *inter alia*, to negotiate and conclude, on behalf of the United Nations, a loan agreement with the Government of the United States of America for an interest-free loan which would require approval by the Congress of the United States in an amount not to exceed \$65,000,000 to provide for the payment of costs of construction (and related costs)". That resolution further provided that such loan would be for a term not less than 30 years and should be repayable in annual installments from the ordinary budget of the United Nations.

12. Pursuant to that authorization, the United Nations and the United States Governments signed the loan agreement on 23 March 1948. The loan agreement provided for the loan of a sum not to exceed the aggregate of \$65,000,000, to be advanced by the United States to the United Nations upon request by the Secretary-General and upon certification of the architect or engineer in charge of the construction that the amount was requested to cover payments in connection with the construction and furnishing of the permanent Headquarters of the United Nations. The loan agreement provided for early payments in amounts ranging from \$1,000,000 to \$2,500,000 commencing in 1 July 1951 and ending on 1 July 1982. Pursuant to the loan agreement, the United Nations agreed that it would not, "without the consent of the United States, while any indebtedness incurred [there]under [was] outstanding unpaid, create any mortgage, lien or other encumbrance on or against any of its real property in the Headquarters district".

29 September 1995

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18. RIGHT TO VOTE OF A UNION OR GROUP OF MEMBER STATES  
RIGHTS OF THE EUROPEAN COMMUNITY IN THE GENERAL ASSEMBLY

*Letter to the Director, Office of International Standards and Legal  
Affairs, United Nations Educational, Scientific and Cultural Orga-  
nization*

I wish to acknowledge receipt of your telefax message dated 20 September 1995.

In your communication, you inquire about the following:

(1) Do the rules and/or practice of the United Nations permit the full participation, with the right to vote, by any union or group of Member States, on the same footing as other participating Member States, in meetings of the Governing bodies of the Organization?

(2) If so, may the Member States of the union or group also participate at the same time in their respective individual capacities in such meetings with the right to vote?

The Charter of the United Nations grants the right to vote in the intergovernmental organs of the United Nations only to individual Member States. Intergovernmental organizations or other entities cannot be Members of the United Nations, and consequently do not have the right to vote in its organs. However, such entities may participate in the work of United Nations organs as observers.

In your communication, you refer to “any union or group of Member States”, by which you may have in mind the “European Union”. In this connection, please note that the European Economic Community was granted observer status in the General Assembly by the Assembly resolution 3208 (XXIX) of 11 October 1974. Since then, that organization has changed its name to the “European Community”, which is represented at Headquarters by the Presidency of the Council of the European Union and by the European Commission.

As to the scope and extent of the participation of intergovernmental organizations enjoying observer status in the work of United Nations organs, they obviously do not enjoy the same rights as Member States but, in general, a limited right of participation in substantive discussions on items of relevance to them. Intergovernmental organizations, as well as other observers, cannot perform a number of acts which are reserved for the full members of an organ, such as the introduction of substantive proposals or procedural motions, the raising of points of order, the circulation of communications as official documents of that organ and the exercise of the right of reply.

As regards the European Community, the particular nature of this organization and its sometimes exclusive competence on behalf of its Member States in certain areas has led the General Assembly to grant to the Community rights of “full participation” in a number of United Nations conferences, such as the United Nations Conference on Environment and Development of 1992. In paragraph 7(a) of resolution 47/191 of 22 December 1992, the General Assembly recommended to the Economic and Social Council that the newly established Commission on Sustainable Development should “provide for the European Community, within its areas of competence, to participate fully ... *without the right to vote*” (emphasis added). Pursuant to that recommendation, the Council, on 8 February 1995, adopted decision 1995/201, which amends the rules of procedure of the functional commissions of the Council and spells out the scope of the “full participation” by the Community in the work of the Commission.

As to your second query, let me firstly reiterate that the issue of voting is moot, as only Member States can vote in United Nations organs. As to participation, the distribution of competence between an organization and its member States and consequently the right to make statements on a particular subject matter, is an internal matter between the organization and its members and does not affect per se the work of the organs of the United Nations. Needless to say, an intergovernmental organization can only exercise the limited rights of participation granted to it, even if it declares that it speaks on behalf of its member States or that it exercises exclusive competence over a particular subject matter.

29 September 1995

19. ROLE OF THE SECRETARY-GENERAL VIS-À-VIS THE UNITED NATIONS JOINT STAFF PENSION BOARD—INVESTMENT ACTIVITIES OF THE JOINT STAFF PENSION FUND—RESPONSIBILITY FOR INVESTMENT OF THE ASSETS OF THE FUND

*Memorandum to the Under-Secretary-General for Administration and Management, Special Representative of the Secretary-General for Investments of the United Nations Joint Staff Pension Fund*

1. The present memorandum refers to your discussion with a member of this Office following the meeting of the Standing Committee last July concerning both (a) the role of the Secretary-General versus that of the Pension Board with regard to responsibility for investment of the assets of the United Nations Joint Staff Pension Fund and (b) the legal ramifications of changing the management of the Fund's investment activities from an internally managed endeavour to outside-managed investment accounts.

2. This memorandum also examines the role of the Secretary-General vis-à-vis the Secretary of the Pension Board, as requested by your memorandum of 8 August 1995.

SUMMARY OF ANALYSIS

3. The Regulations of the United Nations Joint Staff Pension Fund define the roles, responsibilities and duties of the Secretary-General, the Pension Board and the Secretary of the Pension Board with respect to the investment of the assets of the Fund and the administration of the Fund. The Regulations have remained essentially unchanged over their more than 46 year history with regard to the specification of such duties and responsibilities.

4. Pursuant to the Regulations of the Pension Fund, the responsibilities for investment of the assets of the Fund are accorded to the Secretary-General. The role of the Pension Board is limited to providing the Secretary-General with "observations and suggestions" on the investment policies.

5. In carrying out his duties and responsibilities for investment of the assets of the Fund, the Secretary-General, pursuant to his role as chief administrative officer of the Organization under Article 97 of the Charter of the United Nations, may delegate to subordinate officials his responsibilities and duties in regard to investment of the assets of the Fund. However, the Secretary-General, as a fiduciary to the participants and beneficiaries of the Fund, may not delegate to sub-agents (i.e., outside investment managers and advisers) those duties and responsibilities concerning investment of the assets of the Fund which he reasonably may be expected to perform personally or through his subordinates. The Secretary-General may only delegate to sub-agents those investment duties and responsibilities which he reasonably may not be expected to perform in-house.

6. Finally, the Regulations of the Pension Fund make clear that the Pension Board is responsible for the administration of the Fund. The Secretary of the Pension Board acts under the authority of the Pension Board. The Pension Board's responsibilities for the administration of the Fund include the formulation of the budget for the expenses of the administration of the Fund, the deter-

mination of staff requirements for servicing the Pension Board and the Fund and the day-to-day administration of the Fund. In carrying out its responsibilities for the administration of the Fund, the Pension Board is accountable to the General Assembly. The role of the Secretary-General in relation to the administration of the Fund is limited to his power to appoint staff, including the Secretary and Deputy Secretary of the Pension Board, upon the recommendation of the Pension Board, and such staff as may be required from time to time by the Board.

#### RESPONSIBILITY FOR INVESTMENT OF THE ASSETS OF THE FUND

##### *Authority of the Secretary-General*

7. Both of the questions referred to in paragraph 1 above relate to the issue of who has responsibility for investment of the assets of the Fund. Article 19 of the Regulations and Rules of the Fund (hereafter, the "Regulations") provides as follows:

*"(a) The investment of the assets of the Fund shall be decided upon by the Secretary-General after consultation with an investments committee and in the light of observations and suggestions made from time to time by the Board on the investments policy.*

*"(b) The Secretary-General shall arrange for the maintenance of detailed accounts of all investments and other transactions relating to the Fund, which shall be open to examination by the Board." (emphasis added)*

Additionally, article 20 of the Regulations provides that the "Investments Committee shall consist of nine members appointed by the Secretary-General after consultation with the Board and the Advisory Committee on Administrative and Budgetary Questions, subject to confirmation by the General Assembly".

8. These provisions concerning responsibility for investment of the assets of the Fund have remained virtually unchanged since the creation of the Fund. Article 25 of the Original Regulations of the Fund, promulgated pursuant to General Assembly resolution 248 (III) of 7 December 1948, provided that:

*"Subject to the complete separation to be maintained between the assets of the Fund and the assets of the United Nations as provided in article 14, the investment of the assets of the Fund shall be decided upon by the Secretary-General, after consultation with an Investments Committee and having heard any observations or suggestions by the Joint Staff Pension Board concerning the investments policy. The Investments Committee shall consist of three members appointed by the Secretary-General after consultation with the Advisory Committee on Administrative and Budgetary Questions, subject to subsequent confirmation by the General Assembly."*

This provision is essentially, identical to the earlier section 25 of the United Nations Joint Staff Provisional Scheme Regulations adopted by the General Assembly pursuant to its resolution 82(I) of 15 December 1946.

9. The provisions of article 19 of the current Regulations make clear that the Secretary-General is solely responsible and accountable for investment of the assets of the Fund. In carrying out that responsibility, the Secretary-General shall consult with the Investments Committee, the members of which he appoints. However, article 19(a) of the Regulations makes it clear that the Pension Board may make “observations and suggestions ... on the investments policy”. The Secretary-General, of course, is not bound to follow such “observations and suggestions”. Thus, it is clear that the Secretary-General alone bears the responsibility for the investments of the assets of the Fund. The Secretary-General’s role in this regard has been reaffirmed by the General Assembly on various occasions when it has sought to encourage diversity of investment, particularly holdings in developing countries.<sup>28</sup>

*The Secretary-General’s power to delegate investment responsibilities*

10. While the Secretary-General has been accorded sole responsibility for investment of the assets of the Fund, his responsibility in this regard has been described by the General Assembly as that of “fiduciary ... for the interests of participants and beneficiaries of the United Nations Joint Staff Pension Fund under the Regulations and Rules of the Fund”.<sup>29</sup>

11. The issue raised by you, as set out in a memorandum of 18 September 1995, is the extent to which the Secretary-General may delegate to others, in particular outside investment managers, duties to carry out that responsibility.

(A) GENERAL RULE ON DELEGATION OF FIDUCIARY RESPONSIBILITY

12. The Regulations and Rules of the Fund are silent as to the question of whether and to what extent the Secretary-General may delegate his responsibilities for investment of the assets of the Fund.<sup>30</sup> As “fiduciary” for the interests of participants and beneficiaries of the Fund, the Secretary-General has been accorded the powers of an agent with respect to the investment of the assets of the Fund. As a general rule, unless it is otherwise agreed between the agent and his principal, an agent cannot properly delegate to another the exercise of discretion in the use of a power held for the benefit of the principal.<sup>31</sup> Given the relationship of trust between the Secretary-General and the participants and beneficiaries of the Fund, the Secretary-General, as fiduciary of a fund located in the United States, is under a duty to the participants and beneficiaries *not* to delegate to others the doing of the investment acts which the Secretary-General can reasonably be required personally to perform.<sup>32</sup>

13. Under the general standard of prudent investment, a fiduciary is under a duty to the beneficiaries to invest and manage the funds held in trust as a prudent investor would, in the light of the purposes, terms, distribution requirements and other circumstances governing the funds held in trust. In carrying out that duty, the fiduciary must act with prudence in deciding whether and how to delegate authority and in the supervision of agents.<sup>33</sup>

(B) DELEGATION OF FIDUCIARY RESPONSIBILITY TO SUBORDINATES

14. While as a general rule a fiduciary cannot delegate his responsibility for the investment of the funds of beneficiaries to another actor, a corporate fiduciary, although unable to delegate the administration of a trust, can properly administer the trust through duly appointed and supervised subordinates.<sup>34</sup>

15. In the context of the United Nations, the Secretary-General, in his capacity as chief administrative officer of the Organization pursuant to Article 97 of the Charter of the United Nations, delegates numerous duties and responsibilities to subordinate officials. Thus, in the case of his responsibilities for investment of the assets of the Fund, the Secretary-General has appointed a Representative and has established an Investment Management Service to assist the Representative in conducting the investment activities for the assets of the Fund, in particular in executing investment activities in furtherance of the Investment Committee and with the observations and suggestions of the Pension Board. This approach is consistent with the role of a corporate fiduciary under general principles of agency and trusts.

(C) DELEGATION OF FIDUCIARY RESPONSIBILITY TO SUB-AGENTS

16. Within the parameters of the General rule preventing the delegation of fiduciary responsibilities and duties which can be reasonably performed personally or by subordinates, a fiduciary may delegate his fiduciary responsibilities and functions in such a manner as a prudent investor would in like circumstances in the management of his own affairs entrusted others to perform.<sup>35</sup> Thus, a fiduciary is not required personally or through his subordinates to perform all duties and responsibilities which it would be unreasonable to expect him to perform and may in appropriate cases, delegate his responsibilities and functions to an outside agent.<sup>36</sup>

17. On the other hand, with professional advice as needed, the fiduciary is under the responsibility to personally define the objectives of the investments of the funds held in trust and must not abdicate that responsibility or delegate such responsibilities unreasonably. In particular, any delegation of the fiduciary's duties to an outside agent must be done carefully, with caution and only to the extent reasonably necessary under the circumstances.<sup>37</sup>

18. In the Context of the Secretary-General's responsibilities for investment of the assets of the Fund, the Secretary-General has, in the past, delegated to an outside investment manager the responsibility for investment decisions in small capitalized companies, in which the number of transactions is so great and the amount of each transaction and the proportion of Fund assets involved in such transactions is so small as to make in-house management impracticable. Nevertheless, the Secretary-General has the duty and responsibility, as would be reasonably expected of him to perform either personally or through subordinates, for making decisions, setting policies and carrying out the major activities for investment of the assets of the Fund. Acting through a Special Representative and relying on the advice of the Investments Committee, having regard to the observations and suggestions of the Pension Board, and utilizing the support of the Investment Management Service, the Secretary-General is carrying out those duties and responsibilities.

19. Insofar as the provisions of the Regulations and Rules of the Fund do not expressly permit him to do so, the Secretary-General may not unreasonably delegate his duties and responsibilities for investment of the assets of the Fund to outside investment managers and advisers. The extent of permitted delegation is one of degree and judgement. In any case, the Secretary-General may not delegate to such outside investment advisers his duties and responsibilities as relates to establishing and managing investments policy and strategy.

ROLE OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL VIS-À-VIS  
THE SECRETARY OF THE BOARD

20. Your memorandum of 8 August 1995 seeks our views on the respective roles of the Secretary-General of the Pension Fund and the Representative of the Secretary-General for Investments of the Fund.

21. The roles of these two officials are described in parts II and III of the Pension Fund Regulations. These texts have remained essentially unchanged since their promulgation over 46 years ago.<sup>38</sup>

22. The provisions of the Regulations concerning the roles and responsibilities of the Secretary-General and of the Secretary of the Pension Board are, in principle, clear. The functions and duties for investment of the assets of the Fund are the responsibility of the Secretary-General, as delegated to the Representative of the Secretary-General for Investments of the Fund.<sup>39</sup> The functions and duties with respect to the administration of the Fund are the responsibility of the Board.<sup>40</sup>

23. With regard to the responsibilities for the administration of the Fund, article 4(a) of the Regulations provides that the “Fund shall be administered by the United Nations Joint Staff Pension Board, a staff pension committee for each member organization, and secretariat to the Board and to each such committee”. Articles 4(d) and 14 of the Regulations provide for the General Assembly to have an oversight role in respect of the Pension Board’s responsibilities for the administration of the Fund. Thus, article 4(d) provides that “the assets of the Fund shall be used solely for the purposes of, and in accordance with, the Regulations”, which are adopted by the General Assembly. Article 14(a) provides the “Board shall present annually to the General Assembly and to the member organizations a report, including a balance-sheet, on the operation of the Fund, and shall inform each member organization of any action taken by the General Assembly upon the report”.

24. With regard to the expenses for the administration of the Fund, the Pension Board is required, pursuant to article 15(b) of the Regulations, to submit a biennial estimate of expense “to the General Assembly for approval”. Additionally, article 15(a) provides that “expenses incurred by the Board in the administration of the Regulations shall be met by the Fund”. Thus, the General Assembly has the power to approve the budget for expenses of the Fund, the Pension Board has the power to formulate a budget concerning, and to incur expenses in respect of, the administration of the Fund.

25. The role of the Secretary-General vis-à-vis the Pension Board and the Secretary of the Pension Board is expressly limited to the power to appoint the Secretary and Deputy Secretary of the Pension Board “on the recommendation of the Board”. Additionally, the Secretary-General has the power to “appoint such further staff as may be required from time to time by the Board in order to give effect to these regulations.<sup>41</sup> However, the Secretary of the Pension Board “shall be the chief executive officer of the Fund and shall perform his functions under the authority of the Board”.

26. Thus, the Secretary of the Pension Board acts under the authority of the Pension Board in carrying out the Pension Board’s responsibilities for the administration of the Fund.<sup>42</sup> The responsibilities of the Pension Board include the formulation of the budget for the expenses of the administration of the Fund,

determination of the requirements of staff for the secretariat support to the Pension Board, and for the secretariat support to the Pension Board, and for the day-to-day administration of the Fund's assets.

27. The role of the Secretary General, as described above, is primarily related to investment of the assets of the Fund. In this area, the Secretary-General has paramount authority, subject only to the right of the Pension Board to make "observations and suggestions" concerning investment policy as well as to examine the detailed accounts maintained by the Secretary-General in respect of all investments and other transactions relating to the Fund.

28. The main issue concerning the role of the Secretary-General vis-à-vis the role of the Secretary of the Pension Board is the separate nature of their responsibilities. In the case of investment of the assets of the Fund, the duties and responsibilities have been accorded to the Secretary-General. In the area of administration, duties and responsibilities fall upon the Pension Board and the Secretary of the Pension Board acting under the authority of the Board. Any differences between the Pension Board and the Secretary-General as to the way in which the Pension Board exercises its powers over matters such as the budget proposals for the administration of the Fund, if they are not able to be resolved at sessions of the Pension Board, would have to be resolved by the General Assembly, to whom the Pension Board must report and which approves the budget for the expenses related to the administration of the Fund.

3 October 1995

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20. TERMS OF REFERENCE OF THE OFFICE OF INTERNAL OVERSIGHT SERVICES  
INVESTIGATIONS: "MISMANAGEMENT, MISCONDUCT, WASTE OF RESOURCES  
AND ABUSE OF AUTHORITY"

*Note to the Office of Internal Oversight Services*

Terms of Reference for OIOS Investigations: "Mismanagement,  
Misconduct, Waste of Resources and Abuse of Authority"

INTRODUCTION

1. The Office of Internal Oversight Services exercises operational independence under the authority of the Secretary-General in the conduct of its duties and is authorized to initiate, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to monitoring.<sup>43</sup> The purpose of OIOS is to assist the Secretary-General in fulfilling his internal oversight responsibilities, which extend to the staff and resources of the Organization as well as to separately administered organs.<sup>44</sup>

2. Among its several duties, OIOS is mandated to investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and to transmit to the Secretary-General the results of such investiga-

tions together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken.<sup>45</sup>

3. The Investigations Unit of the Office of Internal Oversight Services focuses its investigations on assessing the potential within programme areas for fraud and other violations through the analysis of systems of control in high-risk operations as well as offices away from headquarters.<sup>46</sup>

Additionally, the Unit may receive reports from staff and other persons engaged in activities under the authority of the Organization suggesting improvements in programme activity and reporting perceived cases of possible violations of rules or regulations as well as possible cases of (a) mismanagement, (b) misconduct, (c) waste of resources or (d) abuse of authority.<sup>47</sup>

4. In order to ensure transparency in the implementation of its investigations, OIOS has established definitions for the four categories of activities for which the Investigations Unit may receive reports from staff and other persons engaged in activities under the authority of the Organization. These definitions derive from the Charter of the United Nations, the United Nations Staff Regulations and Rules, other pertinent administrative issuances and decisions of the United Nations Administrative Tribunal. These definitions will be applied by the Investigations Unit to investigations of staff and, *mutatis mutandis*,<sup>48</sup> to United Nations officials or others engaged in activities under the authority of the Organization.

#### THE LEGAL FRAMEWORK

##### *The Charter of the United Nations*

5. Article 101, paragraph 3, of the Charter of the United Nations prescribes the standards of conduct expected of staff as follows:

“The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity.”

In a similar vein is Article 100, paragraph 1, of the Charter, which enjoins staff from taking any action that might “reflect on their position as international officials responsible only to the organization”.

6. The United Nations Administrative Tribunal has repeatedly affirmed that Article 97 of the Charter of the United Nations makes the Secretary-General responsible for achieving these requirements by making him “the chief administrative officer of the Organization”.

##### *The Staff Regulations and Rules*

7. The Staff Regulations, promulgated by the General Assembly pursuant to Article 101, paragraph 1, of the Charter of the United Nations, contain provisions to ensure that staff maintain the highest standards of efficiency, competence and integrity. These concepts are further amplified in the United Nations Staff Rules and other administrative issuances, such as the Secretary-General’s bulletin and administrative instructions, as interpreted by the jurisprudence of the United Nations Administrative Tribunal.<sup>49</sup>

8. In addition, staff are obliged to respect the standards of conduct described in the 1954 Report on the Standards of Conduct in the International Civil Service, a document which is given to staff members upon their initial appointment and which has been reissued from time to time. This document has been drawn to the attention of staff by an information circular and is included in the United Nations personnel Manual.<sup>50</sup>

9. The Secretary-General, as chief administrative officer of the Organization, must enforce these Charter-imposed standards. However, the Secretary-General also has the responsibility to ensure that the rights of staff are protected, including the right to due process, and that all decisions are free from prejudice and any other extraneous factors.<sup>51</sup>

#### *The role of the Investigations Unit of OIOS*

10. In keeping with the responsibility of the Secretary-General to enforce the Charter-imposed standards of conduct, the Investigations Unit of OIOS is charged with drawing to the attention of the Secretary-General specific instances of conduct which should be corrected. Pursuant to its mandate, the Unit will investigate the activities of staff members, United Nations officials and others engaged in activities under the authority of the Organization in order to determine, among the other things, whether such activities may constitute one or more of the following categories of conduct: “mismanagement, misconduct, waste of resources or abuse of authority”.

11. When the Investigations Unit has completed an investigation, it must report the results of the investigation to the Secretary-General or to his authorized designee, unless the unit determines that, in the circumstances, such action is unnecessary. Upon receiving a report of an investigation, the Secretary-General must then determine whether the nature of the reported conduct constitutes “misconduct,” within the meaning of chapter X of the Staff Regulations and Rules, or “unsatisfactory performance,” within the meaning of chapter IX of the Staff Regulations and Rules. Following the determination, the Secretary-General must next decide whether to institute disciplinary proceedings in the case of misconduct, to institute appropriate proceedings in relation to unsatisfactory performance or to take other suitable measures. No matter what determination is made by the Secretary-General, staff are entitled to full protection of the procedures prescribed in the Staff Regulations and Rules, as interpreted by the United Nations Administrative Tribunal.<sup>52</sup> Moreover, the report and recommendations of the Investigations Unit notwithstanding, the Secretary-General has discretion to decide that matters described in the report of the Unit do not warrant further action and may so inform OIOS.

12. In order to better guide the Investigations Unit in conducting investigations and to more clearly apprise staff members, United Nations officials and others of the nature of such undertakings, OIOS provides the following definitions for the four categories of activities upon which the Unit will focus its investigations. These definitions are grouped under the two principal classifications derived from the Charter of the United Nations and the Staff Regulations. However, these two principal classifications are not mutually exclusive; for example, activities that may be seen to constitute “misconduct” may, and often do, also constitute “unsatisfactory performance”.

*Misconduct*

13. Staff rule 110.0 defines misconduct as follows;

“Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.”

Activities that would constitute a failure to maintain the highest standards of integrity include, for example, the following:

- (a) Any willful disregard of the Organization’s legislative mandates or of its Regulations and Rules and other administrative issuances and any willful failure to exercise proper care that is either intended to result in personal benefit or in fact results in the misappropriation of monetary or other resources of the Organizations;
- (b) Any act, or failure to act, which demonstrates failure to maintain the highest standards of integrity required by the Charter of the United Nations as well as any statement, written or oral, or silence that is intended to mislead and that results in the misappropriation of monetary or other resources of the Organization; for example, any type of false certification in respect to claims for benefits and allowances.

*Unsatisfactory performance*

14. The Charter of the United Nations requires staff to perform in accordance with the “highest standards of efficiency [and] competence”. Lapses from that standard may be characterized as “unsatisfactory performance”. Activities that would constitute a failure to meet the highest standards of efficiency and competence, and therefore, that could be characterized as “unsatisfactory performances” include the following:

(A) MISMANAGEMENT

Mismanagement includes, for example:

- (i) Any failure of a staff member to perform all assigned tasks, duties and management responsibilities efficiently, competently and with the best interest of the Organization in mind;
- (ii) Any failure by a staff member to ensure that consultants and contractors are trained on such terms and for such tasks as are in the best interest of the Organization and to adequately supervise those consultants or contractors so as to ensure that they are paid only if they perform as agreed.

(B) WASTE OF RESOURCES

Waste of resources includes, for example:

- (i) Any failure to ensure that the monetary or other resources of the Organization are used solely for the purposes of the Organization or for its benefit;

- (ii) Any act or failure to act which is a direct result of a failure to exercise due care, causes loss to the Organization.

(C) ABUSE OF AUTHORITY

Abuse of authority includes, for example:

- (i) Any discharge of management responsibilities which is motivated other than by the interests or purposes of the Organization;
- (ii) Any act or any failure to act which is motivated by discrimination or prejudice.

1 November 1995

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21. MEMBERSHIP AND FUNCTIONS OF THE PANEL OF  
EXTERNAL AUDITORS

*Memorandum to the Executive Secretary, United Nations  
Board of Auditors*

1. This is in response to your memorandum on the above subject in which you seek the opinion of this Office regarding the following questions set out in paragraph 8 and 9 of the annex to the memorandum:

—Whether permitting private-sector audit institutions, which are appointed External Auditors of some specialized agencies, to attend Panel sessions may create a potential constraint for the United Nations;

—Who qualifies for Panel membership within the framework to the General Assembly resolution which established the Panel;

—Whether those United Nations bodies which are currently audited by the private-sector audit firms are regarded as United Nations organizations for the purpose of Panel membership;

—Whether the private-sector audit firms referred to above may be permitted to attend Panel sessions as observers.

2. To answer your questions, we first examined how the issue of membership of the Panel External Auditors has historically evolved.

3. On 7 December 1946, the General Assembly by its resolution 74(I), entitled “Appointment of External Auditors”, established the United Nations Board of Auditors, composed of the Auditors General of three Member States, and decided that they would serve as external Auditors of the accounts of the United Nations and the International Court of Justice, and *of such specialized agencies as may be designated by the appropriate authority* (emphasis added).

4. Three years later, the General Assembly adopted resolution 347 (IV) of 24 November 1949 entitled “Audit procedures for the United Nations and the specialized agencies”, by which it endorsed the revised procedures governing the audit of the accounts of the United Nations and set out the principles regarding *a joint system of external auditors* (emphasis added). Those procedures and principles were contained respectively in annexes A and B to the resolution.

5. According to resolution 347 (IV),<sup>t</sup> the previous system under which members of the Board of Auditors of the United Nations had been designated to serve as external auditors of specialized agencies was replaced with a new arrangement providing for the establishment of a joint system of external audit in the form of a Panel of External Auditors. Under annex B to resolution 347 (IV), each organization was invited to select one or more members of the Panel to perform its audit. As far as the United Nations was concerned, the General Assembly had decided that members of the Board of Auditors should be nominated to the Joint Panel of External Auditors and that the audit of the accounts of the United Nations should be performed by those members only.

6. Annex B to resolution 347 (IV) stated that the Panel of External Auditors would not exceed six in number and that it would consist of the auditors appointed by common consent by the United Nations and specialized agencies. Annex B imposed an important limitation on the appointment of members of Panel. Paragraph 1 of that annex provided that the Panel should be composed of auditors having the rank of Auditor-General or its equivalent in the various Member States.

7. According to resolution 347 (IV), the Panel of external Auditors was established for three main purposes. Its first task was to provide organizations with an opportunity to select an external auditor from the list of six external auditors, members of the Panel. Secondly, annual meetings of the Panel were to be used by its members for the coordination of their audits and for the exchange of information on methods and findings. Finally, the Panel was invited to submit any observations or recommendations which it might wish to make on the coordination and standardization of the Accounts and financial procedures of the United Nations and the specialized agencies.

8. It appears from the foregoing that the joint system of external auditors introduced by General Assembly in its resolution 347 (IV) was based to a great extent on the assumption that most of the specialized agencies would structure their external audit services along the lines of the external audit procedures employed by the United Nations. Therefore, as noted above, under the joint system each organization was asked to select its external auditor or auditors from the members of the Panel and the latter were required to have the rank of Auditor-General or its equivalent in the various Member States, as provided for by the United Nations regulations.

9. At its fourteenth session, the General Assembly reviewed, on the basis of the observations submitted by the panel and the Consultative Committee on Administrative Questions (CCAQ) of the Administrative Committee on Coordination (ACC),<sup>53</sup> the operation of the joint system of external auditors and, in effect, concluded that the original concept of having a Panel of External Auditors from which the Auditors of the participating organizations would be chosen was no longer viable and that, consequently, that function of the Panel should be abolished. In the light of the foregoing, the General Assembly by the resolution 1438 (XIV) of 5 December 1959, revised the terms of reference of the Panel. Paragraph 1 of annex to the resolution states that "the purpose of the Panel shall be to further the coordination of the audits for which its members are responsible and to exchange information on methods and findings". The Assembly also decided that under the circumstances the Panel should have a difference composition providing all of the specialized agencies with an opportunity to derive advantage from the work of the Panel. Paragraph 1 of the annex to

resolution 1438 (XIV) provides that the Panel of External Auditors shall be composed of the members of the United Nations Board of Auditors and appointed external auditors of the specialized agencies and International Atomic Energy Agency. Resolution 1438 (XIV) remains at present in effect and, therefore, continues to determine membership of the Panel of External Auditors and to govern its activities.

10. The textual analysis of the relevant provisions of resolution 1438 (XIV) does not provide any ground for drawing a distinction, for the purposes of determination of memberships of the Panel, between private and government audit institutions employed by the specialized agencies. Paragraph 1 of the annex to the resolution explicitly states that “the appointed external auditors of the specialized agencies ... shall constitute a Panel of External Auditors”. It appears from the text that should a specialized agency decide to contract a private institution to undertake the external audit of its accounts, under resolution 1438(XIV) a designated official of that institution would be entitled to become a member of the Panel for the duration of the contract.

11. Provisions of resolution 1438 (XIV) concerning membership of the Panel, in our view, cannot be interpreted in isolation from its other provisions, in particular those related to the functions of the Panel. Pursuant to the resolution, the Panel of External Auditors is entrusted with the primary responsibility of enhancing the coordination of the audits and the exchange of information on methods and findings. The resolution further provides that the Panel may submit to the executive heads of the participating organizations any observations or recommendations in relation to the accounts and the financial procedures of the organizations concerned and that, conversely, the executive heads of the participating organizations may, through their auditors, submit to the Panel for its opinion or recommendations any matter within its competence. Should the private audit institutions employed by the specialized agencies be deprived of the right to participate in the work of the Panel, the latter would be deliberately excluded from its activities.

12. It is noted in your memorandum that at the time of the adoption of the above captioned resolution all the specialized agencies and the International Atomic Energy Agency which had been notified of the proposed changes (International Labour Organization, World Health Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization and the International Civil Aviation Organization) had external auditors with the rank of Auditor-General or its equivalent. This is a noteworthy factor. However, it cannot in our view, play a decisive role for the purposes of the interpretation of the resolution.

13. In summation, having analyzed resolution 1438 (XIV) in its entirety, with reference to your question concerning membership of the Panel, we have arrived at the conclusion that all designated external auditors employed by the specialized agencies, irrespective of whether they work for a private company or a government institution are entitled to be members of the Panel for the duration of their service as external auditors of the specialized agencies concerned.

14. With regard to your question as to whether permitting private audit institutions to attend Panel sessions may create a potential constraint for the United Nations, we should like to point out that according to its terms of reference the Panel of External Auditors is not authorized to perform an actual audit of accounts of the United Nations or accounts of the trust funds established under the Financial Regulations and Rules of the Organization, nor is it permitted to have access to books of account and records of the United Nations. As noted above, the task of the Panel is “the coordination of the Audits *for which its members are responsible* (emphasis added) and the exchange of information on methods and findings. With reference to the latter, it should be observed that pursuant to United Nations financial regulations 12.10 and 12.11, the findings of the audit are recorded in the report of the Board of Auditors, which is transmitted, together with the audited financial statements, to the General Assembly. Therefore, we believe that participation in the work of the Panel of private auditors employed by some specialized agencies should not create any potential constraint for the United Nations.

15. As far as your last two questions are concerned, we would like to reiterate that in accordance with resolution 1438 (XIV) only the members of the United Nations Board of Auditors, the appointed external auditors of the specialized agencies and of the International Atomic Energy Agency constitute the Panel of External Auditors. Consequently, pursuant to the resolution, external auditors of other international organizations are not qualified for Panel membership. In addition, it is worth noting that according to international law the term “international organization” means an intergovernmental organization, in other words an organization which is created by an agreement of States. Subsidiary bodies of the United Nations are established by decisions of the principal organs of the United Nations, such as the General Assembly, the Security Council or the Economic and Social Council. Therefore, those bodies are not regarded as international organizations in their own right.

16. Resolution 1438 (XIV) is silent on the question as to whether observers should be permitted to attend sessions of the Panel. In accordance with paragraph 4 of the annex to the resolution, the Panel is supposed to adopt its rules of procedure, which may theoretically contain provisions allowing participation of observers. However, in view of the delicate nature of the issue of observers, we believe that, should the Panel conclude that its work would be facilitated by participation of particular categories of observers, it should first circulate for observations its recommendations on the subject to all organizations concerned and subsequently submit those recommendations for the consideration by the General Assembly.

5 December 1995.

22. JURIDICAL PERSONALITY OF THE UNITED NATIONS FRAMEWORK  
CONVENTION ON CLIMATE CHANGE SECRETARIAT

*Memorandum to the Executive Secretary, Framework Convention  
of Climate Change, Geneva*

1. This is with reference to your facsimile transmissions of 1 and 13 December 1995 seeking our views, among others matters, on the question of juridical personality and legal capacity of the Secretariat under the United Nations Framework Convention on Climate Change<sup>54</sup> (hereinafter ‘the Convention Secretariat’).

2. The Convention Secretariat is one of the bodies foreseen in that instrument. Thus, in accordance with paragraph 2 of article 7, the Conference of the Parties is “the supreme body of [the] Convention”. Furthermore, the Convention established a subsidiary body for scientific and technological advice (article 9), a subsidiary body for implementation (article 10) and, finally, a financial mechanism (article 11). Our analysis of both the legal nature and the functions of these bodies indicates that they have certain distinctive elements attributable to international organizations. However, it is clear that none of these bodies is *de jure* a United Nations subsidiary organ.

3. As you will recall, in accordance with our previous advice regarding the arrangements for first meeting of the Parties to the Convention, the relevant conference agreement was concluded between the Secretariat of the Convention and the Government of Germany. That advice was based *inter alia*, on the provisions of paragraph 2(f) of article 8 which empowered the Secretariat to “enter into such administrative and *contractual arrangements* as may be required for the effective discharge of its functions” (emphasis added).

4. However, none of the above-referenced bodies of the Convention has been duly vested by the Parties with a clear juridical personality on the international plan. Nor have the entities established by the Parties been accorded the appropriate privileges and immunities, including immunity from legal process.

5. Moreover, notwithstanding the fact that the Convention Secretariat is “institutionally linked to the United Nations”, the legal regime enjoyed by the United Nations under applicable agreements cannot be automatically attached to the Convention Secretariat. Therefore, it would in our view be appropriate to clarify the ambiguity concerning the nature and legal status of the Convention Secretariat under international law, which would help to focus the forthcoming discussion with Germany on the *mutatis mutandis* applicability of the recently concluded United Nations Vienna Headquarters Agreement to the Convention Secretariat. One possible way of clarifying this ambiguity would be if the Conference of the Parties or the subsidiary body for implementation took a decision conferring the required juridical personality and legal capacity upon the Convention Secretariat and according it such privileges and immunities as are necessary for the fulfilment of its purposes.

6. In the context of this approach, I should like to draw your attention to decision VI/16 taken in October 1994 by the Sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer,<sup>55</sup> attached herewith, clarifying the nature and legal status of the Multilateral Fund as a body under international law and, in particular, conferring upon it juridical personality and the legal capacities to enter into contractual arrangements, acquire and dispose of movable and immovable property and institute legal proceedings. By the same decision, the Fund was vested with the necessary privileges and immunities, and its officials were also accorded such privileges and immunities as are necessary for the independent exercise of their functions.

*Attachment*

DECISION VI/16. JURIDICAL PERSONALITY, PRIVILEGES AND IMMUNITIES OF  
THE MULTILATERAL FUND

*Recalling* decision IV/18 of the Fourth Meeting of Parties, which established the Financial Mechanism, including the Multilateral Fund for the Implementation of the Montreal Protocol, provided for in article 10 of the Montreal Protocol, as amended in London on 29 June 1990,

To clarify the nature and legal status of the Fund as a body under international law as follows:

(a) *Juridical personality.* The Multilateral Fund shall enjoy such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in particular the capacity to enter into contracts, to acquire and dispose of moveable and immovable property and to institute legal proceedings in defence of its interests;

(b) *Privileges and immunities*

- (i) The Fund shall, in accordance with arrangements to be determined with the Government of Canada, enjoy in the territory of the host country such privileges and immunities as are necessary for the fulfilment of its purpose;
- (ii) The officials of the Fund Secretariat shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Multilateral Fund.

18 December 1995

## TREATIES

### 23. AMENDMENTS TO THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS AND ADDITIONAL PROTOCOLS—ARTICLES 3 AND 8 OF THE CONVENTION

#### *Letter to the Deputy Director, Centre for Disarmament Affairs, and Provisional Secretary-General of the Convention on Certain Conventional Weapons Review Conference*

This is in reply to your telefax of 14 July 1995, conveying a number of questions on actions to be taken by the forthcoming Review Conference of the Convention on Certain Conventional Weapons. I received under separate cover copy of the note verbale from the Secretary-General informing States about the convening the Review Conference, to be held at Vienna from 25 September to 13 October 1995.

I shall address your queries in the order in which you formulated them. My reply will be on the basis of the contents of your telefax, as well of the text of the Convention and the draft rules of procedure for the Review Conference.<sup>56</sup>

#### *Amendments to the Convention and the annexed Protocols*<sup>57</sup>

(a) If the proposed rules of procedure are adopted, would amendments to the Convention or to annexed Protocols have to be adopted with a vote?

(b) If the answer to the preceding question is in the affirmative, what would be the course of action to be followed if there was no agreement among the States parties on a specific amendment? Since the rules of procedure are not precise on this point, would it be possible to resort to a vote, if a majority of the States parties were willing to do so?

Rule 34 of the draft rules of procedure states that the Conference “shall conduct its work and take decisions in accordance with article 8 of the Convention”. Article 8.1(b) of the Convention provides that amendments to the Convention or any annexed Protocol shall be adopted “in the same manner as this Convention and the annexed protocols, provided that the amendments to this Convention may be adopted only by the High Contracting Parties and that amendments to a specific annexed Protocol may be adopted only by the Eight Contracting Parties which are bound by that Protocol”. You state in your telefax that the Conference which adopted the Convention was unable to adopt a rule of procedure on decision-making for lack of agreement on this issue, and that the Convention and its annexed Protocols were eventually adopted without a vote.

It is the view of this Office that the fact that the Convention and the annexed protocols were adopted without a vote cannot, in the particular circumstances that prevailed in the 1979-1980 Conference, constitute a binding precedent for the Review Conference. As you state in your communication, the first Conference was unable to agree on the decision-making process to be followed for the adoption of the instruments under consideration; this is reflected in the absence of an appropriate rule of procedure for the Conference and by the silence of the two reports of the Conference to the General Assembly on the issue of decision-making.<sup>58</sup> The adoption of the text of the Convention and the annexed Protocols without a vote, i.e., by general agreement, took place de facto

rather than in conformity with a previous decision by the Conference and in accordance with its rules of procedure. Article 8.1(b) uses the expression “shall be adopted ... *in the same manner as this convention and the annexed Protocols*” (emphasis added); however, it seems to us that the Convention makes reference to the method agreed upon by the Conference for such adoption, rather than to the manner in which in the absence of a decision thereon, the Convention was a fact adopted.

In view of the foregoing, it is the view of this Office that the issue of the “manner of adoption” of the Convention and its annexed Protocols, to which article 8.1(b) makes reference, remains undecided. Consequently, and pursuant to the above-quoted draft rule 34, the Review Conference is not limited to adopting proposed amendments without a vote but can resort to a vote in case it is impossible to obtain a general agreement. However, it would be up to the Conference to agree on the conditions and modalities for resorting to a vote, and on the necessary majority.

(c) Once the amendments are adopted, should they be opened for signature or, since the Convention and the Annexed Protocols have already entered into force, should they be referred to all States for their consideration and, as appropriate, for their ratification and accession?

There is no general rule of international law as to whether amendments to a convention are to be opened for signature. Consequently, reference must be made to the final clauses of the Convention in question. In the case of the Convention on Certain Conventional Weapons and its annexed Protocols, article 8.1(b) of the Convention states that amendments to the Convention and the annexed Protocols “shall enter into force in the same manner as this Convention and the annexed Protocols”. Article 5 of the Convention provides that the Convention shall enter into force six months after the date of deposit of the twentieth instrument of ratification, etc; an annexed Protocol shall enter into force six months after the date by which 20 States have notified their consent to be bound by that Protocol. After that date, the Convention and the annexed Protocols shall enter into force for a State six months after that State has deposited its instrument of ratification, etc., or, respectively, six months after it has notified its consent to be bound by a protocol. The opening of a certain instrument to signature is only required by article 3, which states that the Convention would be open for signature by all States for 12 months as from 10 April 1991. Nowhere is it mentioned, expressly or by reference to article 3, that amendments to the Convention or to the annexed Protocols are to be opened for signature.

In view of the foregoing, amendments adopted at the forthcoming Conference do not have to be opened for signature. In the case of the Convention, they shall be immediately open to ratification, etc., by the High Contracting Parties. In the case of the annexed Protocols, they shall be open to notifications of consent to be bound by States parties to those Protocols.

#### *Additional protocols*

(d) Should States which are not parties to the Convention but are participating in the Review Conference be able to participate in the decision to adopt additional protocols? Or, on the other hand, should they not be allowed to participate in the decision to adopt additional protocols, since those protocols would be additional to a Convention to which those States are not parties?

Article 8.2(a) of the Convention provides that, in case a conference for the consideration and adoption of additional protocols is convened, the depositary shall invite “all States” to such a conference. Article 8.2(b) provides that the conference may agree, “with the full participation of all States represented at the Conference,” upon additional protocols. We are aware of the fact that the ambiguous language of the latter provision was the result of a difficult compromise between rather different positions as regards the negotiations and adoption of new protocols.

Pursuant to established international practice, protocols additional to a given convention are not completely separate and autonomous instruments but are ancillary to, and inseparable from, that convention. This principle is reflected in article 4.5 of the Convention on Certain Conventional Weapons which states that protocols, once they are in force for a certain State, form an integral part of the Convention as far as that State is concerned. It follows from the above that additional protocols could normally only be adopted by the State parties to the Convention in question, unless the Convention itself clearly laid out a different decision-making process. It does not seem to us that the language of the relevant articles of the Convention on Certain Conventional Weapons as well as the draft rules of procedure for the Review Conference, contain a clear exception to the foregoing principle. Article 8.2(a) provides that only a High Contracting Party can propose an additional protocol, and that the depositary shall communicate this proposal to all High Contracting Parties, and shall convene a Conference if a certain number of High Contracting Parties so agree. Article 8.2(b) states that “such a conference” may agree upon additional protocols; the “full participation of all States represented at the Conference” is added after those words as a parenthetical. The draft rules of procedure only refer to States parties as regards representation in the Conference (rule 1) and the determination of the quorum (rule 18). Draft rule 1 adds that States non-parties may participate as observers. The draft rules do not contain any distinction between the adoption of amendments and that of new protocols.

In view of the foregoing, it is the view of this Office that only States parties to the Convention on Certain Conventional Weapons can adopt additional protocols. The process that leads to the adoption, however, has to ensure the full participation of all States represented at the Conference. It should be noted in this regard that a distinction between a right of “full participation” in a United Nations conference and the right to take part in the adoption of substantive decisions by that conference finds a recent precedent in “full participation” of the European Community in the United Nations Conference on Environment and Development. In that case, a right of “full participation” did not include the right to take part in the adoption of substantive decisions.

(e) Once adopted, would the additional Protocols be open for signature or should they be referred to all States for their consideration and, as appropriate, for their ratification or accession, since they would be additional to a Convention which is already in force?

The reply given to point (c) applies, *mutatis mutandis*, also to the additional Protocols.

You further inquire as to whether full powers should be required for the delegations participating in the review Conference. Under general international law, as codified by article 7.2(c) of the 1969 Vienna Convention on the Law of

Treaties, “representatives accredited by States to an international conference ..., for the purpose of adopting the text of a treaty in that conference” are considered as representing their States by virtue of their functions and without having to produce full powers. The credentials of the representatives of the States participating in the Conference would constitute adequate full powers.

28 July 1995

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24. INTERPRETATION OF ARTICLE 8 OF THE CONVENTION ON CERTAIN  
CONVENTIONAL WEAPONS

*Facsimile to the Convention on Conventional  
Weapons Review Conference*

This is in response to the questions which were raised in your facsimile of 9 October 1995.

PERIODICITY OF FUTURE REVIEW CONFERENCES

1. The question has been raised whether in order to ensure the convening every 5 or 10 years of regular conferences of States parties to 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>59</sup> (hereinafter “the Convention”) to review the scope and operation of the Convention, the text of article 8, paragraph 3, of the Convention should be amended, or whether the current Conference has the authority to take a decision to that effect without amending the Convention.

It has been suggested in the latter case that, should the current Conference decide on the matter, the subsequent regular conferences would be automatically convened by the Secretary-General of the United Nations or at the request of the general Assembly.

2. The procedures concerning the convening of Conferences of High Contracting Parties are governed by the provisions of article 8 of the Convention.

3. Paragraphs 1 and 2 of article 8 set forth the requirements for the convening of such conferences in cases where a State party proposes either an amendment to the Convention or any annexed Protocols, or an additional protocol relating to the categories of conventional weapons not covered by the existing Protocols.

4. Paragraph 3 of article 8 relates to the convening of a review conference, which according to paragraph 3(a) could be convened *at the request of any High Contracting Party* (emphasis added) if, after a period of 10 years following the entry into force of the Convention, no conference has been convened in accordance with paragraphs 1 or 2 of article 8. It is pursuant to article 8, paragraph 3(a), of the Convention, that the Government of ... requested the convening of the present Conference.

5. Paragraph 3 of article 8 does not provide for the convening, following the conclusion of the review conference referred to in subparagraph 3(a), of subsequent periodic review conferences. However, it is noted in paragraph 3(c) of that article that there may be a need for a further review conference. Paragraph 3(c) provides in this regard that the review conference may consider whether provision should be made for such a further conference. Paragraph 3(c) quite explicitly states in this connection that, should the review conference take a decision to that effect, the conditions governing the convening of the review conference should also be observed in the case of a further conference, namely, it may be convened at the request of any High Contracting Party such request could be made only after the expiration of a 10 year period during which no conference had been convened in accordance with paragraphs 1 or 2 of article 8 referred to above.

6. It appears from the foregoing that, from a strictly legal point of view, a single further conference is the only additional review forum that may be convened under article 8, paragraph 3, of the Convention, because the latter contains no provisions authorizing the further conference to make arrangements for a subsequent review conference or conferences.

7. The foregoing analysis results from an interpretation of the Convention which is based solely on the textual reading of paragraph 3 of article 8. However, it should be noted that article 8 of the Convention is entitled "Review and amendments". It could be argued that at the time of the adoption of the Convention, it was understood that the purpose and object of the Convention would require the convening of Conferences of Contracting Parties "to review the scope and operation of this Convention and the Protocols annexed thereto" (article 8, pa. 3(a)). The fact that article 8 includes a reference to a review procedure may be considered as a reflection of an intent on the part of the authors of the Convention to establish a mechanism which, taking into account the purpose and object of the Convention, would allow, if necessary, the convening of conferences of Contracting Parties to review the implementation of the Convention. It is worth noting that the International Law Commission in its commentaries to the draft articles on the law of treaties pointed out that the majority of jurists emphasized the primacy of the text as the basis for the interpretation of a treaty, while at the same time giving a certain place to extrinsic evidence of intentions of the parties and to the objects and purposes of the treaty as a means of interpretation.<sup>60</sup>

8. It could also be argued that although article 8, paragraph 3, of the Convention does not provide for serial periodic review conferences, it does not, at the same time, necessarily preclude the holding of such conferences, should the Contracting Parties be in agreement that it would facilitate the implementation of the Convention.

9. The 1969 Vienna Convention on the Law of Treaties states in paragraph 3(a) of article 31 (General rule of interpretation) that in interpreting a treaty there shall be taken into account, together with the context, *inter alia*, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.

10. In its commentaries on this paragraph, the International Law Commission concluded that "an agreement as to the interpretation of a provisions reached after the conclusion of the treaty represents an authentic interpretation by the parties which must be read into the treaty for the purposes of its interpretation".<sup>61</sup>

11. On the basis of the above analysis, this office is of the view that should the current Review Conference determine by general agreement or consensus, that in the light of the purpose and object of the Convention Review Conferences of Contracting Parties should be held regularly in order to facilitate the implementation of the Convention such a decision would not directly contravene the provisions of paragraph 3 of article 8 of the Convention as long as the above decision was taken on the understanding that, as provided for in the paragraph, a request to convene a review conference, after a determined period of time would be made by a Contracting Party and, therefore, there would be no trigger mechanism implying that review conferences should be convened automatically by the Secretary-General as the Depositary.

13 October 1995

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### CLAIMS, COMPENSATION, CONTRACTS AND LIABILITY ISSUES

#### 25. LIABILITY OF THE UNITED NATIONS IN RESPECT OF CONTINGENT-OWNED EQUIPMENT—GUIDELINES FOR GOVERNMENTS CONTRIBUTING TROOPS TO UNITED NATIONS PEACEKEEPING OPERATIONS—MODEL AGREEMENT BETWEEN THE UNITED NATIONS AND MEMBER STATES CONTRIBUTING PERSONNEL AND EQUIPMENT TO UNITED NATIONS PEACEKEEPING OPERATIONS

*Memorandum to the Assistant Secretary-General, Controller,  
Office of Programme Planning, Budget and Accounts*

1. This is with reference to your memorandum of 19 December 1994, seeking our views on the request by the Advisory Committee on Administrative and Budgetary Questions regarding the liability of the United Nations in respect of contingent-owned Accounts

#### INTRODUCTION

2. You have indicated that, in the Secretary-General's report on the financing of the United Nations Assistance Mission in Rwanda (UNAMIR),<sup>62</sup> provision was made for compensating claims by Governments for equipment which was lost, stolen or abandoned during the withdrawal of military contingents from Rwanda in April 1994. You have also indicated that, in its related report on the financing of UNAMIR, the Advisory Committee recommended that "an analysis should be undertaken of the legal aspects of United Nations liability under various circumstances which might arise in peacekeeping operations and the results of such analysis should be submitted for the Advisory Committee's consideration as soon as possible".<sup>63</sup> You have indicated to us that the Advisory Committee requested that the cost estimate for the following financial period should reflect the results of the legal analysis, and you have accordingly requested the Office of Legal Affairs to undertake the Analysis requested by the Advisory Committee on this matter.

## PRELIMINARY REMARKS

### *Scope of the requested legal analysis*

3. Further to your above-mentioned memorandum, we were informed that the Advisory Committee on Administrative and Budgetary Questions seeks a succinct analysis of the Organization's liability in respect of damaged, lost or abandoned contingent-owned equipment, having regard, in particular, to the abandoned equipment in Rwanda. Such an analysis is set out in the following sections.

### LACK OF CASE-SPECIFIC DOCUMENTATION

4. We would first note that neither your memorandum nor the Secretary-General's aforementioned report on the financing of UNAMIR, provide any information as to the precise facts and circumstances concerning the abandoned equipment in Rwanda which led to the Advisory Committee's inquiry. Neither your Office nor the Department of Peacekeeping Operations could provide us with further facts. In the absence of specific cases of loss, we find it difficult to provide other than general advice.

### *Agreements between the United Nations and troop-contributing States*

5. The issue of whether it is the United Nations or the Government of the contingent to which the equipment belongs that bears the responsibility for the cost of repair/replacement of damaged/lost equipment is a matter which has to be considered on a case-by-case basis in the light of the arrangements between the United Nations and each Government contributing equipment to peacekeeping operations. Such arrangements should be based on the Model Agreement between the United Nations and Member States contributing personnel and equipment to United Nations peacekeeping operations.<sup>64</sup>

6. In the context of UNAMIR, this Office has only cleared one draft agreement: with a Member State concerning its contribution to UNAMIR. The draft in question was based on the Model Agreement and legal clearance was given on that ground. In the absence of information or documentation concerning, for example, (a) the identity of the equipment that was abandoned in Rwanda in April 1994; (b) the specific terms agreed upon between the Organization and Governments which contributed this equipment to UNAMIR; (c) the identity of the contingents which were using the equipment in question; and (d) the exact circumstances under which the equipment was abandoned, we will review the matter under consideration on the basis of the provisions of the Model Agreement. We will further refer to the relevant provisions of the Aide-Memoire entitled "Guidelines for Governments Contributing Troops to United Nations Peacekeeping Operations" which are annexed to the agreements between the Organization and Member States contributing personnel and equipment<sup>65</sup> and which provide the general administrative and financial arrangements applicable to the deployment of military personnel to peacekeeping operations. These Guidelines set out the Letter of Assist procedures and the general principles governing the calculation of reimbursement by the United Nations in respect of contingent-owned equipment.<sup>66</sup>

7. Paragraph 19 of the Model Agreement provides that the equipment provided by a Member State at the Organization's request "shall remain the property of the Government". Accordingly, unless otherwise agreed by the Organization and the Government, the equipment provided by the Governments always remains the property of the Government. As regards the financial arrangements for such equipment, paragraph 20 of the Model Agreement regulates the reimbursement obligations of the United Nations to the Government as follows:

"20. The value of all Government/contingent-owned equipment and other supplies made available to the United Nations shall be determined upon their arrival in and departure from [the United Nations peacekeeping operation]. The United Nations shall reimburse the Government of the [participating State] *as compensation for usage of the equipment* in the amount of the difference between the value of the equipment at the time it is brought in and the residual value when it is repatriated, in the case of short-term missions, or, in the case of missions extending over several years, at rates of 30 per cent, 30 per cent, 20 per cent and 20 per cent per annum respectively over a four-year period. In the case that the full incoming value of the equipment is reimbursed to the Government of [the participating State], the residual value of outgoing equipment at the completion of an operation shall be credited to the United Nations."<sup>67</sup> (emphasis added)

In the light of the above provision, it is clear that the Organization compensates the Government "*for usage of the equipment*" according to depreciation guidelines based on the value of the equipment agreed upon at the time of its arrival and for a period extending up to four years at sliding scale rates.<sup>68</sup> If the equipment remains in use in the mission area for more than four years, the issue of compensation for usage does not arise, as the agreed upon value of the equipment would have been fully paid by the United Nations. Similarly, no question should arise for compensating the Governments for loss of or damage to equipment, if such loss or damage occurred four years after the equipment has been in use by the Organization.

8. In addition to the Organization's responsibility to compensate the Government for the use of the equipment, the Guidelines stipulate that the United Nations is responsible for the maintenance of the contingent-owned equipment and bears the cost of effecting repairs to such equipment in the event of damage while it is in use by the United Nations.<sup>69</sup> It is thus clear that the United Nations is responsible for repairing equipment that has been damaged while in use by the United Nations.

9. While paragraph 23 of Model Agreement makes provision for negotiations between the parties in the event that Government-owned aircraft/vessels are lost, there are no explicit provisions in either the Model Agreement or the Guidelines regulating which party bears the risk in the event that other types of equipment are totally lost, stolen or abandoned. Paragraph 23 states:

"23. The United Nations shall arrange appropriate third-party insurance.<sup>70</sup> *Any claim by the Government of [the participating State] in respect of loss of aircraft vessel(s) while in service with the United Nations shall be settled by negotiation, based on the residual value of the aircraft/vessel(s) at the time of the loss.*" (emphasis added)

In this respect, it should be pointed out that the applicability of the latter provisions is explicitly limited to aircraft and vessels and should not be interpreted as applicable to the issue at hand, i.e., which of the parties bears the responsibility for the replacements costs for other types of lost, stolen or abandoned contingent-owned equipment. It should be noted that, under the above-quoted provisions, claims would have to be settled by negotiation based on the residual value of the aircraft/vessel. The Organization is, under such provisions, exposed to potential liability in the event of loss of an aircraft/vessel being used by the United Nations under Letters of Assist. We have been informed by the Field Administration and Logistics Division that such liability could, in the case of totals loss, run to millions of dollars since modern aircraft, such as the C-130, used for troop rotations and long-term services for peacekeeping operations are State aircraft and are not normally insured.

#### CONCLUSION

10. Having regard to the foregoing, it would appear that the existing arrangements for contingent-owned equipment do not take account of the rapid expansion of peacekeeping operations and the risks associated with that expansion. A lacuna exists as to which party bears the responsibility for the cost of lost, stolen, or abandoned contingent-owned equipment, other than aircraft/vessel(s). However, troop-contributing States could argue that the resolution of claims in respect of such contingent-owned equipment should be based on the formula provided in the above-quoted paragraph 23. As mentioned above in respect of aircraft/vessels, this could pose extensive potential liability for the Organization.

31 January 1995

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26. PROHIBITION OF ADVERTISING IN UNITED NATIONS PURCHASE ORDERS—  
USE OF THE UNITED NATIONS NAME AND EMBLEM—UNITED NATIONS  
GENERAL CONDITION FOR GENERAL CONTRACTS

*Memorandum to the Officer-in-Charge, Purchase  
and Transportation Service*

1. Please refer to your memorandum of 3 April 1995 on the above-captioned subject. It is noted that you have received an informal inquiry from the Permanent Mission of ... as to whether United Nations contractors should be permanently bound by the standard provisions of the purchase orders prohibiting vendors from advertising that they are furnishing goods or services to the United Nations, or whether this prohibition lapses after the contract has been performed. You requested our advice with regard to this inquiry.

2. As you know, the use of the United Nations name and emblem is reserved for official purposes of the Organization in accordance with General Assembly resolution 92(1) of 7 December 1946, which also prohibits any use of the United Nations name or emblem for commercial or any other purposes without the authorization of the Secretary-General.

3. The inquiry, as described in your memorandum, is formulated in general terms: it is not clear to which specific goods or services the inquiry refers. Therefore, relevant provisions of applicable existing United Nations are briefly reviewed below.

4. As noted in your memorandum, United Nations General Conditions for Purchase Orders contain a provisions entitled “Prohibition on advertising,” which reads as follows:

“the Vendor shall not advertise or otherwise make public that the vendor is furnishing goods or services to the United Nations.”

In additions, those General Conditions contain a provisions entitled “Use of the United Nations name and emblem” stipulating that:

“The Vendor shall not use the name, emblem or official seal of the United Nations or any abbreviations of the name ‘United Nations’ for any purpose.”

5. It is noted that the inquiry concerns both goods and services provided to the United Nations, and that usually services to the Organization are provided on the basis of contracts rather than purchase orders. In this connection, it should be recalled that the United Nations General Conditions for General Contracts contain a provisions concerning “Use of name, emblem or official seal of the United Nations,” which reads as follows:

“The Contractor shall not advertise or otherwise make public the fact that it is a contractor with the United Nations. Also the Contractor shall, in no other manner whatsoever, use the name, emblem or official seal of the United Nations or any abbreviation of the name of the United Nations in connection with its business or otherwise.”

6. Similar provisions are included, for example, in the United Nations Standard Aircraft charter Agreement and the United Nations Development Programme General conditions of Contract for Minor Construction Works (with the addition of the words “Unless written authorization is given by UNDP”).

7. While the above provisions do not contain a specific reference to the continued validity of the prohibition established therein after contract performance, some others do. For example, the General Terms and Conditions Applicable to Purchase Orders, used by UNDP, provide as follows:

“The Seller shall not advertise or make public the fact that it is performing, or has performed, services for the UNDP or the United Nations, or use the name, emblem or official seal of the UNDP or the United Nations or any abbreviation of the name of the UNDP or the United Nations for advertising purposes or for any other purposes. *This obligation does not lapse upon completion of work under this Order or termination thereof.*” (emphasis added)

A similar stipulation is included in the General Conditions for United Nations Development Programme/Office of Personnel Service (UNDP/OPS) Contracts for Professional Services.

8. Thus, while specific legal arrangements for purchasing different goods or services by the organizations of the United Nations system may differ, the prohibition on using the United Nations name or emblem for commercial or any other unauthorized purposes is applicable in all cases in accordance with General Assembly resolution 92(I). Some of the provisions quoted above explicitly state that the prohibition contained therein does not lapse with the completion of performance under the contract. While others do not contain a specific indication to that effect, they are not intended to derogate from the general prohibition established by the General Assembly, which remains valid irrespective of the way one or another contract or purchase order is formulated.

9. Accordingly, unless an explicit written authorization to the contrary is granted by the Organization, United Nations vendors and contractors are precluded from the advertising or making public that they were furnishing goods or services to the Organization even upon cessation of performance under purchase orders or contracts.

17 April 1995

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27. RESPONSIBILITY FOR CARRYING OUT EMBARGOES IMPOSED BY THE SECURITY COUNCIL—ISSUE OF LIABILITY OF THE UNITED NATIONS FOR COSTS OF ANY ACTION BY MEMBER STATES CARRIED OUT IN ORDER TO ENSURE COMPLIANCE WITH RESOLUTIONS OF THE SECURITY COUNCIL

*Memorandum to the Assistant Secretary-General, Department of Peacekeeping Operations*

1. This is in response to your memorandum dated 28 March 1995, requesting our advice in connection with a claim for reimbursement of cargo handling expenses incurred by the [name of Company] (hereinafter “the Claimant”) from 20 August to 2 September 1993 at Djibouti harbour. Our advice thereon follows.

2. From the documentation forwarded to us, it appears that the cargo vessel “Y”, which arrived at Djibouti harbour on 19 August 1993, was suspected of carrying weapons to Somalia in violation of the embargo imposed by the Security Council pursuant to paragraph 5 of its resolution 733 (1992) of 23 January 1992. It further appears that the Djibouti authorities as well as the navy of a Member State undertook to search the “Y” for such weapons and that, for that purpose, the Claimant was requested by officials of that Member State to discharge the entire cargo of the “Y” and reload it after completion of the search.

3. Thereafter, it seems that the Claimant repeatedly attempted to obtain from the Embassy of the Member State in Djibouti reimbursement of the cargo handling expenses incurred during that operation, but to no avail. In a letter dated 29 January 1994 addressed to the Claimant, the Deputy Chief of Mission in the Member State’s Embassy indicated the following:

“I should like to confirm that my Governments is of the view that this search was conducted within the framework to he United Nations Somalia operations and hence suggests that you address yourself to the United Nations Secretariat for payment of the expenses incurred”.

As suggested by the Embassy of the Member State in Djibouti, the Claimant has now addressed its claim, in the amount of US\$ 104,320.99, to the United Nations.

4. In paragraph 2 of your memorandum, you indicate your view that “if the Member State’s authorities in Djibouti requested the services of the company, responsibility for payment of the related costs should be borne by such authorities”. You also indicated that “no request was sent to any Governments by the Department of Peacekeeping Operations or any part of the Secretariat, for that matter, to search ships perhaps suspected of carrying weapons to Somalia”.

5. The responsibility for carrying out embargoes imposed by the Security Council rests with Member States, which are accordingly, responsible for meeting the costs of any particular action they deem necessary for ensuring compliance with the embargo. Furthermore, commitments on behalf of the United Nations can only be validly made by the Secretary-General and other officials acting under his authority. Officials of Member States who are not entrusted with the authority to act on behalf of the Organization do not have the power to commit the United Nations.

6. We therefore fully concur with your view that responsibility for payment of the costs incurred by the Claimant should be borne by the authorities who requested the Claimant’s services and not by the United Nations.

21 April 1995

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28. RESPONSIBILITY FOR THE COSTS OF REPAIRING AIRCRAFT USED IN PEACEKEEPING OPERATIONS—STANDARD AIRCRAFT CHARTER AGREEMENT—ARRANGEMENTS FOR TROOP ROTATIONS

*Memorandum to the Officer-in-Charge, Logistics and Communications Service, Field Administration and Logistics Division, Department of Peacekeeping Operations*

1. This refers to your memorandum of 5 January 1995, requesting our advice in connection with a claim submitted to the United Nations by the Government of a Member State for reimbursement of the costs of repairs of an IL-76 aircraft that is said to have been damaged during a rotation of that State’s troops in the service of the United Nations Protection Force (UNPROFOR).

## OUTLINE OF FACTS

2. We understand that, pursuant to a Letter of Assist issued to the Government of the Member State on 10 August 1994, the Government undertook the rotation of its Battalion-1, which had been contributed by the Government to UNPROFOR, between that State and Sarajevo in July and August 1994. The State's air force operated in IL-76 aircraft, which is a State Aircraft, for this rotation. Under the one page Letter of Assist, the United Nations agreed to a lump-sum payment for the rotation; there were no other terms and conditions agreed to between the United Nations and the Governments to govern the rotation.

3. In connection with one of the flights performed by the Governments on 22 July 1994, a one page, undated report by UNPROFOR remarked, "A/C shot at during take off". We understand that no other reports setting out further information and details on the matter were prepared by the United Nations.

4. Five months after the 22 July 1994 flight, the Permanent Representative of the Member State to the United Nations sent a note verbale to the United Nations stating that, during takeoff at Sarajevo airport for the 22 July 1994 flight, the IL-76 aircraft had come under enemy fire and, as a result had been damaged. The Permanent Representative further indicated that a soldier inside the aircraft had been injured and had subsequently died. The Permanent Representative requested that the United Nations reimburse the Governments for repairs to the aircraft. We noted that the Government did not provide any investigative reports on the alleged incident nor any information as to whether the repairs had been effected or the actual costs of the repairs. Such reports and information should normally accompany any claims made against the Organization. We do not know whether the Governments has submitted any claim in respect of the soldier inside the aircraft who died as a result of the firing upon the aircraft. The letter of claim did not provide any supporting evidence of the identity of the soldier or the cause of his death. The present memorandum will address only the request for reimbursement for repairs.

### ARRANGEMENT FOR TROOP ROTATIONS.

5. The issue of whether it is the United Nations or the Government of the Member state that bears the responsibility for the costs of repairing the IL-76 aircraft is a matter which has to be considered in the light of the arrangements the Organization has for troop rotations.

### *Commercial chartering of aircraft*

6. Troop rotations are normally arranged by the United Nations by means of commercially chartered aircraft following international competitive bidding among commercial carriers. This is provided for in the Aide-Memoire entitled "Guidelines for the Governments contributing troops to the United Nations Protection Force in the former Republic of Yugoslavia (hereinafter referred tot as "Guidelines"), which provides the general administrative and financial arrangements applicable to the deployment of military personnel to UNPROFOR. Paragraph 138 of the Guidelines provides, in part:

“the rotation of contingents will be arranged by the United Nations, normally by chartered commercial aircraft after international bidding ... Contractual arrangements with commercial airlines are made by the United Nations. Since numerous airlines will be requested to submit bids for air-lifts, a national airline of the troop-contributing country competes on an equal footing for an award of the contract...”

7. Following international competitive bidding, a contract is concluded between the United Nations and the successful bidder for the rotation on the basis of the Standard Aircraft Charter Agreement. Under that Agreement, it is the carrier that is responsible for maintaining the aircraft in a fully operative condition and airworthy as well as for maintaining full hull (and third party) insurance to cover any damage to the aircraft.<sup>71</sup> Accordingly, the carrier has the risk of loss or damage to the aircraft and is responsible for any costs of repairs of the aircraft which would be covered by commercial insurance.

#### *Letters of Assist*

8. Letters of Assist constitute an exception to the international competitive bidding whereby a Government may be authorized the United Nations to provide, inter alia:

“transportation services for the movement of United Nations military personnel ... to or from a mission area that are not readily available commercially, or which, if provided commercially, would likely cause operational dislocations or shortages;

“... ”

“provided that resort to Letters of Assist shall be discontinued when the circumstances for conditions that give rise to their use no longer obtain”.<sup>72</sup>

9. While arrangements with troop-contributing Governments for troops rotations under a Letter of Assist are allowed as an exception to international competitive bidding when the transportation services “are not readily available commercially, or which, if provided commercially, would likely cause operational dislocations or shortages”, the nature of the air transportation services, whether performed by a Government or a commercial operator, is the same. The United Nations, which is neither the owner nor the operator of the aircraft, is in effect chartering air transportation services for the rotation of troops, irrespective of whether those services are performed by a Government or a commercial operator. The responsibility of the United Nations is limited to payment of an all-inclusive, lump sum price for the performance of the rotation.<sup>73</sup> In such case, the Governments may, like commercial carriers, make arrangements for instance, or it may self-insure, but in any event it assumes the risks of damage that may occur to the aircraft during the rotation.

10. It should be noted in this respect that, having regard to the difficulties which have arisen in the use of Letters of Assist for air transportation services, we have provided to your service the General Terms and Conditions of Letters of Assist for Aviation/Air Transportation Services involving State Aircraft. Para-

graph 15 of the General Terms and Conditions provides that the Government bears the risk of loss or damage to the aircraft and the Government may meet its responsibility under the Letter of Assist through insurance or self-insurance. In future, when troop rotations by means of State aircraft under Letters of Assist are authorized as an exception to commercial charter of aircraft, the above-mentioned General Terms and Conditions of Letters of assist should be used for rotation so that the terms governing the rotations are clearly set out.

#### CONCLUSION

11. Having regard to the above, it is our view that the Government of the Member State, and not the United Nations, bears the responsibility for the costs of repairing the IL-76 aircraft.

9 May 1995

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#### 29. DEATH AND DISABILITY BENEFITS TO MEMBERS OF MILITARY CONTINGENTS PARTICIPATING IN UNITED NATIONS PEACEKEEPING OPERATIONS

##### *Memorandum to the Chief, Finance Management and Support Service, Field Administration and Logistics Division, Department of Peace- keeping Operations*

1. This is with reference to your memorandum of 20 September 1995, which sought our comments on the views of the Advisory Committee on Administrative and Budgetary Questions on the Secretary-General's report (A/49/906) of 2 June 1995 concerning the death and disability benefits to members of military contingents participating in United Nations peacekeeping operations.

#### BACKGROUND

2. In his report, the Secretary-General considered six different alternatives to the current compensation system taking into account the principles and options<sup>74</sup> previously set out in General Assembly resolution 49/233 A of 23 December 1994:

- (a) Current arrangements with a reasonable minimum level of compensation payable for death and disability (option 1);
- (b) System of compensation featuring standardized rates of reimbursement for death and disability (option 2);
- (c) Uniform Global insurance scheme to cover all troops (option 3);
- (d) Current arrangements for military observers and civilian police (option 4);
- (e) Current system of following national legislation with a ceiling (option 5);
- (f) Payment to contributing countries of a fixed amount per soldier per month in lieu of reimbursement (additional option).

The report concluded (para. 25) that “only options 2 and 3 meet all the criteria set out in General Assembly resolution 49/233 A”. In particular, the Secretary-General recommended option 3 as the best alternative.

3. The above proposals were considered by the Advisory Committee in its report (A/50/684) of 30 October 1995. The Committee noted, *inter alia*, a number of administrative and legal issues related to the different options formulated by the Secretary-General, including what the Committee considered would be a “departure from current practices of paying reimbursement for compensation paid by troop contribution countries”, as well as the need to clarify “the legal implication of requiring a soldier without direct contractual arrangements with the United Nations to designate a beneficiary upon arrival in the mission area and of the providing for payments directly to individuals” (para. 10). The Advisory Committee concluded its consideration as follows:

“19. In reviewing the current system and the six options referred to above, the Advisory Committee identified issues on which the General Assembly needs to provide further guidance on whether payments should be in the form of an allowance, a reimbursement or an award and whether they should be made to Member States or individuals directly; the amount to be paid by the United Nations; the status of the additional allowance mechanism put forward by the Secretary-General in his additional option; and whether an insurance scheme should be established. In this regard, a necessary prerequisite is an understanding and agreement on the precise legal status of contingent personnel and of the nature of their legal, administrative and operational relationship with the Organization and their Government. The Fifth Committee may wish to seek appropriate legal guidance on this matter. Furthermore, in relation to the awards aspect of options 2 and 3, the question of whether awards should be paid at one universal rate regardless of national practice and/or origins remains to be clarified.

“20. On the basis of the policy decisions to be taken by the General Assembly on these issues, the Secretary-General should be requested to draft and submit to the Assembly through the Advisory Committee a detailed proposal together with the draft procedures for implementation and the administrative, legal and financial implications. The proposal, which should be formulated with the assistance of the Office of Legal Affairs of the Secretariat, should take into account comments made by the Advisory Committee above as well as such concerns as may be expressed by the Fifth Committee.

“21. Pending the introduction of a new system, the Advisory Committee recommends that, without prejudice to whatever new procedures will be decided upon by the General Assembly, steps should be taken to improve the management of the current system so as to handle outstanding claims expeditiously. For example, there is a need for accurate and readily accessible data and a clear indication of the steps that are taken from the time a claim is submitted to the time of payment.”

## COMMENTS

4. We agree with the comments of the Advisory Committee. Contingent personnel are provided by their Governments under agreements between those Governments and the United Nations. Throughout their period of service in a United Nations peacekeeping operation, they remain under the orders of their respective commanders and retain their legal relationship with their Governments. The United Nations has a legal relationship only with the troop contributing countries. Unlike military observers, who are accorded the status of experts on mission for the United Nations pursuant to section 22 of the Convention on the Privileges and Immunities of the United Nations, contingent personnel, as the Advisory Committee rightly points out in paragraph 16 of its report, “have no direct contractual arrangements with the United Nations”.

5. It follows from the above that it would not be legally appropriate for the United Nations to make any form of direct payments to individual contingent personnel. Nor could internal compensation rules of the United Nations apply directly to individual contingent members, who remain under the in personam jurisdiction of their respective Governments. Therefore, we do not think that the current reimbursement procedure can easily be eliminated or substituted by a system of direct payments to disabled troops or dependent survivors.

6. Also, given the lack of a contractual or a statutory link between the United Nations and the contingent personnel, it would be difficult for the United Nations to require individual contingent members to nominate beneficiaries upon arrival in the mission area. The beneficiaries of such personnel will necessarily be those who are entitled to such benefits under the applicable national law, a situation which the United Nations could not purport to change without the consent of the Governments concerned, which would make the present system of payments even more complex.

7. In the light of the above, and given the views of the Advisory Committee, it seems doubtful to us that option 3 could serve as basis for formulating further proposals to the General Assembly on this matter. Instead, it would seem more consistent with the legal status of contingent personnel and with the nature of their legal, administrative and operational relationship with the Organization and their Governments, to revert to and explore further the position taken earlier by the Secretary-General in paragraph 70 of his report (A/48/945) of 25 May 1994 (i.e., that “the basic mechanism would remain, with the states concerned settling in the first instance and claims for its contingent personnel, based on the national law and regulations prevailing for payments to the armed forces”).

8. In that connection, consideration could be given to a system of combined minimum and maximum payments which would help to give some quality of treatment, while acknowledging the fact that national compensation schemes will vary. At the same time, special attention could be given to those principles mentioned in General Assembly resolution 49/233 A which clearly fall within the authority of the Secretary-General (i.e., “simplification of administrative arrangements to the extent possible” and “speedy settlement of claims for death and disability”). For that purposes, we suggest that Field Administration and Logistics Division consider the possibility of the elimination of unnecessary layers of control and simplifying and speeding-up the certification requirements. It should also be possible to develop clear information mat-

ers to be distributed to troop-contributing States explaining the documentary and other requirements of reimbursements by the United Nations, so as to expedite the handling of such claims.

9. We should be happy to discuss further these matters with you and to review the draft of any future Secretary-General's report on his subject, which will have to address the policy issues raised by the fact that there is no direct relationship between the contingent members and the United Nations.

December 1995

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### COPYRIGHT ISSUES

#### 30. ATTRIBUTION OF AUTHORSHIP AT THE UNITED NATIONS—PARAGRAPH 3 OF ADMINISTRATIVE INSTRUCTION ST/AI/189/ADD.6RE/V.3 OF 19 MARCH 1990—COPYRIGHT ON OTHER INTELLECTUAL PROPERTY RIGHTS

##### *Memorandum to the Chief, United Nations Publications Service*

1. I am writing in response to your memorandum of 23 November 1994, by which you sought our comments on the draft of an addendum to the administrative instruction concerning attribution of authorship at the United Nations. You indicated that a presentation concerning the draft addendum was to take place before the Working Committee of the Publications Board and you requested that we provide our comments so that they could be incorporated into the draft prior to that meeting.

##### POLICY CONSIDERATIONS CONCERNING ATTRIBUTION OF AUTHORSHIP

2. We note that the current policy concerning attribution of authorship at the United Nations is stated in paragraph 3 of administrative instruction ST/AI/189/Add.6/Rev.3 of 19 March 1990, which provides that “the general principle to be applied [to attribution of authorship] is that publications are issued in the name of the United Nations, while documents emanating from the Secretariat are attributed to the Secretary-General or to the Secretariat”. From that statement of general principle, it is clear that writings or other original works of authorship produced by United Nations staff members are generally considered to be works produced by the Organization itself. Thus, whether or not an individual staff member should be attributed credit for authorship is, for most part, a question of policy flowing from that general principle.

3. In this regard, we note further that, as stated in paragraph 3 thereof, the proposed addendum to the administrative instruction seeks “to advance the Secretary-General's policy on the establishment of a transparent and effective system of accountability and responsibility” by instituting “a more flexibly applied and consistent policy of attribution, which can be granted as long as it [i.e., attribution of authorship] is consistent with the legislative authority”. The

objectives for such a more flexible policy of attribution, as stated in paragraph 4 thereof, would be:

“(a) to acknowledge the original intellectual contributions in the preparation of United Nations publications and reports, taking into account the special creative, scientific and literary efforts contained therein; (b) to facilitate a dialogue with the international academic and professional communities in order to advance United Nations objectives in relation to political and economic and social issues of global concern and thereby enhance the image of the United Nations; (c) to serve as an incentive to staff presently working in the Organization, as well as to potential new staff members known to be experts in their respective fields; (d) to increase staff accountability and responsibility in the creation of high-quality publications and reports; and to (e) enhance the sales potential of United Nations publications.”

There are not legal objections to the Publications Board concluding that these stated objectives appear to provide a reasonable basis for a more flexible approach to attribution of authorship. However, we are not sure that “accountability” has anything to do with attribution of authorship, which seems to us to accomplish nothing more than giving credit to the creative acts of staff members. We are unable to subscribe to the assumption, apparently linking attribution of authorship and accountability, that a staff member will prepare better written material if he or she gets public credit for his or her efforts.

#### LEGAL ISSUES CONCERNING ATTRIBUTION OF AUTHORSHIP

4. Although attributing authorship for United Nations publications is for the most part a policy question, there are three legal issues which relate to that question. First, the question arises as to whether the draft addendum comports with existing United Nations Regulations and/or Staff Rules. Second, if it does, then it should be determined whether attributing authorship would allow the person so attributed to claim copyright or any other intellectual property rights in the work published by the United Nations. Finally, the draft addendum provides that attribution could be granted only if such attribution were “consistent with the legislative authority”. Each of the issues is reviewed in turn.

#### *Consistency of the draft addendum with existing regulations and/or rules*

5. The first question is whether the draft addendum to the administrative instruction on attribution of authorship is consistent with applicable United Nations Staff Regulations and Rules. Obviously, no administrative instruction promulgated by the Secretary-General could contradict regulations adopted by the General Assembly or rules adopted by the Secretary-General in furtherance thereof.<sup>75</sup>

6. We see nothing in the Staff Regulations or Rules that would expressly prohibit the attribution of authorship to United Nations Staff members. Staff regulation 1.4 provides, as a general rule, that staff members “should avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status [as international civil servants], or on the integrity, inde-

pendence and impartiality which are required by that status". Presumably any work that is to be published by the United Nations would not cause a staff member to violate this principle. Staff rule 101.6(e)(iv) appears to apply directly to the question of attribution of authorship. It provides that staff members shall not, "except in the normal course of official duties or with the prior approval of the Secretary-General," submit articles, books or other material for publication. To the extent that the United Nations published a writing and attributed its authorship to a staff member, this would be done in the normal course of the staff member's official duties and, it must be presumed, with the approval of the Secretary-General.

7. Based on the foregoing, it would seem that nothing in the Staff Regulations or Rules prevents the implementation of a more liberal policy of attribution of authorship as envisaged by the draft addendum to the administrative instruction.

#### *Copyright or other intellectual property rights*

8. The second question concerns whether attribution of authorship would involve the creation of any copyrights or other intellectual property rights for the staff member to whom the work is attributed.<sup>76</sup> The United States Copyright Act of 1976 provides that "in the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for the purposes of this title, and unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright."<sup>77</sup> A "work made for hire" is defined to be "a work prepared by an employee within the scope of his or her employment".<sup>78</sup>

9. Under United States copyright law, therefore, a staff member would have no claim to copyright in a original work of authorship prepared by the staff member in the course of his or her official duties. Rather, the United Nations would be considered the owner of the copyright. This result would not be changed merely because of the name of the staff member was attributed to the publication.

10. We note, however, that the draft addendum contemplates, in paragraph 11 and 12, that the attribution guideline set forth therein would also apply to "consultants specifically engaged for the purpose of preparing a publication or paper". Attribution would be given, pursuant to the policy guidelines set forth in the addendum, except in cases "when a consultant is engaged to prepare a policy paper that is to be issued as a report of the Secretary-General, usually in response to request from a legislative body".

11. Under United States copyright law, the rules governing "works made for hire" do not necessarily apply, per force, to works prepared by a consultant. Cases interpreting the "work made for hire" provisions of the Copyright Act<sup>79</sup> have determined that the employer engaging the consultant is the owner of the copyright.<sup>80</sup> However, in other cases, copyright in works created by a consultant have been accorded to the consultant.<sup>81</sup>

12. Thus, it is not clear that the United Nations would own original works of authorship created by a consultant. Any uncertainties regarding copyright or any other intellectual property rights could, however, be dealt with by means of a written agreement between the United Nations and the consultant.<sup>82</sup>

13. In this regard, we note that clause 3 of the “Conditions of Service—Consultants” set forth on the reverse side of the United Nations Special Service Agreement for Consultants<sup>83</sup> provides as follows:

“The United Nations shall be entitled to all property rights, including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or is made in consequence of, the services provided to the Organization by the Consultant. At the request of the United Nations, the consultant shall assist in securing such property rights and transferring them to the Organization in compliance with the requirements applicable law”.

A similar clause is contained in the United Nations “General Conditions for General Contracts”. Such a clause should be sufficient to dispel any doubts about ownership by the United Nations of any copyrights or other intellectual property rights in original works of authorship produced by a consultant.

14. Unless the clause referred to above is part of a contract with a consultant, however, the United Nations should enter into a specific written agreement with the consultant concerning ownership of copyright in that work. Such an agreement would provide that, to the extent the consultant has any copyright or other intellectual property rights in the work being produced and attributed to him or her, he or she thereby irrevocably transfers all such rights to the United Nations. In case of any doubts, this Office should be consulted. To the extent that the draft addendum does not make this clear, it should be revised to clearly reflect that a specific written agreement with a consultant may, under certain circumstances, be warranted.

#### *Consistency with legislative authority*

15. The remaining issue concerns whether any given attribution of authorship would be consistent with the “legislative authority” to which the publication responds. The draft addendum to the administrative instruction states, in paragraph 3, that attribution of authorship “can be granted as long as it is consistent with legislative authority” and that “in case of any doubt regarding the interpretation of the legislative authority, the Office of Legal Affairs will be consulted and its views will be forwarded to the Publications Board”.

16. It would appear that the concern here is that written material may sometimes be produced at the United Nations in response to a request therefore from a legislative body (e.g., a report by the Secretary-General in response to a specific request therefore by the Advisory Committee on Administrative and Budgetary questions). In such cases, it may be inappropriate to attribute the written material to anyone other than the Secretary-General or a specific department, office or subsidiary body. Clearly, the appropriateness of attribution in such circumstances depends on various factors, including the terms of the legislative authority itself, and therefore granting attribution must be determined on a case-by-case basis. It appears then that the draft addendum sufficiently provides for this by requiring that the Office of Legal Affairs be consulted for any interpretation of the legislative authority pursuant to which written material was to be produced.

## CONCLUSION

17. The foregoing constitute the legal considerations that should be brought to the attention of the Working Committee of the Publications Board when it considers the question of attribution of authorship. The draft addendum appears to be consistent with existing United Nations Staff Regulations and Rules. Any questions concerning copyright, particularly with regard to works produced by and attributed to consultants, should be brought to the attention of this Office. Additionally, any concerns over whether attribution would be inconsistent with relevant legislative authority pursuant to which a work is produced should likewise be brought to the attention of this Office.

13 April 1995

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## FINANCIAL ISSUES

### 31. LABELING OF GOODS BOUGHT WITH DONOR'S CONTRIBUTION WITH THE LATTER'S FLAG AND THE WORDS "DONATED BY"—GENERAL ASSEMBLY RESOLUTION 48/209

#### *Memorandum to the Legal Liaison Officer, United Nations Office at Geneva*

1. This is with reference to your memorandum of 17 March 1995, requesting our advice on the proposal by the Governments of [a Member State], contained in a note verbale addressed to the Centre for Human Rights dated 12 January 1995, that goods and materials procured with its contribution should be specifically identified as donated by the Governments of [that Member State].

2. In your memorandum, you indicated that the Centre for Human Rights had relied, for this request, on an earlier precedent contained in an Agreement between the European Union and the United Nations for provision of personnel and equipment for use by the Commission for Human Rights in Rwanda. You also stated in your memorandum that you had had discussions with the representatives of the Permanent Mission of the United Nations Office at Geneva, who expressed a need for a legal opinion on the matter, should the request not be acceptable.

3. We share your view that the Agreement with the European Union does not constitute a precedent in the present case. It is clear that the acceptance of the request by the European Union to identify equipment provided under that Agreement as a contribution from the European Union was based on the fact that the Agreement itself concerns a contribution by the European Union in the form of personnel and equipment. The contribution is made under a Cooperation Service Agreement whereby the personnel remain officials of the European Union and

ownership of the equipment is retained by the European Union as well. These arrangements are different from contribution to the United Nations multilateral assistance programmes in the economic and social sector, or for general humanitarian assistance, which are based on policies established by the General Assembly pursuant to Chapter IX of the Charter of the United Nations and are administered as United Nations funds. In this respect, you may wish to refer to General Assembly resolution 48/209 of 21 December 1993, which reaffirmed that “the fundamental characteristics of the operational activities of the United Nations system should be, inter alia, their universal, voluntary and grant nature, and their neutrality and multilateralism”. These principles enumerated by the General Assembly in respect of operational activities for development are equally applicable to contributions to United Nations activities with regard to humanitarian assistance such as those conducted by the United Nations High Commissioner for Human Rights in Rwanda. The principle of multilateralism suggested that the assistance provided is not identifiable to any particular donor, but is considered as United Nations assistance provided on behalf of all its Member States.

4. However, I believe that you should be able to assure the Permanent Mission of the Member States that the contributions of the Government of the State would be appropriately recognized by the United Nations. This recognition is normally made by the Secretary-General in his reports to the General Assembly on the work of the United Nations, which includes the work of the United Nations High Commissioner for Human Rights in the area of humanitarian assistance. We would also have no objection, should the Centre for Human Rights consider it feasible, to accept the suggestion by the Permanent Mission of ... in paragraph 5 of the note verbale, to publicize their contribution “to the countries, organizations and the people concerned” through the normal channels of communications used by the United Nations, such as press releases and reports.

7 April 1995

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32. DONATION OF A COPY OF THE PEACE BELL TO THE UNITED NATIONS—  
UNITED NATIONS POLICY CONCERNING DONATIONS—FINANCIAL REGULATIONS 7.2 TO 7.4—FINANCIAL RULES 107.5 TO 107.7

*Letter to the Senior Legal Liaison Office, United Nations  
Office at Vienna*

1. Please refer to your memorandum of 28 June 1995 to the Legal Counsel on the above-captioned subject. It is noted that a non-governmental organization (hereinafter “the NGO”) cooperating with the United Nations International Drug Control Programme wishes to donate to the United Nations, for display at the Vienna International Centre, a copy of the Peace Bell which is located at United Nations Headquarters in New York. You requested our advice and guidance as to whether “this particular gift ... can be accepted and, if so, on what conditions”. There are a few questions in connection with your request which will be examined separately below.

### *Original Peace Bell*

2. According to press feature 214, produced by Press Section of the United Nations Office of Public Information in July 1971, the Peace Bell “was donated by the United Nations Association of Japan in the name of the people of Japan. The bell was cast from coins donated by delegates of the 60 nations at the Thirteenth General Conference of United Nations Associations held in Paris in 1951, and from individual contributions of various kinds of metal. The bell is 3 feet, 3 inches high, 2 feet in diameter at its base and weighs 256 pounds. It is based in a typically Japanese structure like a Shinto shrine, made of cypress wood. The Tada factory in Japan completed the bell on United Nations Day, 24 October 1952; it was presented to the United Nations on 8 June 1954 by Renzo Sawada, Japanese observer to the United Nations.”

3. Files of this Office do not contain any information as to the legal arrangements of the donation of the original Peace Bell to the United Nations. In particular, we do not know whether the original bell was copyrighted and, if so, whether those copyrights were transferred to the United Nations in 1954.

4. As you know, ownership of a physical object does not always entail ownership of the intellectual property relating to the object. For example, article 202 of the United States Copyright Act of 1976 provides that, unless there is an agreement to the contrary, the transfer of ownership of a physical object does not itself convey right of copyright in the copyrighted work represented by the object.

5. Accordingly, it is necessary to ascertain that the entities intending to produce and donate a copy of the original Peace Bell have addressed the intellectual property aspect of the case in order to avoid possible future embarrassment for the Organization if the donation is accepted.

### *United Nations policy concerning donations*

6. The policy of the United Nations concerning acceptance of donations is based on United Nations financial regulations 7.2 to 7.4 and financial rules 107.5 to 107.7 promulgated under them. Those rules stipulate as follows:

#### *“Rule 107.5*

“In cases other than those approved by the General Assembly, the establishment of any trust fund or receipt of any voluntary contribution, gift or donation to be administered by the United Nations requires approval of the Secretary-General, who may delegate this authority to the Under-Secretary-General for Administration and Management.

#### *“Rule 107.6*

“No voluntary contribution, gift or donation for a specific purpose may be accepted if the purpose is inconsistent with the policies and aims of the United Nations.

*“Rule 107.7*

“Voluntary contributions, gifts or donations which directly or indirectly involve an immediate or ultimate financial liability for the Organization may be accepted only with the approval of the General Assembly.”

7. It appears that the proposed donation would be consistent with the policies and aims of the Organization, as required by financial rule 107.6. However, the financial arrangements of the donation are not clear. It is noted, for example, that, according to the undated “discussion paper” concerning the proposal, a copy of which was attached to your memorandum, “*funds donated to the UNDCP by the NGO will be used for purchase of the bell (estimated cost between \$50,000 and \$100,000)*”. It is not clear whether the above-mentioned funds have already been donated to UNDCP for some purposes other than the “purchase” of the bell and their “reassignment” is suggested or a new donation of funds is intended. Similarly, it is not clear under what legal authority UNDCP could “purchase” the bell. In any event, you must seek the concurrence of the Controller prior to taking any further action in this case as his Office has the authority delegated pursuant to financial rule 107.5.

8. As indicated in the letter of 23 April 1992 signed by the Assistant Secretary-General, Office of General Services, “due to the finite space available, the United Nations can only accept donations from Member States. This general policy has in the past resulted in our inability to accommodate any of the numerous offers of fine works of art we have received from non-governmental organizations.” We are aware that a few exceptions to that general policy were made in the past. Whether or not an exception should be made in the case under review is of course a policy question.

*Use of the United Nations name*

9. As you know, the use of the United Nations name is reserved for the official purposes of the Organization in accordance with General Assembly resolution 92(I) of 7 December 1946. Moreover, that resolution expressly prohibits any use of the United Nations name for commercial purposes. In order to implement the commercial use prohibition, the practice of the United Nations has been to include in its commercial contracts a standard clause preventing any entity contracting with the Organization from advertising or making public the fact that it provided services to the United Nations. The purpose of this clause is to prevent solicitation for business on the basis of a connection with the United Nations.

10. The same policy and practice must be applied in this case, notwithstanding the fact that the bell would be donated to the United Nations free of charge. If the donations in question are from commercial entities, the United Nations cannot allow its name to be used in connection with such companies or their services and/or products.

11. While your memorandum mentions only the NGO as the donor, it is noted, from copies of documentation attached to your memorandum, that an Association and possibly other donors may participate in the project, and, in such case, their names would be added to a plaque to be displayed at the site of the bell.

12. On the assumption that the NGO is a not-for-profit entity, the depiction of its name on the plaque does not pose problems. Whether the Association and other donors are commercial entities is not known to us. If they are, the participation of those donors in the donation could be acceptable only if they agreed not to publicize the donation, including the publication of their names on the plaque, and not to use their participation in the donation for advertising or any other commercial purposes.

*Agreement to be concluded*

13. Provided it is eventually decided by the Organization to accept the gift in question, the terms and conditions of the donation should be recorded in a brief agreement to be concluded by the United Nations, on one side, and the donor(s) on the other.

5 July 1995

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**PERSONNEL ISSUES**

33. PARTICIPATION OF HIGH-LEVEL UNITED NATIONS OFFICIALS IN NON-GOVERNMENTAL STRUCTURES—STAFF RULE 101.6—MEANING OF THE EXPRESSION “NORMAL COURSE OF OFFICIAL DUTY”

*Memorandum to the Director, Executive Office  
of the Secretary-General*

1. Please refer to your note, dated 7 March 1995, seeking my further advice on the request addressed to the Secretary-General by a Swiss organization (hereinafter “the Foundation”) for the support of the United Nations for a meeting of the Foundation to be held in Malta. In my memorandum of 16 February 1995, it was suggested that, given the uncertainties of the case and the need for more data to enable a full consideration of the request, the Director-General of the United Nations Office at Geneva, who is listed as a member of the Advisory Board of the Foundation, should be contacted for more information on the subject. Your memorandum of 7 March 1995 has provided me with the additional information.

*Preliminary matters*

2. I have some difficulty in accepting the general approach to the effect that, if international institutions are not profit-making and are recognized by Member States, such institutions should necessarily deserve the support of the United Nations, “especially when they deal with substantive issues which are of primary concern<sup>84</sup> to the United Nations”. Although this is more a policy than a legal matter, it would appear to me that no automatic support should be implied in such matters: support, by the United Nations, of any organization or institution outside the United Nations system should, in my view, be extended only after a careful consideration of all aspects and implications of such action.

3. Similarly, I have to disagree with the proposed interpretation of United Nations staff rule 101.6, to the effect that “the participation of high-level United Nations officials in non-governmental structures, ... as well as national, legal and political science societies ... are in full compliance with staff rule 101.6 and are carried out in the ‘normal course of official duties’”. My disagreement is based on the considerations described below.

4. Paragraph (a) of staff rule 101.6 stipulates that:

“Staff members shall not engage in any continuous or recurring outside occupation or employment without the prior approval of the Secretary-General.”

The participation in the work of more or less permanent organs or bodies of “non-government structures” or of “national, legal and political science societies” constitutes a continuous or recurring outside occupation for purposes of staff rule 101.6 and therefore requires prior approval. Accordingly, to be “in full compliance” with that rule, such participation should receive such prior approval.

5. Furthermore, the question is raised whether the participation of high-ranking United Nations officials in non-governmental structures may be carried out “in the normal course of official duties”, an evident reference to the expression used in staff rule 101.6 (e), the full text of which reads as follows:

“Staff members shall not, *except in the normal course of official duties* or with the prior approval of the Secretary-General, perform any of the following acts, if such act relates to the purpose, activities or interests of the United Nations:

- (i) Issue statements to the press, radio or other agencies of public information;
- (ii) Accept speaking engagements;
- (iii) Take part in film, theatre, radio or television productions;
- (iv) Submit articles, books or other material for publication.” (emphasis added)

According to the above staff rule, participation in non-governmental structures is not among “acts” which may be performed by staff members “in the normal course of official duties” without the prior approval of the Secretary-General.

#### *Advice*

6. It is noted from the additional information provided that the United Nations support for the Foundation is sought “in order to obtain the greatest possible participation and a large audience at the highest political level” and that “the endorsement of patronage of the United Nations has no connection whatsoever with fund-raising and/or other financial purposes”. It is further noted that the United Nations “has already provided support to the activities of the Foundation on the occasion of its meeting in Bucharest from 21 to 24 April 1994”.<sup>85</sup>

7. However, it is still not clear from the additional information what is the specific nature or form of the support that the Foundation is seeking from the United Nations. It is noted in this regard that, in describing the support provided by the United Nations to the Bucharest meeting of the Foundation in 1994, it was indicated that “the Secretary-General had on that occasion designated the Assistant Secretary-General for Human Rights to attend”. On the assumption that a similar support may be sought in the case under review, this Office sees no legal impediment to the Secretary-General’s deciding to designate a United Nations official to attend the forthcoming 1995 meeting of the Foundation. As indicated in my former memorandum to you on the subject, whether or not to make this decision in view of the inherently political nature of some of the Foundation’s activities is, of course essentially a policy issue and therefore ultimately a matter for your Office.

14 March 1995

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34. POSSIBILITY OF INITIATING RECOVERY ACTION AGAINST A STAFF MEMBER BEFORE NATIONAL CIVIL COURTS—JURISDICTION OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL.

*Memorandum to the Legal Liaison Officer a.i.,  
United Nations Office at Geneva*

1. This is with reference to your memorandum of 15 February 1995, forwarding, for our comments and advice, a copy of a legal opinion given by a [name of city] lawyer concerning the possibility and prospects of initiating recovery action against Mr. B (a staff member) before a State’s civil courts.

*Advice given by local counsel*

2. The lawyer’s (hereafter “Mr. A”) first conclusion is that the relationship between the United Nations and a staff member (or for that matter, a former staff member) that derives from the United Nations Staff Regulations and Rules is part of public international law. Mr. A further concludes that a [State] civil court, when seized of a civil action for recovery brought by the United Nations against Mr. B, would probably decline jurisdiction, considering such an action to be under the exclusive internal administrative jurisdiction of the United Nations.

3. Even if the court would qualify the claim by the United Nations against Mr. B as a claim for unjust enrichment under the [State] Civil Code, Mr. A considers that the outcome would still be doubtful, as the court would probably apply a statute of limitations of one year in this case. Mr. A nevertheless advises in favour of initiating legal action, at least for the purposes of establishing a precedent for future cases.

### *Policy considerations*

4. In the light of the conclusions reached by Mr. A, you suggest, in paragraph 5 of your memorandum, that the International Trade Center (ITC) should, “taking into account the very slim chances of winning the case and the costs involved, consider its claim against Mr. B as a write-off under the Financial Rules.”

5. We appreciate that it is normally not in the interest of the United Nations to initiate legal action before national courts for recovery of relatively small amounts of money when the outcome of such action would seem to be unfavourable and the potential costs entailed might exceed the amount that the Organization can reasonably expect to recover. However, the particular circumstances of this case give rise to general policy issues which require consideration.

6. As you know, the General Assembly has over the years expressed increased concern about alleged cases of fraud or presumptive fraud within the United Nations. A report on “Recovery of misappropriated funds from staff members and former staff members”<sup>86</sup> was submitted by the Secretary-General to the General Assembly on 9 November 1993 pursuant to a request contained in General Assembly resolution 47/211 of 23 December 1992.<sup>87</sup> In that report, the Secretary-General described as follows the difficulties faced by the Organization in instituting civil action for recovery of misappropriated funds, where such misappropriation consisted in fraud in connection with United Nations entitlements:

“(a) Establishing legal and effective mechanisms to recover misappropriated funds, as recommended by the Advisory Committee on Administrative Budgetary Questions in paragraph 53 of its report;

(b) Seeking criminal prosecution of those who have committed fraud against the Organization.”

“12. Civil action for recovery of misappropriated funds requires proof of fraud by staff members. In this connection, a general problem arises if the alleged fraud consisted of breach of internal United Nations regulations of rules (e.g. claiming and obtaining from the United Nations excessive or unwarranted reimbursement for medical expenses, education grant or income taxes). In such cases, in order to determine whether the staff members’ acts were fraudulent, the national court would have to interpret and apply those provisions of the internal regulations and rules of the Organization allegedly violated by the staff member concerned.

“13. However, in many legal systems, a national court may find difficulties in, or even a legal impediment to, applying internal rules of an inter-governmental organization which do not have the force of law in that national legal system, unless they are the few regulations promulgated pursuant to Headquarters Agreements to the express exclusion of local law. Fur-

thermore, the submission of disputes involving internal regulations or rules to national courts could result in interpretations conflicting with those given by United Nations organs or inconsistent with the policies and interests of the Organization.”

7. The Secretary-General proposed to the General Assembly, on that occasion, that the statute of the United Nations Administrative Tribunal should be amended to give it jurisdiction to judge claims submitted by the Organization against staff members so that proceedings before national courts would be required only for enforcement of the judgment.

8. The General Assembly, in section III of its resolution 48/218 (A) of 23 December 1993, decided to study the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms. To that end, the Assembly decided to establish an ad hoc intergovernmental working group of 25 members (the “Group of Experts”) to examine these questions and submit a report with specific suggestions to the General Assembly.

9. In its final report, the Group of Experts recommended, inter alia, that the Statute of the Administrative Tribunal should be amended to give it jurisdiction to adjudicate financial claims submitted by the Secretary-General against staff members.<sup>88</sup>

10. The Group of Experts appears to have endorsed the recommendation originally made by the Secretary-General in paragraph 26 of his report (A/48/572), but it does not seem to have addressed the question of enforcement of judgments of the Tribunal by Member States, should this become necessary. As a result, the expanded jurisdiction of the Tribunal may not turn out to be fully effective if the judgments of the Tribunal are not recognized and enforced by national courts. Similarly, other recommendations of the Group of Experts for cooperation between the United Nations and Member States on these matters,<sup>89</sup> if adopted, might not in and of themselves be sufficient for the purpose of providing the United Nations with adequate tools for seeking recovery of misappropriated funds.

11. In this connection, we note Mr. A’s closing statement that, in his view, “a proceeding would be worth the expenditure to get a precedent”. We ourselves are inclined to agree with Mr. A’s assessment. In our view, the claims by the United Nations against Mr. B may indeed represent a valuable test case. If the Organization succeeds in obtaining a favourable judgment, this would constitute an important precedent for similar cases in [the State] and, perhaps, in other duty stations. If the [State] civil courts deny jurisdiction as expected by Mr. A, a judgment in that sense would confirm in practice the position taken by the Secretary-General in his report (A/48/572) and would be a forceful argument for the general adoption of the measures advocated by the Secretary-General in that report. On a more limited scale, such a judgment could eventually justify negotiating with the [State] Government the establishment of mechanisms for cooperation between the [State] judiciary and the United Nations in similar cases.

*Proposed course of action*

12. In the light of the above, and given that ITC is accountable for the monies paid to Mr. B, it might be questionable to write off the misappropriated sums before serious attempts are made for their recovery.

13. We therefore recommend that steps be taken to initiate legal action against Mr. B, should you be satisfied that the facts are adequately documented and that the claim against Mr. B is solid. Since the misappropriated funds are ITC funds, the costs relating to such legal action should be borne by ITC. If proceedings are instituted, we stand ready to assist the local counsel.

31 March 1995

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35. TRAVEL OF STAFF REPRESENTATIVES—ADMINISTRATIVE INSTRUCTION ST/AI/293 OF 15 JULY 1982—STATUS OF REPRESENTATIVES OF THE FEDERATION OF INTERNATIONAL CIVIL SERVANTS' ASSOCIATIONS

*Memorandum to the Officer-in-Charge, Compensation and Classification Service, Officer of Human Resources Management*

1. This is in response to your memorandum of 9 March 1995, seeking our advice as to whether staff representatives traveling on United Nations Staff Association business are considered as being on mission status for purposes of compensation in case of death, injury or illness compensable under Appendix D of the United Nations Staff Rules. You have also requested our advice on the status of representatives of the Federation of International Civil Servants' Associations (FICSA), traveling on FICSA business, paid for and authorized by FICSA, rather than the Staff Association.

2. Pursuant to paragraph 2 of administrative instruction ST/AI/293 of 15 July 1982 on the "Facilities to be provided to staff representatives", "[t]he functions of staff representatives are official". The official nature of the functions of staff representatives also has been emphasized by the United Nations Administrative Tribunal in a recent judgment as follows:

"The official nature of the functions of staff representatives implies that time spent in exercising these functions should not be regarded differently from the time spent on office duties, but as being on a par with the latter."<sup>90</sup>

Paragraph 12 of the aforementioned instruction further provides that "staff representatives duly designated to attend intra-organizational, interorganizational or intergovernmental meetings shall be placed on official duty status for the time required to attend such meetings, *including appropriate travel time*" (emphasis added). In the light of that provision, injuries incurred by "duly designated" staff representatives while in travel status for such meetings would be deemed to be service-incurred and thus compensable under Appendix D.

3. For the purpose of responding to your second query, i.e., whether the same considerations would also apply to FICSA representatives traveling on FICSA business, account must be taken of FICSA's status as an *interlocuteur valable* with the administrations of the common system on matters relating to staff welfare and administration: FICSA representatives make submissions to the International Civil Service Commission (ICSC) and participate in its meetings<sup>91</sup> and they attend meetings of the United Nations Joint Staff Pension Board (UNJSPB) as observers.<sup>92</sup> FICSA is also cooperating with the other recognized staff bodies of other organizations and with the United Nations system's Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA) [also recognized by rule 36 of the ICSC rules of procedure].

4. In the light of the foregoing, we consider that the provisions of paragraph 12 of administrative instruction ST/AI/293, quoted in paragraph 2 above, apply also to the United Nations staff who are "duly designated" FICSA representatives and who travel "to attend intra-organizational, interorganizational or intergovernmental meetings". Thus, injuries while in travel status incurred by United Nations staff who are designated as such representatives would be deemed to be attributable to the performance of official duties for purposes of Appendix D to the Staff Rules.

1 May 1995

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36. QUESTION WHETHER DEPENDENCY ALLOWANCES ARE INDEPENDENT FROM THE PAYMENT OF SIMILAR WELFARE BENEFITS BY NATIONAL GOVERNMENTS—STAFF REGULATION 3.4(C)

*Memorandum to the Senior Legal Officer, Division of Human Resources and Management, Office of the United Nations High Commissioner for Refugees*

1. This is with reference to your memorandum of 22 June 1995, on the above-captioned matter, which was referred to us for reply. In your memorandum, you request our advice as to whether the obligation of the United Nations to pay dependency allowances to those staff members entitled to such benefit is independent from, or subsidiary to, the payment of similar welfare benefits by the national governments of the staff members concerned.

2. We understand that the question outlined above arose with respect to welfare benefits to which staff members residing in those two countries of their nationality are entitled under their national laws, and that authorities in those countries have indicated to UNHCR that they consider the United Nations to be the "first payer" of any such benefits. Accordingly, both Governments have informed the United Nations that, in calculating the payments due to those staff members under their national law, both Governments will deduct the amount of any dependency allowance paid by the United Nations from the family allowances that would otherwise be payable to their respective nationals/residents. In this connection, you indicate your view that if authorities of the two States main-

tain that position the United Nations would in practice become the “first payer”, and would be unable to deduct any amount paid by those Governments to staff members entitled to family allowances under the respective legislation.

3. The payment of dependency benefits is subject to the provisions staff regulation 3.4(c) of the United Nations Staff Regulations and Rules, which reads as follows:

“With the view to avoiding duplication of benefits and in order to achieve equality between staff members who receive benefits under applicable laws in the form of governmental grants and staff members who do not receive such dependency allowances, the Secretary-General shall prescribe conditions under which the dependency allowance ... *shall be payable only to the extent that the dependency benefits enjoyed by the staff member or his or her spouse under applicable laws amount to less than such a dependency allowance.*” (emphasis added)

These provisions are elaborated in staff rule 103.23 (b), which provides as follows:

“... the full amount of dependency allowances provided under that regulation and staff rules in respect of a dependent child shall be payable, *except where the staff member or his or her spouse receive a direct governmental grant in respect of the same child. Where such a governmental grant is made, dependency allowance payable under this rule shall be the approximate amount by which the governmental grant is less than the dependency allowance set out by the Staff Regulations and Staff Rules.*” (emphasis added)

4. It is quite clear from the above that, under the régime of dependency allowances instituted by staff regulation 3.4, the payment of such allowances is always subsidiary to payments by national Governments under existing national welfare schemes, which are, accordingly, regarded as “first payers” for United Nations purposes. Thus, in case no governmental grants are paid, the Organization pays the full allowance, but if any national grants are paid, the Organization has to deduct the approximate amount of the national grant.

5. We emphasize that the subsidiary nature of these payments is clearly stated in staff regulation 3.4 (c). It follows that the Administration cannot deviate from, or make exceptions to, such a fundamental and clearly stated principle unless the General Assembly authorizes such action through an amendment to staff regulation 3.4(c). We note, moreover, that the entitlement to dependency benefits under staff regulation 3.4(c) is operative only to the extent that the government benefits are less than United Nations benefits so that United Nations benefits only “top up” government benefits to reach the level of United Nations benefits. If government benefits are higher than United Nations benefits, the staff concerned do not receive United Nations benefits. If a Government takes the view that it will only pay if the United Nations is a first payer, the result may be that staff will be entitled to those government benefits and so the United Nations allowance will be payable in full. If this result is intolerable, the Secretary-General could request the General Assembly to amend staff regulation 3.4(c).

23 October 1995

## PROCUREMENT

### 37. USE OF BROKERS OR SIMILAR AGENCIES ON AIRCRAFT CHARTERS

#### *Memorandum to the Director and Deputy to the Assistant Secretary-General for Support Services, Office of Conference and Support Services*

1. This is further to our previous correspondence on the above-reference matter. We have recently been provided a copy of the Audit Observation Memorandum of 15 December 1994 on air operations, and would like to provide a few more comments on the question of brokers, which we believe should be taken into account in making any decisions as to the use of brokers.

2. We firstly note that the External Auditors have observed that the monthly base cost under the new standard Aircraft Charter Agreement concluded with licensed operators is generally lower than the monthly base cost under the prior lease agreements with [name of a company]. We would point out in this connection that under the prior lease agreements, the brokers concluded sub-lease contracts with aircraft operators and passed on the expenses of the operation to the United Nations without disclosing the actual costs for those sub-leases. In this way, the United Nations contributed indirectly to paying a broker's fee. In many of those lease agreements, it was unusual for the United Nations to end up paying much more (e.g., through amendments to the agreements) than the price which the broker had originally bid.

3. The overall lower monthly base costs, together with the savings from a decrease in the exposure to third-party claims to which the United Nations would be exposed under leasing arrangements, must be computed when comparing any bids from brokers with bids from aircraft operators.

4. The External Auditors have noted certain awards of contract to operators for higher prices than the prices bid by brokers. The Auditors recommended, in this regard, that the issue of subcontracting should be given careful consideration to ensure that the Organization seizes any opportunity for cost savings. We note that the reintroduction of subcontractors would essentially mean that the United Nations would sign contracts with brokers which would subcontract the performance of the air transportation services. For the reasons discussed below, in paragraph 2 above and in our 22 November memorandum, we observe that the apparent cost benefits are not real, and even where they may exist, they would be offset by the potential legal liability to which the United Nations would be exposed by contracting directly with brokers for operation of the aircraft. We would therefore advise, as explained below, against engaging brokers under the United Nations Aircraft Charter Agreement. This would of course not preclude other arrangements with brokers whereby they could be used for a fee to locate an aircraft operator, provided that the Aircraft Charter Agreement is always concluded with the actual licensed aircraft operator.

5. We note that a broker is an individual or firm doing business as a middle person, providing a variety of services which the individual or firm is not necessarily licensed or qualified to do. In the air transportation business, brokerage firms provide certain services such as ticketing and procurement, but they are not involved in the actual operation of the aircraft for which they are

licensed. As distinct from a broker, an aircraft operator, which is normally a firm but may also be an individual, possesses an air operator certificate issued by the State of the operator.<sup>93</sup> The issuance of air operator certificates is one of the important ways in which States regulate air transport operations and ensure that those operations are safe.

6. The legal instrument often used to obtain aircraft from brokers is a lease agreement with an aircraft operator under which the lessee takes responsibility for the operation and control of the aircraft and assumes responsibility for claims from passengers and other third parties. The lease is necessary because the broker cannot operate the aircraft without a licence. In the past, there have been misunderstandings arising from brokers leasing aircraft directly to the United Nations and the operation of such aircraft by pilots or crew engaged by brokers and relying on United Nations markings and call signs for navigation of the aircraft. States, airport and in-flight agencies, and even brokers, have argued that the United Nations functioned under the lease agreements as the operator of the aircraft and thus bore the responsibilities and liabilities applicable to carriers. Under such lease arrangements, the Organization was exposed to third-party claims and other financial liabilities for which it was not adequately protected. Furthermore, the International Civil Aviation Organization advised that the United Nations itself could not act as an aircraft operator since it was not a State, had not been licensed by any State to do so, and the ICAO system made no provision for the United Nations to perform the function of a State or an aircraft operator.

7. ICAO thus advised that, since the United Nations is not a licensed operator, a leasing arrangement with a broker is not an appropriate contractual modality for the provision of air transport services for the United Nations. For this reason, a new standard Aircraft Charter Agreement was designed to be concluded with licensed operators only. Under the standard Aircraft Charter Agreement, the operator retains control of the aircraft and its operation and maintenance. The crew remains in the employ of the operator, which bears the risk of loss of, or damage to, the aircraft and assumes responsibility for claims from passengers and other third parties. In our view, this is the only contracting arrangement which would adequately protect the United Nations until the United Nations can secure a special status under the ICAO instruments to directly own and operate aircraft.

8. If it is decided that brokers should be reintroduced into the procurement process, we would advise that the role of the brokers should be limited to identifying suitable aircraft operators, for which they would be paid a specified fee under a separate arrangement. As soon as the aircraft operator is selected by the United Nations, the United Nations should proceed to contract under the standard Aircraft Charter Agreement with the licensed operator of the aircraft without any further involvement of the broker. We consider that this would satisfy the Auditors' concerns with respect to cost savings and would avoid the problems posed by entering into contracts with brokers using subcontractors. This Office would be happy to assist in the preparation of appropriate contracting modalities should such decision be made.

10 January 1995

## TELECOMMUNICATIONS

### 38. USE OF THE SPACE SEGMENT CAPACITY LEASED BY THE UNITED NATIONS FROM INTELSAT—ARTICLE 39 OF THE 1982 INTERNATIONAL TELECOMMUNICATION CONVENTION

#### *Memorandum to the Director and Deputy to the Assistant Secretary-General for Support Services, Office of Conference and Support Services*

1. Please refer to your memorandum, dated 11 July 1995, on the above-captioned subject. It is noted that recently the World Health Organization concluded a contract with [name of a Corporation] concerning the provision of international telecommunications services for the WHO office in [name of State]. It is also noted that, while this contract does not explicitly provide that the Corporation would be using space segment capacity leased by the United Nations from the International Telecommunication Satellite Organization (INTELSAT) under the 1984 Agreement between the two organizations (as amended in 1993),<sup>94</sup> your Office has been requested by WHO to provide such international business service transponder capacity. You requested an advice as to whether it would be possible, under the terms of the 1984 United Nations/INTELSAT Agreement and other relevant instruments, to grant the WHO request and to authorize the proposed use of the space segment capacity by the Corporation, and, if so, under what circumstances or conditions.

#### *General framework*

2. The authority of the United Nations to engage in radio broadcasting and to have a telecommunication network may be derived from the approval by the General Assembly in 1946 of a recommendation of the Technical Advisory Committee on Information Concerning Policies, Functions and Organization of the Department of Public Information, as follows:

“The United Nations should also have its own radio broadcasting station or stations, with the necessary wavelengths, both for communication with Members and with branch offices, and for the origination of United Nations programmes.” (General Assembly resolution 13 (I) of 13 February 1946, annex, I, para. 10)

3. Article 39 of the 1982 International Telecommunication Convention (Nairobi)<sup>95</sup> recognized that “the telecommunication operating services of the United Nations shall be entitled to the rights and bound by the obligations of this Convention and of the Administrative Regulations annexed thereto”; and article XVI of the 1947 Agreement between the United Nations and the International Telecommunication Union states:

“1. The Union recognizes that it is important that the United Nations shall benefit by the same rights as the members of the Union for operating telecommunication services.

“2. The United Nations undertakes to operate the telecommunication services under its control in accordance with the terms of the International Telecommunication Convention and the regulations annexed thereto ...”

4. International Telecommunication Union (ITU) resolution No. 50 of 1989, entitled “Use of the United Nations Telecommunication Network for the Telecommunication Traffic of the Specialized Agencies”, adopted by the ITU Plenipotentiary Conference (Nice, 1989), “resolved” that “*the United Nations telecommunication network* may carry the traffic of the specialized agencies” (emphasis added) and established certain specific conditions for that purpose. A similar resolution was adopted by ITU in 1994.

5. Amendment No. 1, of 1993, to the 1984 Agreement for the leasing of space segment capacity between INTELSAT and the United Nations reflected the wish of the parties that “space segment capacity leased *for the United Nations telecommunications network* also [should be] available for use by the specialized agencies of the United Nations” (third preambular paragraph of the Amendment, emphasis added), and modified the text of the original Agreement accordingly.

#### *Contract between WHO and the Corporation*

6. WHO, a specialized agency linked to the United Nations, is an independent international organization. We understand that the contract between WHO and the Corporation has been concluded directly, without any participation by the United Nations.

7. The text of the WHO/the Corporation contract does not contain any provision explicitly stating or implying that WHO is obliged to provide the Corporation with space segment capacity leased under the United Nations/INTELSAT Agreement. We have been informed by the Office of the WHO Legal Counsel that “WHO and the Corporation had assumed on the basis of prior links using the Corporation’s equipment established by the United Nations High Commission for Refugees and the United Nations that establishing a link with INTELSAT in this case was a matter of routine.”

8. In a preliminary manner, it should be noted that, as far as the United Nations/INTELSAT Agreement is concerned, there appears to be a substantive difference between UNHCR, which is a part of the United Nations, and WHO, which is not. The implications of this difference are indicated below.

9. The above ITU resolutions authorize the United Nations telecommunication network to carry the traffic of the specialized agencies which wish to use it under certain specific terms. Similarly, the United Nations/INTELSAT Agreement envisages leasing INTELSAT space segment capacity to the United Nations telecommunication network. In other words, the existence of the United Nations network is a precondition for either carrying the traffic of specialized agencies or leasing the capacity from INTELSAT.

10. Accordingly, the United Nations has no right to utilize the space segment capacity for the use of specialized agencies provided by INTELSAT in telecommunications networks or facilities established independently by such agencies from the United Nations. Thus, WHO cannot use the space segment capacity leased to the United Nations under the 1984 Agreement, and the United

Nations cannot authorize such use because this action would be in contradiction with the 1984 Agreement between the United Nations and INTELSAT, as well as with relevant ITU resolutions.

11. In view of the foregoing, it is our opinion that the WHO request cannot be granted under the presented circumstances. Of course, under the appropriate circumstances, the United Nations could agree with WHO to provide such services under the relevant ITU resolutions through a United Nations telecommunication network comprising United Nations-owned facilities or facilities provided to the United Nations under contract. Naturally, the degree to which any such arrangement would serve the interests of the United Nations would be an important consideration. In any event, WHO and its contractor are free to seek the assistance of the appropriate [name of State] authorities in obtaining space segment capacity from INTELSAT, or any other source, for whatever length of time is deemed appropriate.

13 July 1995

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**B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations**

**FOOD AND AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS**

**1. QUESTION OF EUROPEAN COMMUNITY MEMBERSHIP IN A JOINT BODY  
ESTABLISHED BY FAO AND WHO**

*Communication from the Legal Counsel of FAO*

...As a member of FAO, the European Community (EC) has a right to become a member of the Codex Alimentarius Commission, which is a body established jointly by FAO and WHO under, in FAO's case, article VI.1 of the FAO Constitution. Article II of the Statutes of the Codex Alimentarius Commission, however, indicates that membership of the Commission "shall comprise such of those nations" (Member Nations and Associate Members of FAO and WHO) "as have notified the Director-General of FAO or of WHO of their desire to be considered as Members". In view of the issues that arise through membership by both Member Nations and Member Organizations (regional economic integrating organizations) and the fact that the Codex Alimentarius Commission is a joint body of both FAO and WHO, a number of modifications will need to be introduced in the Statutes and the Rules of Procedure of the Commission, before the EC can take up its membership. This fact was recognized expressly by the Council at its 99<sup>th</sup> session in June 1991, when considering the question of the amendment of the Basic Texts of the Organization to allow for the admission to FAO membership of regional economic integration organizations (see

report of the 99<sup>th</sup> session of the Council, June 1991, para. 268).

... The matter of EC participation in the Codex was discussed by the Committee on Constitutional and Legal Matters (CCLM) at its 59<sup>th</sup> session in September 1992. At that session, the Committee considered that it would not be appropriate to consider renegotiating the status of EC, nor would it be correct to increase the rights of participation of EC in a joint body as compared to the rights which it now enjoys as a member of FAO, given that its capacity to participate in the joint body could only derive from its membership in FAO ...

In view of the above, I can answer your queries in your memorandum of 25 January 1995 as follows:

1. The notification does not entail immediate membership of EC in the Codex Alimentarius Commission.
2. The issue of how EC membership would affect the status of the current EC member states that are members of the Commission is a matter which must be settled in the Statutes and/or Rules of Procedure of the Codex Alimentarius Commission and should be settled along the same lines as EC membership of FAO...
3. Until these matters are settled and the relevant amendments to the Rules of Procedure and Statutes are adopted, the status of EC at Codex meetings, including the Committee on Food Import and Export Inspection and Certification Systems to be held at the end of February 1995, should remain that of an observer ...

1 February 1995

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## 2. QUESTION OF A GOVERNMENT SCREENING AN FAO NATIONAL PROGRAMME OFFICER CANDIDATE

### *Note to the FAO Deputy Director-General*

You asked for my legal advice regarding the letter from the Principal Secretary of the Ministry of Agriculture in [a Member Nation] in which he states that it is imperative that selected candidates be screened and cleared by the Government. Under article VII of the FAO Constitution, “[t]he staff of the Organization shall be appointed by the Director-General in accordance with such procedures as may be determined by rules made by the Conference.” Rule XXXIX.4 of the General Rules of the Organization provides that “... the Director-General shall act in his unfettered judgment in appointing, assigning and promoting staff personnel, and shall not be bound to accept advice or request from any other source.”

The above provisions of the Basic Texts would preclude as a general principle acceptance of the [Member Nation’s] request that selected candidates be screened or cleared by the Government. In this context, your attention is drawn

to the comments of the Committee on Constitutional and Legal Matters at its 63<sup>rd</sup> session in September 1994 in which the Committee “underlined the independence of national professional officers (NPOs) from the influence of any authority external to the Organization, both in their recruitment and in the performance of their duties, was a fundamental condition for the new system.”

It is to be noted in this connection that the Agreement for the FAO representation in [the Member Nation] provides that both the FAO representative and his expatriate staff must be cleared by the Government before assignment to the representation. However, this clearance procedure refers only to *expatriate* staff who will normally already be FAO staff members and can be assigned in any country in the world. NPOs, on the other hand, can only be assigned to the country of which they are a national. To accept the principle that the national Government can clear the “assignment” of an NPO would therefore amount in practice to requiring clearance by the national Government for the “appointment” of an FAO staff member. If the principle were to be conceded on this point to the Government of [the Member Nation], it would need to be conceded to all Governments in which NPOs are to be appointed. It would in practice sound the death knell of the independence of the international civil service in so far as NPOs are concerned.

21 March 1995

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3. QUESTION OF AN ASSOCIATE MEMBER OF FAO BEING REPRESENTED  
AT MEETINGS BY ITS METROPOLITAN POWER

*Letter to the Permanent Representative of a member nation*

Please refer to your letter of 10 March 1995 in which you ask for my advice as to whether an Associate Member of FAO could, if it wished, be represented at meetings of FAO Committees or under conventions or agreements by its metropolitan Power. Mr. Stein has already drawn your attention to article III.3 of the Constitution, which provides that “No delegate may represent more than one Member Nation or Associate Member.”

I can confirm that this provision, although it appears under the heading “Conference”, is considered to be of a general application. It is therefore my opinion that it would not be possible from a legal point of view for an Associate Member of FAO to ask another country, or in this case its own metropolitan Power, to represent it at meetings of the Organization. I believe that the same principle would hold for meetings of bodies established under article XIV of the FAO Constitution in the absence of any provision in those agreements specifically allowing for such representation.

24 March 1995

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NOTE

<sup>1</sup>United Nations, *Treaty Series*, vol. 962, p.89.

<sup>2</sup>*Ibid.*, vol. 1, p.15.

<sup>3</sup>*Ibid.*, vol. 195, p. 2; vol. 1209, p. 32; vol. 1281, p.297. See also International Telecommunication Convention concluded at Nairobi on 6 November 1982 (not yet published) and Constitution and Convention of the International Telecommunication Union concluded at Geneva on 22 December 1992 (not yet published).

<sup>4</sup>United Nations, *Treaty Series*, vol. 11, p. 11.

<sup>5</sup>*Ibid.*, vol. 500, p. 223.

<sup>6</sup>A/CONF.67/16.

<sup>7</sup>*I.C.J. Reports 1989*, p.177.

<sup>8</sup>Document PAH/INF.78/2

<sup>9</sup>*Yearbook of the International Law Commission, 1958*, vol. II, p. 96.

<sup>10</sup>United Nations, *Treaty Series*, vol. 1513, p.293.

<sup>11</sup>*Ibid.*, vol. 1522, p.3.

<sup>12</sup>*Official Records of the Economic and Social Council, Second Year: Fifth Session, Supplement No. 6, Part II, document E/491, chap. III, pp. 17-23.*

<sup>13</sup>United Nations, *Treaty Series*, vol. 828, p. 107 and p. 305.

<sup>14</sup>See DP/1994/52.

<sup>15</sup>DP/1994/62.

<sup>16</sup>The same activities, as defined in DP/1994/62, are also reproduced in the joint report of the Administrator and the Executive Director (DP/1995/6) to the Executive Board, dated 22 November 1994.

<sup>17</sup>DP/1994/62, para. 20.

<sup>18</sup>See para.1, decision 94/32, see also decision 94/12, paragraph 1, which reads: “Takes note of the Secretary-General’s intention to strengthen the coordinating and central funding roles of the United Nations Development Programme in accordance with General Assembly resolution 47/199 and other resolutions and to ensure that the Office for Project Services will undertake implementation rather than funding activities...” (emphasis added)

<sup>19</sup>Paragraph 3 of Board decision 94/12 reads: Stresses the importance of OPS continuing to operate within the United Nations development system and not becoming a new agency.

<sup>20</sup>DP/1995/7 of 23 November 1994, and DP/1995/7/Add.1 of 22 November 1994.

<sup>21</sup>The General Assembly, by its resolution 1240(XIII) of 14 October 1958, entitled, Establishment of the Special Fund, authorized the Governing Council to approve financial regulations for the Special Fund (the predecessor of UNDP). It provided that: “The Special Fund shall be governed by financial regulations consistent with the financial regulations and policies of the United Nations. The financial regulations for the Fund shall be drafted by the Secretary-General of the United Nations, in consultation with the Managing Director, for approval by the Governing Council, after review by the Advisory Committee for Administrative and Budgetary Questions.”

<sup>22</sup>See Executive Board decision 94/12, para. 4, which reads: “Underlines the need to enhance further role of the Executive Board in providing overall policy guidance for and supervision of OPS”.

<sup>23</sup>See Executive Board decision 94/12, para. 6.

<sup>24</sup>It appears that the only exclusions from that delegation are the authority to award compensation in the event of death, injury or illness attributable to the performance of official duties, and the authority to interpret the staff regulations and rules in cases involving issues of general policy.

<sup>25</sup>See General Assembly resolution 1448 (XIV) of 5 December 1959 and 1586 (XV) of 20 December 1960 authorizing the Secretary-General “to seek short term loans from Governments,” as well as resolution 302 (IV) of 8 December 1949.

<sup>26</sup>See General Assembly resolution 1739 (XVI) of 20 December 1961.

<sup>27</sup>General Assembly resolution 1448 (XIV), para. 4.

<sup>28</sup>See, for example, General Assembly resolutions 31/197 of 22 December 1976, 32/73 A of 9 December 1978, 34/222 of 20 December 1979 and 35/216B of 17 December 1980.

<sup>29</sup>General Assembly resolution 35/216 B of 14 December 1980.

<sup>30</sup>It should be noted that the Administrative Rules of the Pension Fund specify, in subparagraph (c) of the introduction thereto, that “for the purpose of article 18 of the Regulations,” which provides that “the assets shall be the property of the Fund and shall be acquired, deposited and held in the name of the United Nations,” the phrase “in the name of the United Nations ... shall include the holding of assets in the name of a nominee or nominees of custodians for the United Nations”. Thus the Pension Board has, by administrative rule, delegated responsibility for the holding of the assets of the Fund. This, however, cannot be seen as authority for a delegation of responsibility for investment of the assets of the Fund.

<sup>31</sup>See, e.g., Restatement (Second) Agency § 18.

<sup>32</sup>See, e.g., Restatement (Second) Trusts § 171.

<sup>33</sup>See, e.g., Restatement of Trust (Prudent Investor Rule) § 227.

<sup>34</sup>For example, in the United States, the conduct of trust business by national banks is regulated by the Board of Governors of the Federal Reserve System and the Comptroller of the Currency. Regulations issued by the Comptroller of the Currency require that national banks administering trusts maintain separate trust departments and further provide for the supervision of such departments by the directors of the bank as well as for the appointment of a trust investment committee and of an executive officer and competent legal counsel. See 12 C.F.R. §§9.1 et seq. See also, e.g., *Restatement (Second) Trusts* § 171, comment e.

<sup>35</sup>See, for example, *Restatement Trusts (Prudent Investor Rule)* §227, comment j.

<sup>36</sup>*Idem*, comment j to section 227 of *Restatement Trusts (Prudent Investor Rule)* gives an example of a delegation of fiduciary responsibility by trustees to investment agents who possess the necessary skill and expertise for carrying out a particular investment strategy with which the trustees or their subordinates are unfamiliar. The comment indicates that, assuming the investment strategy itself was prudent and worthwhile for the beneficiaries, then if the strategy were to be pursued, prudent delegation of responsibility for engaging in such an investment strategy would be consistent with principles of agency and trusts. However, even where such delegation is justified, the comment goes on to note that prudent delegation “requires informed careful planning and arrangements” because “in undertaking to delegate, [fiduciaries] must have, or must obtain through the advice and assistance of others, the skill and time necessary to make a competent, careful evaluation of potential [investment] managers ... and to monitor their performance of their duties”. See also, e.g., *Restatement Trusts (Prudent Investor Rule)* §227, comment j.

<sup>37</sup>By way of analogy, these general rules prohibiting unreasonable delegation of investment decision-making responsibilities are reflected in ERISA section 402(c)(3) and 403(a)(2). See also *Uniform Management of Institutional Funds Act* § 5. See also, for example, *Restatement Trusts (Prudent Investor Rule)* §227, comment j.

<sup>38</sup>See General Assembly resolution 248(III) of 7 December 1948: article 23 of the Regulations, as promulgated thereunder, established a Secretary of the Pension Board as “exercising functions under the authority of the Board”. The Secretary-General’s role over the Secretary of the Pension Board was limited to the power of appointment only. Article 22 thereof established the Pension Board, and related articles of those Regulations placed the responsibility for administration of the Fund under the authority of the Pension Board.

<sup>39</sup>See articles 19 and 20 of the Regulations.

<sup>40</sup>See article 4 and 7 through 15 of the regulation. There is nothing in the history of the General Assembly action concerning the Pension Fund Regulations to suggest the Assembly envisioned a dual role to be played by the Secretary of the Pension Board and the Secretary-General with respect to the administration of the Fund. The Pension Board, with the assistance of the Secretary of the Pension Board, was given responsibility for administering the Fund while the Secretary-General, with the assistance of the Investments Committee, was given responsibility for administering the investments of the assets of the Funds.

<sup>41</sup>See article 7(a) and (b) of the Regulations.

<sup>42</sup>Of course the Secretary, the Deputy Secretary of the Pension Board, as well as the staff appointed to assist them, are appointed as United Nations staff members and are, accordingly, subject to the authority of the Secretary-General in all matters not specifically governed by the Regulations.

<sup>43</sup>General Assembly resolution 48/218 B of 29 July 1994.

<sup>44</sup>Secretary-General bulletin ST/SGB/273 of September 1994.

<sup>45</sup>General Assembly resolution 48/218 B, para. 5(c)(iv).

<sup>46</sup>ST/SGB/273, para. 17.

<sup>47</sup>ST/SBG/273, para. 18.

<sup>48</sup>The definitions will be applied generally to officials or others in activities under the authority of the Organization taking into account, as necessary and appropriate, the different status of such officials and others or their relationship to Organization. Generally, “others” engaged in activities under the authority of the United Nations will be contractors, either corporate or individual, whose relationship to the Organization will be governed by a contract that will, at least in part, define the scope of the organization’s remedies for activities within these definitions.

<sup>49</sup>In particular, article I of the United Nations Staff Regulations and staff regulations 4.1 and 4.2. In essence, staff are primarily assessed in accordance with the Charter-imposed duty to maintain the highest standards of efficiency, competence and integrity, rather than by having done a prohibited act.

<sup>50</sup>ST/IC/82/13 of 26 February 1982; section 1030 of the United Nations Personnel Manual (vol. I).

<sup>51</sup>The procedures dealing with misconduct are described in chapter X of the Staff Regulations and Rules, while the procedure for dealing with unsatisfactory performance are set out in chapter IX of the Staff Regulations and Rules and in ST/AI240/Rev.2 of 28 November 1984.

<sup>52</sup>Pursuant to paragraph 7 of its resolution 48/218 B, the General Assembly requested the Secretary-General “to ensure that procedures are ... in place that protect individual rights, the anonymity of staff members, due process for all parties concerned and fairness during investigations”. These procedures are detailed in paragraph 18 of the Secretary-General’s bulletin ST/SGB/273.

<sup>53</sup>Document A/C.5.795.

<sup>54</sup>A/AC.237/18 (Part II)/Add.1 and Corr.1.

<sup>55</sup>United Nations, *Treaty Series*, vol.1522, p.3.

<sup>56</sup>United Nations, *Treaty Series*, vol. 1342, p. 137 and document CCW/CONF. I/16 (Part I).

<sup>57</sup>Document CCW/CONF.I/GE/23, annex III.

<sup>58</sup>A/CONF.95/8 and A/CONF.95/15.

<sup>59</sup>United Nations, *Treaty Series*, vol. 1342, p. 137.

<sup>60</sup>*Official Records of the United Nations Conference on the Law of Treaties, Second Session, Vienna, 9 April—22 May 1969* (United Nations Publication, Sales No. 70.V.6), Documents of the Conference, p.38.

<sup>61</sup>Ibid. p.41.

<sup>62</sup>A/49/375.

<sup>63</sup>A/49/501, para.31.

<sup>64</sup>A/46/185 and Corr.1, annex.

<sup>65</sup>Model Agreement, para.14.

<sup>66</sup>These Guidelines are mission-specific and are issued for every peacekeeping operation by the Department of Peacekeeping Operations. Owing to the fact that every peacekeeping operation has special compositional features and operational movements, the Guidelines have to be adapted to suit the particular operational requirements of each peacekeeping mission. However, the provisions concerning the general administrative and financial arrangements remain the same in every case.

<sup>67</sup>United Nations document A/46/185 and Corr.1, annex, para.20.

<sup>68</sup>It should be noted that the General Assembly during the current session consider the Secretary-General’s report on the “effective planning, budgeting and administration of peacekeeping operations” (A/48/945) which, in paragraph 82 to 84, discusses alternatives to the current procedures for determining reimbursement to Member States for contingent-owned equipment. The outcome of the Assembly’s consideration of the Secretary-General’s proposals may well affect the reimbursement obligations of the United Nations to Governments for contingent-owned equipment.

<sup>69</sup>See the Annex to the Guidelines, entitled “General guidelines on the basis of which reimbursement is calculated for peacekeeping operations” which provide, in relevant part, that “maintaining the serviceability of the equipment, including repairs, provisions of spare parts, etc. rests with the United Nations, from the time of its delivery to the peacekeeping operations service”.

<sup>70</sup>Third-party insurance does not, of course, relate to the damage to the contingent-owned equipment and covers only the risk of injury and/or property damaged incurred by third parties.

<sup>71</sup>See article 4.3 and 8.1 of the Standard Aircraft Charter Agreement.

<sup>72</sup>See section 5.03 of the Procurement Manual for the Purchase and Transportation Service.

<sup>73</sup>We understand that these payment terms are the same for commercially chartered aircraft and for aircraft provided under Letters of Assist.

<sup>74</sup>In resolution 49/233 A the General Assembly requested the Secretary-General to present concrete proposals on possible revisions to the current arrangements for compensation for death or injury sustained by contingent troops in the service of United Nations peacekeeping operations based on the principles of:

- (a) Equal treatment of Member States;
- (b) Compensation to the beneficiary that is not lower than reimbursement by the United Nations;
- (c) Simplification of administrative arrangements to the extent possible;
- (d) Speedy settlement of claims for death and disability;

and requested concrete proposals for each of the following options:

“(a) Current arrangements with a reasonable minimum level of compensation payable for death and disability;

“(b) A system of compensation featuring standardized rates of reimbursement for death and disability;

“(c) A uniform global insurance scheme to cover all troops;

“(d) The proposals submitted by the Secretary-General in paragraph 71 of his report [i.e., the current policy used for military observers, whereby reimbursement is limited to twice the annual salary excluding allowances, or \$50,000, whichever is greater.]”.

<sup>75</sup>See for example, staff regulations 12.2, 12.3 and 12.4 (providing that staff rules promulgated in furtherance of staff regulations are subject to modifications or deletions by the General Assembly); financial rule 114.4 (providing that the Financial “Rules may be *amplified* by administrative instructions by the Under-Secretary-General for Administration and Management “ (emphasis added); financial rule 114.5 (providing that Financial “Rules may be amended by the Secretary-General in a manner consistent with the Financial Regulations”).

<sup>76</sup>Section 201 of the United States Code.

<sup>77</sup>17 USC § 201(b).

<sup>78</sup>17 USC § 101. We have not conducted a comparative analysis of other legal systems to determine whether such a “work made for hire” rules exists, but we suspect that the same rule or a similar rule applies to original works of authorship made by an employee in the regular course of his or her employment.

<sup>79</sup>17 USC § 201.

<sup>80</sup>See *Real Estate Data, Inc. v. Sidewell Co.*, 809 F.2d 366 (7<sup>th</sup> Circ. 1987), *aff’d*, 907 F.2d 770, *cert. Denied* 498 U.S. 1088 (an agreement to the contrary, copyright belongs to the person commissioning the work, not the person creating the work, even in cases where the person creating work is an independent contractor).

<sup>81</sup>See for example *Aymes v. Bonelli*, 980 F.2d 857 (2d Cir. 1992) (where computer programme required high degree of skill to create, programmer was independent contractor, and his program required high degree of skill to create, programmer was independent contractor, and his programme was not “work for hire” under the Copyright Act).

<sup>82</sup>See 17 USC § 201 (b) (parties may vary “work made for hire” ownership of copyright by means of “a written agreement signed by them”); cf. also 17 USC § 201(d)(1) (“[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance or by a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession”).

<sup>83</sup>United Nations Form P. 104.

<sup>84</sup>Incidentally, I wonder whether the development of “dialogue between the leaders of Governments and the business community” (which, as I understand, is the main objective of the Foundation) is indeed “of *primary* concern to the United Nations”.

<sup>85</sup>According to our files, this Office was not consulted when the decision to provide support for the Bucharest meeting was taken.

<sup>86</sup> A/48/572

<sup>87</sup> By that resolution the General Assembly requested the Secretary-General to make proposals to the General Assembly on:

<sup>88</sup> A/49/418, para. 32(d)

<sup>89</sup> For example, that the General Assembly consider recommending to Member States that they: (a) extend to the United Nations and to other Member States assistance in investigating and securing criminal prosecution of individuals who defraud or attempt to defraud the United Nations; and (b) consider enacting legislation making fraud and attempted fraud against the United Nations subject to the jurisdiction of national courts and punishable by appropriate penalties (A/49/418, para. 32 (g)).

<sup>90</sup> See Administrative Tribunal Judgment No. 679; *Fagan*, at para. XI

<sup>91</sup> See rules 36 and 37 of the rules of procedure of the ICSC.

<sup>92</sup> See rule A.9 (b) of the rules of procedure of UNJSPB

<sup>93</sup> See Annex 6 to the Convention on International Civil Aviation, Part I, chap. 4, para. 4.2.1.1; United Nations, *Treaty Series*, vol. 15, p. 295.

<sup>94</sup> United Nations, *Treaty Series*, vol. 1365, p. 307 (Agreement). Amendment unpublished.

<sup>95</sup> United Nations, *Treaty Series*, vol. 195, p. 2; vol. 1209, p. 32; vol. 1281, p. 297. See also International Telecommunication Convention, concluded at Nairobi on 6 November 1982 (not yet published), and Constitution and Convention of the International Telecommunication Union, concluded at Geneva on 22 December 1992 (not yet published).

**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 Tribunal for the Former Yugoslavia

PROSECUTOR *v.* TADIC<sup>1</sup>

(JURISDICTION)<sup>2</sup>

*International Tribunal for the Former Yugoslavia*

*Trial Chamber. 10 August 1995*

(McDonald, *Presiding Judge*; Stephen and Vohrah, *Judges*)

*Appeals Chamber. 2 October 1995*

(Cassese, *President*; Li, Deschênes, Abi-Saab and Sidhwa, *Judges*)

SUMMARY: *The facts*:—The accused, Mr. Dusko Tadic, was charged by the Prosecutor of the International Tribunal for the Former Yugoslavia<sup>3</sup> with grave breaches of the Geneva Conventions, 1949, serious violations of the laws and customs of war and crimes against humanity, under articles 2, 3 and 5 of the Statute of the Tribunal.<sup>4</sup> The Prosecutor alleged that the accused had taken part in the murder, rape, torture and ill-treatment of persons detained at a prison camp maintained by Bosnian Serbs at Omarska in the Prijedor region of Bosnia and Herzegovina during the summer of 1992 and in the murder and ill-treatment of other captured persons.

The accused challenged the jurisdiction of the Tribunal on the grounds that:

(1) The establishment of the Tribunal and the adoption of its Statute had been beyond the powers of the Security Council, so that the Tribunal had not been established by law and was not entitled to try the accused;

*“Article 2: Grave breaches of the Geneva Conventions of 1949*

“The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) Wilful killing;
- (b) Torture or inhuman treatment, including biological experiments;
- (c) Wilfully causing great suffering or serious injury to body or health;

- (d) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) Compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) Wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) Unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) Taking civilians as hostages.

*“Article 3: Violations of the laws or customs of war*

“The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) Employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) Wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) Attack or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings;
- (d) Seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) Plunder of private property.

*“Article 5: Crimes against Humanity*

“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.”

No charges were brought under article 4 of the Statute, which gives the Tribunal jurisdiction over allegations of genocide.

(2) The primacy given to the Tribunal over national courts by article 9 of the Statute was contrary to international law. The accused had a right to trial before a national court;

(3) The Tribunal lacked subject-matter jurisdiction, because under international law the offences listed in articles 2, 3, and 5 of the Statute of the Tribunal could only be committed in the course of an international armed conflict and no such conflict had been taking place in the Prijedor region at the time the offences were allegedly committed.

Both the Prosecutor and the United States of America, which submitted arguments as an *amicus curiae*, contested these grounds.

*Held* (by the Trial Chamber):—The challenge to the establishment of the Tribunal was incompetent. The other grounds of challenge were dismissed.

(1) The Tribunal did not have the power to question the lawfulness of the actions of the Security Council in establishing the Tribunal. There was no basis in international law for holding that an international court or tribunal had powers of judicial review in respect of decisions of the Security Council in the exercise of its powers to restore and maintain international peace and security under Chapter VII of the Charter of the United Nations. In particular, the decision that the situation in the former Yugoslavia constituted a threat to international peace and security was a political, non-justiciable decision by the Security Council. Moreover, the action of the Security Council in establishing the Tribunal had been a reasonable measure within the scope of its powers under Article 41 of the Charter of the United Nations.

(2) The accused lacked standing to raise the issue of the primacy of the Tribunal over national courts. In addition, the accused had failed to establish that there was a peremptory norm of international law to the effect that a defendant was entitled to trial before a particular national court.

(3) Article 2 of the Tribunal's Statute was a self-contained provision and did not import all the requirements of the Geneva Conventions' system of grave breaches. In particular, there was no requirement that the offences enumerated in that Article had to have been committed in the context of an international armed conflict.

(4) The jurisdiction of the Tribunal to try persons accused of violations of the laws and customs of war under article 3 of the Statute also did not depend upon whether the armed conflict in which those violations were alleged to have been committed was characterized as international or internal. The customary international law of armed conflict included rules applicable to internal armed conflicts, as did common article 3 of the Geneva Conventions, violations of which constituted war crimes.

(5) Crimes against humanity formed part of customary international law and as such were not limited to crimes committed in the course of an international armed conflict. The decision of the International Military Tribunal at Nürnberg to the opposite effect was due to the interpretation which that Tribunal put upon the wording of its Charter and did not reflect contemporary international law.

The accused appealed to the Appeals Chamber of the International Tribunal.

*Held* (by the Appeals Chamber):—The appeal was dismissed.

1. *The legality of the establishment of the Tribunal*

(Judge Li dissenting) The Tribunal was entitled to inquire, in the context of a challenge to its jurisdiction, into the legality of its own establishment by the Security Council.

(Unanimously) In the circumstances, the Council had been entitled to establish the Tribunal.

(1) The question whether the Tribunal had been lawfully established was a question of jurisdiction, since the Tribunal would lack jurisdiction if it had not been lawfully established.

(2) Although the Tribunal was a subsidiary organ of the Security Council, it was a judicial body and thus different from most of the subsidiary organs which the Council had established. While it did not possess powers of judicial review in respect of resolutions of the Security Council, it had an incidental jurisdiction to determine whether it had been lawfully established which it could exercise solely for the purpose of ascertaining whether it had primary jurisdiction over the case before it.

(3) There was no doctrine of political question or non-justiciability in international law and the Tribunal was not debarred by any such doctrine from examining the accused's challenge to the legality of the establishment of the Tribunal.

(4) The Security Council enjoyed a wide discretion in determining what constituted a threat to international peace and security, a breach of the peace or an act of aggression and what measures were appropriate to deal with such a situation. That discretion was not, however, unlimited. In the present case, the Council's determination that the situation in the former Yugoslavia constituted a threat to the peace was clearly within the scope of that discretion. Similarly, the establishment of the Tribunal was a legitimate exercise by the Council of its power to take non-military measures under article 41 of the Charter.

(5) While there was a general principle of law that a criminal tribunal had to be "established by law", that principle did not apply in such a way that the creation of an international criminal tribunal by resolution of the Security Council would be unlawful. Although the Security Council was not a legislature, it was an organ of the United Nations competent to establish a tribunal with criminal jurisdiction. Provided the tribunal subsequently functioned in accordance with legal standards, it satisfied the general principle of legality.

2. *Primacy over national courts*

(Unanimously) The challenge to the primacy of the Tribunal was unfounded and had to be dismissed.

(1) Although the accused had been the subject of an investigation in Germany, he had not been brought to trial there. There was accordingly no question of a breach of the principle *ne bis in idem* or of needing to invoke the provisions of article 10 of the Statute, which provided for the holding of a new trial in exceptional circumstances.

(2) The accused was entitled to raise an objection to the jurisdiction of the Tribunal based upon the supposed infringement of State sovereignty. The national authorities to the contrary, such as the decisions of the Israel Supreme Court in *Eichmann*<sup>5</sup> and the United States District Court in *United States v. Noriega*,<sup>6</sup> did not carry the same weight before an international tribunal. However, the circumstances in which the Tribunal was established and the nature of the offences in respect of which it had jurisdiction justified the primacy which it had been given and which was necessary if the Tribunal was to be effective.

(3) The right of the accused to be tried before a national court in accordance with the principle *jus de non evocando* did not preclude his trial before a properly constituted international tribunal.

### 3. *Subject-matter jurisdiction*

(Judge Sidhwa dissenting, Judges Li and Abi-Saab dissenting on certain aspects of the reasoning but concurring in the decision) The Tribunal had subject-matter jurisdiction over the case.

(1) An armed conflict existed whether there was a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applied from the initiation of such armed conflicts and extended beyond the cessation of hostilities until a general conclusion of peace was reached or, in the case of internal armed conflicts, a peaceful settlement was achieved. Until that time, international humanitarian law continued to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat took place there. There had therefore been an armed conflict in the Prijedor region of Bosnia and Herzegovina at the time the offences were alleged to have been committed, even though the accused had argued that there had been no fighting in that region and that the Bosnian Serbs had “assumed power” there without encountering opposition.

(2) The conflicts which had occurred in the territory of the former Yugoslavia since 1991 had both internal and international aspects. The Security Council had not characterized those conflicts as international and had intended the Tribunal to adjudicate violations of humanitarian law that occurred in both types of conflict. The subject-matter jurisdiction of the Tribunal thus extended to offences committed in both internal and international armed conflicts.

(3) Article 2 of the Statute, which gave the Tribunal jurisdiction in respect of grave breaches of the Geneva Conventions, was applicable only to offences committed in the context of an international armed conflict. Articles 2 to 5 of the Statute were jurisdictional, not substantive, provisions and neither created nor defined the offences in respect of which they conferred jurisdiction. To determine the content of the law on grave breaches; therefore it was necessary to turn to the Geneva Conventions. The text of the Conventions made clear that the grave breaches provisions which they contained were not applicable to breaches of the law on internal armed conflicts.

(4) Article 3 of the Statute covered all violations of international humanitarian law other than the grave breaches of the Geneva Conventions which were covered by article 2 and those offences covered by articles 4 and 5. It was, therefore, broad enough to give the Tribunal jurisdiction in respect of serious violations of the international law of internal armed conflicts, including common article 3 of the Geneva Conventions and the customary law applicable to internal armed conflicts.

(5) Internal armed conflicts were subject to an extensive body of customary international law which extended beyond the rules codified in common relating to the conduct of combat, such as rules on weaponry and what constituted a legitimate target. They included, but were not limited to, many of the rules set down in Additional Protocol II to the Geneva Conventions. Although many of these rules were similar to those applicable in international armed conflicts, only a number of the rules of the law of international armed conflicts had been extended to conflicts of an internal character. Moreover, it was the general essence of those rules, rather than their detailed regulation, which had become applicable to internal armed conflicts.

(6) Violation of the rules of international law regulating internal armed conflicts entailed individual criminal responsibility.

(7) Article 5 of the Statute was expressly stated to apply to crimes against humanity committed in internal as well as international armed conflicts. The Security Council had, in this respect, adopted a more restrictive view than modern customary international law, which did not require any nexus between crimes against humanity and armed conflict, whatever the position may have been at the time of the Nürnberg trial.

(8) In addition to offences against customary international law, the Tribunal was authorized to apply any treaty which was unquestionably binding on the parties at the time of the alleged offence and the provisions of which were not contrary to peremptory norms of international humanitarian law. In general, therefore, the violation of agreements concluded between the warring parties fell within the Tribunal's jurisdiction under article 3 of the Statute.

#### *Separate opinion of Judge Li*

(1) The Tribunal had no jurisdiction to review the legality of the actions of the Security Council and should not have examined the legality of its own establishment.

(2) The interpretation of article 3 of the Statute in the decision of the Appeals Chamber was too far-reaching. The law applicable to internal armed conflicts was far more restricted than the decision suggested.

(3) The Appeals Chamber should have treated the entire conflict in the former Yugoslavia as an international armed conflict.

#### *Separate opinion of Judge Abi-Saab*

The Laws applicable in armed conflicts had evolved in such a way that grave breaches should now be seen merely as a specific category of war crimes. The concept of grave breaches should now be regarded as applicable to internal as well as international armed conflicts.

*Separate opinion of Judge Sidhwa*

(1) The accused was entitled, under article 25 of the Statute and rule 72(B) of the Rules of Procedure,<sup>7</sup> to appeal against the decision of the Trial Chamber, notwithstanding that that decision was of an interlocutory character.

(2) Although the Tribunal did not possess powers of judicial review over Security Council decisions, it was entitled to examine the legality of its own establishment by the Council. It was not necessary in the present case to determine what the Tribunal should have done if it had found that it had not been lawfully established.

(3) The Tribunal had been lawfully established by the Security Council in the exercise of its powers under Chapter VII of the Charter. Whether it had been “established by law” within the meaning of article 14(1) of the International Covenant on Civil and Political Rights was a more difficult question. The Covenant was designed to protect individuals from being tried before tribunals specially created for political purposes. That was not the case here. The Security Council was not a political body in the sense in which a national legislative body in power could be characterized as political. The Council had not acted arbitrarily in establishing the Tribunal and the Tribunal would operate with scrupulous regard for the concept of a fair trial. Nor was there any substance in the objection that the Council would exercise power only in respect of States and not individuals.

(4) The accused lacked standing to complain that the establishment of the Tribunal and its primacy over national courts violated the sovereignty of States. The principle *jus de non evocando* had no application in a case where sovereign States had given up their sovereign right to try certain offences to the Tribunal.

(5) Article 2 of the Statute was applicable only to offences committed in an international armed conflict. Article 3, on the other hand, gave the Tribunal jurisdiction to apply the whole of the law applicable in internal and international armed conflicts.

(6) Whether there had been an armed conflict in the Prijedor region at the relevant time and, if so, whether it was internal or international in character were questions which required findings of fact. The relevant facts should have been established by the Trial Chamber. The Appeal Chamber had an inherent power to remand a case to the Trial Chamber so that the relevant facts could be established and should have done so.

*Declaration of Judge Deschênes*

The official languages of the Tribunal were English and French and it was therefore regrettable that the Tribunal had given its decision only in English with merely the promise of a French translation in the future.

The following is the text of the decision of the Trial Chamber:

DECISION

On 23 June 1995 the Defence filed a preliminary motion, pursuant to rule 73(A)(i) of the Rules of Procedure and Evidence (“the Rules”), which provides for objections based on lack of jurisdiction, seeking dismissal of all of the charges

against the accused. The defence motion challenges the powers of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“the International Tribunal”) to try the accused under three heads: the alleged improper establishment of the International Tribunal; the improper grant of primacy to the International Tribunal; and challenges to the subject-matter jurisdiction of the International Tribunal. The Prosecutor contends that none of these points is valid and that the International Tribunal has jurisdiction over the accused as charged. The Government of the United States of America has submitted a brief as *amicus curiae*.

The argument of the parties on this motion was heard on 25 and 26 July and judgment on the motion was reserved, to be delivered this day.

THE TRIAL CHAMBER, HAVING CONSIDERED the written submissions and oral arguments of the parties and the written submission of the *amicus curiae*,

HEREBY ISSUES ITS DECISION.

## REASONS FOR DECISION

### I. The establishment of the International Tribunal

#### A. *Legitimacy of creation*

1. The attack on the competence of the International Tribunal in this case is based on a number of grounds, some of which may be subsumed under one general heading: that the action of the Security Council in establishing the International Tribunal and in adopting the Statute under which it functions is beyond power; hence the International Tribunal is not duly established by law and cannot try the accused.

2. It is said that, to be duly established by law, the International Tribunal should have been created either by treaty, the consensual act of nations, or by amendment of the Charter of the United Nations, not by resolution of the Security Council. Called in aid of this general proposition are a number of considerations: that before the creation of the International Tribunal in 1993 it was never envisaged that such an *ad hoc* criminal tribunal might be set up; that the General Assembly, whose participation would at least have guaranteed full representation of the international community, was not involved in its creation; that it was never intended by the Charter that the Security Council should, under Chapter VII, establish a judicial body, let alone a criminal tribunal; that the Security Council had been inconsistent in creating this tribunal while not taking a similar step in the case of other areas of conflict in which violations of international humanitarian law may have occurred; that the establishment of the International Tribunal had neither promoted, nor was capable of promoting, international peace, as the current situation in the former Yugoslavia demonstrates; that the Security Council could not, in any event, create criminal liability on the part of individuals and that this is what the creation of the International Tribunal did; that there existed and exists now no such international emergency as would justify the action of the Security Council; that no political organ such as the Security Council

is capable of establishing an independent and impartial tribunal; that there is an inherent defect in the creation, after the event, of ad hoc tribunals to try particular types of offences and, finally, that to give the International Tribunal primacy over national courts is, in any event and in itself, inherently wrong.

3. Essential to these submissions is, of course, the concept that this Trial Chamber has the capacity to review and rule upon the legality of the acts of the Security Council in establishing the International Tribunal. This the defence asserts, doing so by way of attack upon the jurisdiction of the International Tribunal.

4. There are, clearly enough, matters of jurisdiction which are open to determination by the International Tribunal, questions of time, place and nature of an offence charged. These are properly described as jurisdictional, whereas the validity of the creation of the International Tribunal is not truly a matter of jurisdiction but rather of the lawfulness of its creation, involving scrutiny of the powers of the Security Council and of the manner of their exercise; perhaps, too, of the appropriateness of its response to the situation in the former Yugoslavia.

5. The Trial Chamber has heard out the defence in its submissions involving judicial review of the actions of the Security Council. However, this International Tribunal is not a constitutional court set up to scrutinize the actions of organs of the United Nations. It is, on the contrary, a criminal tribunal with clearly defined powers, involving a quite specific and limited criminal jurisdiction. If it is to confine its adjudications to those specific limits, it will have no authority to investigate the legality of its creation by the Security Council.

6. The force of criminal law draws its efficacy, in part, from the fact that it reflects a consensus on what is demanded of human behaviour. But it is of equal importance that a body that judges the criminality of this behaviour should be viewed as legitimate. This is the first time that the international community has created a court with criminal jurisdiction. The establishment of the International Tribunal has now spawned the creation of an ad hoc Tribunal for Rwanda. Each of these ad hoc Tribunals represents an important step towards the establishment of a permanent international criminal tribunal. In this context, the Trial Chamber considers that it would be inappropriate to dismiss without comment the accused's contentions that the establishment of the International Tribunal by the Security Council was beyond power and an ill-founded political action, not reasonably aimed at restoring and maintaining peace, and that the International Tribunal is not duly established by law.

7. Any discussion of this matter must begin with the Charter of the United Nations. Article 24, paragraph 1, provides that the Members of the United Nations:

“confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

The powers of the Security Council to discharge its primary responsibility for the maintenance of international peace and security are set out in Chapters VI, VII, VIII and XII of the Charter. The International Tribunal was established

under Chapter VII. The Security Council has broad discretion in exercising its authority under Chapter VII and there are few limits on the exercise of that power. As indicated by the *travaux préparatoires*:

“Wide freedom of judgment is left as regards the moment [the Security Council] may choose to intervene and the means to be applied, with sole reserve that it should act ‘in accordance with the purposes and principles of the [United Nations]’.” (See Statement of the Rapporteur of Committee III/3, document 134, III/3/3, 11 UNCIO documents 785 (1945).)

The broad discretion given to the Security Council in the exercise of its Chapter VII authority itself suggests that decisions taken under this head are not reviewable.

8. For the defence it is said that it is a basic human right of an accused to have a fair and public hearing by a competent, independent and impartial tribunal established by law. The defence asserts that this right is protected by a panoply of principles of fundamental justice recognized by human rights law. There can be no doubt that the International Tribunal should seek to provide just such a trial; indeed, in enacting its Statute, care has been taken by the Security Council to ensure that this in fact occurs and the judges of the International Tribunal, in framing its Rules, have also paid scrupulous regard to the requirements of a fair trial. For example, article 21 of the Statute of the International Tribunal guarantees the accused the right to a fair trial and article 20 obligates the Trial Chambers to ensure that trials are, in fact, fair. There are several other provisions to the same effect. However, it is one thing for the Security Council to have taken every care to ensure that a structure appropriate to the conduct of fair trials has been created; it is an entirely different thing in any way to infer from that careful structuring that it was intended that the International Tribunal be empowered to question the legality of the law which established it. The competence of the International Tribunal is precise and narrowly defined; as described in article 1 of its Statute, it is to prosecute persons responsible for serious violations of international humanitarian law, subject to spatial and temporal limits, and to do so in accordance with the Statute. That is the full extent of the competence of the International Tribunal.

9. The defence seeks to extend the competence of the International Tribunal to review the actions of the Security Council by reference to the Rules of the International Tribunal. It refers first to rule 73(A)(i), which provides that preliminary motions by the accused can include: “objections based on lack of jurisdiction”. That rule relates to challenges to jurisdiction and is no authority for engaging in an investigation, not into jurisdiction, but into the legality of the action of the Security Council in establishing the International Tribunal. The defence also points to rule 91, “False testimony under solemn declaration”, as an example of the exercise by the International Tribunal of powers that are not explicitly provide for in its Statute. There is, however, no analogy to be drawn between the inherent authority of a Chamber to control its own proceedings and any suggested power to review the authority of the Security Council. Therefore, even were it conceivable that the Rules adopted by the judges could extend the competence of the International Tribunal, the Rules referred to by the defence do not support such an enlargement.

10. The defence relies on, or at least refers to, what has been said by the International Court of Justice (“the Court”) in three cases: *Certain Expenses of the United Nations*, ICJ Reports 1962, p. 151, at p. 168 (Advisory Opinion of 20 July) (the “*Expenses Advisory Opinion*”),<sup>8</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, p. 16, at p. 45 (Advisory Opinion of 21 June) (the “*Namibia Advisory Opinion*”)<sup>9</sup> and *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United States)*, ICJ Reports 1992, p. 114, at p. 176 (Provisional Measures Order of 14 April) (the “*Lockerbie decision*”).<sup>10</sup> In the first of these, the *Expenses Advisory Opinion*, the Court specifically stated that, unlike the legal system of some States, there exists no procedure for determining the validity of acts of organs of the United Nations. It referred to proposals at the time of drafting of the Charter that such a power should be given to the Court and to the rejection of those proposals.

11. In the second of these cases, the *Namibia Advisory Opinion*, the Court dealt very specifically with this matter, stating that: “Undoubtedly, the Court does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations organs concerned.”<sup>11</sup>

12. Finally, in the *Lockerbie* decision, Judge Weeramantry, in his dissenting opinion, but in this respect not in dissent from other members of the Court, said that “It is not for this Court to sit in review on a given resolution of the Security Council”<sup>12</sup> and, that in relation to the exercise by the Security Council of its powers under Chapter VII:

“the determination under Article 29 of the existence of any threat to the peace ... is one entirely within the discretion of the Council. ... the Council and no other is the judge of the existence of the state of affairs which brings Chapter VII into operation. ... Once [such a determination is] taken the door is opened to the various decisions the Council may make under that Chapter.”<sup>13</sup>

13. These opinions of the Court clearly provide no basis for the International Tribunal to review the actions of the Security Council, indeed, they are authorities to the contrary.

14. In support of its submission that this Trial Chamber should review the actions of the Security Council, the defence contends that the decisions of the Security Council are not “sacrosanct”. Certainly, commentators have suggested that there are limits to the authority of the Security Council. It has been posited that such limits may be based on Article 24, paragraph 2, which provides that the Security Council:

“shall act in accordance with the Purposes and Principles of the United Nations. The specific powers appointed to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.”

One commentator interprets this provision to mean that the Security Council “cannot, in principle, act arbitrarily and unfettered by any restraints”. (D.W. Bowett, *The Law of International Institutions*, p. 33 (1982).) Another commentator has

taken the position that, although the Security Council has broad discretion in the field of international peace and security, it cannot “act arbitrarily or use the existence of a threat to the peace as a basis for action which ... is for collateral and independent purposes, such as the overthrow of a government or the partition of a State”. (Ian Brownlie, “The Decisions of Political Organs of the United Nations and the Rule of Law”, in *Essays in Honour of Wang Tieya*, p. 95 (1992).)

15. Support for the view that the Security Council cannot act arbitrarily or for an ulterior purpose is found in the nature of the Charter as a treaty delegating certain powers to the United Nations. In fact, such a limitation is almost a corollary of the principle that the organs of the United Nations must act in accordance with the powers delegated them. It is a matter of logic that if the Security Council acted arbitrarily or for an ulterior purpose it would be acting outside the purview of the powers delegated to it in the Charter.

16. Although it is not for this Trial Chamber to judge the reasonableness of the acts of the Security Council, it is without doubt that, with respect to the former Yugoslavia, the Security Council did not act arbitrarily. To the contrary, the Security Council’s establishment of the International Tribunal represents its informed judgment, after great deliberation, that violations of international humanitarian law were occurring in the former Yugoslavia and that such violations created a threat to the peace. One commentator has noted the “careful, incremental approach” of the Security Council to the situation in the former Yugoslavia and described the establishment of the International Tribunal as a protracted, four-step process involving: “(1) condemnation; (2) publication; (3) investigation; and (4) punishment”. (James C. O’Brien, “The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia”, 87 *AJIL* 639, at pp. 640-2 (1993).) First, with its resolution 764 (1992) adopted on 13 July 1992, the Security Council stressed that “persons who commit or order the commission of grave breaches of the [1949 Geneva] Conventions are individually responsible in respect of such breached”. Second, the Security Council publicized this condemnation by adopting, on 12 August 1992, resolution 771 (1992), which called upon States and other bodies to submit “substantiated information” to the Secretary-General, who would report to the Security Council “recommending additional measures that might be appropriate”. Third, by resolution 780 (1992) of 6 October 1992, the Security Council established the Commission of Experts to investigate these violations of international humanitarian law. The Security Council in due course received the report of the Commission of Experts, which concluded that grave breaches of the 1949 Geneva Conventions and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia including wilful killing, ethnic cleansing, mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests. (See interim report of the Commission of Experts, document S/25274 (26 January 1993).) Finally, on 22 February 1993, by resolution 808 (1993), the Security Council decided that an international tribunal should be established and directed the Secretary-General to submit specific proposals for the implementation of that decision. On 25 May 1993, in resolution 827 (1993), the Security Council adopted the draft Statute and thus established the International Tribunal.

17. None of the hypothetical cases which commentators have suggested as example of limits on the powers of the Security Council, whether imposed by the terms of the Charter or general principles of international law and, in particular, *jus cogens*, have any relevance to the present case. Moreover, even if there be such limits, that is not to say that any judicial body, let alone this International Tribunal, can exercise powers of judicial review to determine whether, in relation to an exercise by the Security Council of powers under Chapter VII, those limits have been exceeded.

18. One may add that in the present case any submission to the contrary becomes particularly unattractive when, in the notorious circumstances of the former Yugoslavia, the Security Council has done no more than take the step of “ameliorating a threat to international peace and security by providing for the prosecution of individuals who violate well-established international law ... [something] best addressed by a judicial remedy”. (O’Brien, *supra*, at p. 643.)

19. It is not irrelevant that what the Security Council has enacted under Chapter VII is the creation of a tribunal whose jurisdiction is expressly confined to the prosecution of breaches of international humanitarian law that are beyond any doubt part of customary law, not the establishment of some eccentric and novel code of conduct or some wholly irrational criterion, such as the possession of white hair, as was instanced in argument by the defence. Arguments based upon *reductio ad absurdum* may be useful to destroy a fallacious proposition but will seldom provide a firm foundation for the creation of a valid one.

20. In argument the spectre was raised of interference by the Security Council in the proceedings of the International Tribunal, for instance, by the abolition of the International Tribunal, in midstream as it were, for wholly political reasons. No doubt this would be within the power of the Security Council, but so too is like action in a national context. National legislatures, with greater or lesser ease, depending upon their powers under their respective constitutions or governing laws, may abolish courts previously created but this in no way detracts from the status of those courts as entities established by law.

21. The Security Council established the International Tribunal as an enforcement measure under Chapter VII of the Charter of the United Nations after finding that the violations of international humanitarian law in the former Yugoslavia constituted a threat to the peace. In making this finding, the Security Council acted under Article 39 of the Charter, which provides:

“The Security Council shall determine the existence of any threat to peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

22. When, in resolution 827 (1993), the Security Council stated that it was “convinced” that, in the “particular circumstances of the former Yugoslavia”, the establishment of the International Tribunal would contribute to the restoration and maintenance of peace, the course it took was novel only in the means adopted but not in the object sought to be attained. The Security Council has on a number of occasions addressed humanitarian law issues in the context

of threats to the peace, has called upon States to comply with obligations imposed by humanitarian law and has on occasion taken steps to ensure such compliance. It has done so, for example, in relation to Southern Rhodesia in 1965 and 1966, South Africa in 1977, Lebanon on a number of occasions in the 1980s, Iran and Iraq in 1987, Iraq again in 1991, Haiti and Somalia in 1993 and, of course, Rwanda in 1994. In the last of these, the establishment of the Rwanda Tribunal by the Security Council followed its finding that the conflict there involved violations of humanitarian law and was a threat to the peace.

23. The making of a judgment as to whether there was such an emergency in the former Yugoslavia as would justify the setting up of the International Tribunal under Chapter VII is eminently one for the Security Council and only for it; it is certainly not a justiciable issue but one involving considerations of high policy and of a political nature. As to whether the particular measure of establishing the International Tribunal is, in fact, likely to be conducive to the restoration of peace and security is, again pre-eminently a matter for the Security Council and for it alone and no judicial body, certainly not this Trial Chamber, can or should review that step.

24. The concept of non-justiciability, in a national context, has been described as follows:

“Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.” (*Baker v. Carr*, 369 US 186, at p. 217 (1962).)

The validity of the decision of the Security Council to establish the International Tribunal rests on its finding that the events in the former Yugoslavia constituted a threat to the peace. This finding is necessarily fact-based and raises political, non-justiciable issues. As noted by Judge Weeramantry, such a decision “entails a factual and political judgment and not a legal one”. (The *Lockerbie* decision, at p. 176).<sup>14</sup> A commentator has agreed, saying that “a threat to international peace and security is not a fixed standard which can be easily and automatically applied” (David L. Johnson, Note, “Sanctions and South Africa”, 19 Harv. Intl LJ 887, at p. 901 (1978)). The factual and political nature of an Article 29 determination by the Security Council makes it inherently inappropriate for any review by this Trial Chamber.

25. The defence contends that there has been a lack of consistency in the actions of the Security Council. Certainly the International Tribunal is the first of its kind to be created. However, the fact that the Security Council has not taken a similar step in other, earlier cases cannot in itself be of any relevance in determining the legality of its action in this case.

26. Article 41 of the Charter provides:

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

The Article, on its face, does not limit the discretion of the Security Council to take measures not involving the use of armed force.

27. That it was not originally envisaged that an ad hoc judicial tribunal might be created under Chapter VII, even if that be factually correct, is nothing to the point. Chapter VII confers very wide powers upon the Security Council and no good reason has been advanced why Article 41 should be read as excluding the step, very appropriate in the circumstances, of creating the International Tribunal to deal with the notorious situation existing in the former Yugoslavia. This is a situation clearly suited to adjudication by a tribunal and punishment of those found guilty of crimes that violate international humanitarian law. This is not, as the defence puts it, a question of the Security Council doing anything it likes; it is a seemingly entirely appropriate reaction to a situation in which international peace is clearly endangered.

28. The defence argues that the establishment of the International Tribunal is not a measure contemplated by Article 41 because the examples included in that Article focus on economic and political measures, not judicial measures. As the defence concedes, however, the list in that Article is not exhaustive. Once again, the decision of the Security Council in this regard is fraught with fact-based, policy determinations that make this issue non-justiciable.

29. Further, the defence contends that the International Tribunal is not an appropriate measure under Article 41 because it has failed to restore peace in the former Yugoslavia. However, the accused is but the first and, as yet, the only accused to be brought before the International Tribunal, and it is wholly premature at this initial stage of its functioning to attempt to assess the effectiveness of the International Tribunal as a measure to restore peace, even were it the function of the International Tribunal to do so.

30. The Security Council discussions on the situation in the former Yugoslavia suggest two ways in which the International Tribunal would help in restoring and maintaining peace. First, several States expressed the view that the creation of the International Tribunal would deter further violations of international humanitarian law. (See Provisional Verbatim Record, UN SCOR, 48<sup>th</sup> Session, 3175<sup>th</sup> mtg., pp. 8 and 22, S/PV 3175, 3217<sup>th</sup> mtg., S/PV 3217, pp. 12, 19.

31. Second, States took the position that the establishment of the International Tribunal would assist in the restoration of peace in the region. At the Security Council meeting on resolution 808 (1993), Hungary, in supporting the establishment of the International Tribunal, explained how the International Tribunal would be helpful in this regard:

“The way the international community deals with questions relating to the events in the former Yugoslavia will leave a profound mark on the future of that part of Europe, and beyond. It will make either easier or more painful, or even impossible, the healing of the psychological wounds the conflict

has inflicted upon peoples who for centuries have lived together in harmony and good-neighbourliness, regardless of what we may hear today from certain parties to the conflict. We cannot forget that the peoples, the ethnic communities and the national minorities of Central and Eastern Europe are watching us and following our work with close attention. (Provisional Verbatim Record of 22 February 1993, *supra*, at 19-20.)

Slovenia also indicated its conviction that:

“[T]he establishment of such a tribunal is a necessary and very important step, given the fact that those responsible for such crimes would be judged by an impartial judicial body as well as the fact that it could also contribute positively to the finding of solutions for the restoration of peace in the above-mentioned regions. (Letter from the Permanent Representative of Slovenia to the United Nations addressed to the Secretary-General, document S/25652 (22 April 1993))

Similarly, a commentator who has written extensively about the International Tribunal has stated:

“[I]t is important to try individuals responsible for crimes if there is to be any real hope of defusing ethnic tensions in this region. Blame should not rest on an entire nation but should be assigned to individual perpetrators of crimes and responsible leaders.” (Theodor Meron, “Case for War Crimes Trials in Yugoslavia”, 72 *Foreign Affairs* 122, at p. 134 (1993))

The Trial Chamber agrees that due to the nature of the conflict, an adjudicatory body is a particularly appropriate measure to achieve lasting peace in the former Yugoslavia. In any case, the ultimate success or failure of the International Tribunal is certainly not an issue for this Trial Chamber.

32. Then it is said that international law requires that criminal courts be independent and impartial and that no court created by a political body such as the Security Council can have those characteristics. Of course, criminal courts worldwide are the creations of legislatures, eminently political bodies. The Court, in the *Effect of Awards* case, specifically held that a political organ of the United Nations—in that case, the General Assembly—could and had created “an independent and truly judicial body”. (*Effect of Awards of Compensation made by the United Nations Administrative Tribunal*, ICJ Reports 1954, p. 47, at p. 53 (Advisory Opinion of 13 July) (“*Effect of Awards*”).<sup>15</sup>) The question whether a court is independent and impartial depends not upon the body that creates it but upon its constitution, its judges and the way in which they function. The International Tribunal has, as its Statute and Rules attest, been constituted so as to ensure a fair trial to an accused and it is to be hoped that the way its Judges administer their jurisdiction will leave no room for complaints about lack of impartiality or want of independence.

33. The fact that the Security Council has established an ad hoc tribunal is also said to reveal invalidity because it is said to deny to the accused the right conferred by Article 14 of the International Convention on the Protection of Civil and Political Rights (“ICCPR”) to be tried by a tribunal “established by law”. However, on analysis this introduces no new concept; it is but another way of expressing the general complaint that the creation of the International Tribunal was beyond the power of the Security Council.

34. It is noteworthy that, in the context of the International Covenant and its entitlement in Article 14 to a trial by a “tribunal established by law”, this phrase requires only that the tribunal be legally constituted. At the time Article 14 was being drafted, it was sought unsuccessfully to amend it to require that tribunals should be “pre-established”. As Professor David Harris puts it in his article “The Right to a Fair Trial in Criminal Proceedings as a Human Right”, 16 ICLQ 353, at p. 356 (1967):

An amendment which sought to change the wording of the United Nations text to read “pre-established” and so cover all ad hoc or special tribunals was firmly and successfully opposed, however, on the ground that this would make normal judicial reorganization difficult. Mention was also made of the Nuremberg and Tokyo Tribunals which were ad hoc and yet which, it is generally agreed, gave the accused a fair trial in a procedural sense in most respects ... the important consideration is whether a court observes certain other requirements once it begins to function, however it might be created.

35. It is also argued that Article 29 of Chapter VI of the Charter does not contemplate the creation by the Security Council of an international judicial body when it refers to the creation of subsidiary organs. The reasoning behind this submission is no more than an assertion that a judicial body cannot be an additional organ of some other body; yet Article 29 is expressed in the broadest terms and nothing appears to limit its scope to non-judicial organs. In any event, it is not under Chapter VI of the Charter that the Security Council has established this Tribunal; as the Statute of the International Tribunal declares in its opening paragraph, it is as a measure under Chapter VII that the Security Council has created this International Tribunal. Moreover, in the *Effect of Awards* case mentioned above, the Court specifically decided that the General Assembly had the power to create an administrative tribunal. (*Effect of Awards* case at pp. 56-61.)<sup>16</sup> If the General Assembly has the authority to create a subsidiary judicial body, then surely the Security Council can create such a body in the exercise of its wide discretion to act under Chapter VII.

36. Nor has any basis been established for denying to the Security Council the power of indirect imposition of criminal liability upon individuals through the creation of a tribunal having criminal jurisdiction. On the contrary, given that the Security Council found that the threat to the peace posed by the conflict in the former Yugoslavia arose because of large-scale violations of international humanitarian law committed by individuals, it was both appropriate and necessary for the Security Council, through the International Tribunal, to act on individuals in order to address the threat to the peace. In this regard it is important that when, in its resolutions 731 (1992) and 748 (1992), the Security Council required the Libyan Government to surrender the two Libyan nationals who were accused of the Lockerbie bombing and imposed mandatory commercial and diplomatic sanctions to obtain Libya’s compliance with its decision, it was in substance acting upon individuals, seeking the extradition and trial of those Libyan nationals.

37. Reference was also made to the *jus de non evocando*, a feature of a number of national constitutions. But that principle, if it requires that an accused be tried by the regularly established courts and not by some special tribunal set up for that particular purpose, has no application when what is at issue is

the exercise by the Security Council, acting under Chapter VII, of the powers conferred upon it by the Charter of the United Nations. Of course, this involves some surrender of sovereignty by the member nations of the United Nations but that is precisely what was achieved by the adoption of the Charter. In particular, that was achieved, in the case of action by the Security Council under Chapter VII, by Article 2, paragraph 7, of the Charter and its reference to the application of enforcement measures under Chapter VII. The same observation applies to the contention that there is some vice involved in the conferring of primacy upon this Tribunal. That is no more than a means by which the Security Council seeks to give effect to the powers conferred upon it by Chapter VII. In any event, it is by no means clear that an individual defendant has standing to raise this point.

38. The submission that there should have been involvement of the General Assembly in the creation of the International Tribunal can only have any meaning if what is suggested is the creation of a tribunal by means of an amendment of the Charter. If, however; the International Tribunal can, as seems clear, be created under Chapter VII, the suggestion of an amendment of the Charter is as unnecessary, as it is impractical as a measure appropriate by way of a response to the current situation in the former Yugoslavia.

39. It was claimed on behalf of the accused that he was disadvantaged by his removal from the jurisdiction of German courts to that of the International Tribunal since that denied him the opportunity under the Optional Protocol to the International Covenant on Civil and Political Rights to have recourse to the Human Rights Committee to complain about the trial accorded him. No doubt this is so, since that right does not appear to apply to proceedings before international tribunals, but that is nothing to the point in any challenge to the jurisdiction of this Trial Chamber; it can only be remedied, if remedy is required, by a further Protocol to the Covenant. A similar comment applies in the case of the European Convention on Human Rights to which the defence also refers.

40. The foregoing disposes of the various submissions of the defence so far as they relate to the legality of the creation of the International Tribunal, submissions to which the Trial Chamber felt it proper to refer since the defence raised them but, many of which, as stated above, it does not regard as properly open for consideration by this Trial Chamber since they go, not so much to its jurisdiction, as to the unreviewable lawfulness of the actions of the Security Council.

#### B. *Primacy of the International Tribunal*

41. The Trial Chamber deals next with the defence argument that the primacy jurisdiction conferred upon the International Tribunal by Article 9, paragraph 2, finds no basis in international law because the national courts of Bosnia and Herzegovina or, alternatively, of the entity known as the Bosnian Serb Republic, have primary jurisdiction to try the accused. This argument in effect again challenges the legality of the action of the Security Council in establishing the International Tribunal: the answer to this has already been provided above. The Trial Chamber is not entitled to engage in an exercise involving the review of a resolution passed by the Security Council. In any event, the accused not being a State lacks the *locus standi* to raise the issue of primacy, which involves

a plea that the sovereign State may raise or waive and a right clearly the accused cannot take over from that State. (See *Israel v. Eichmann*, 36 ILR 5, at 62 (1961).) In this regard, it is pertinent to note that the challenge to the primacy of the International Tribunal has been made against the express intent of the two States most closely affected by the indictment against the accused—Bosnia and Herzegovina and the Federal Republic of Germany. The former, on the territory of which the crimes were allegedly committed, and the latter where the accused resided at the time of his arrest, have unconditionally accepted the jurisdiction of the International Tribunal and the accused cannot claim the rights that have been specifically waived by the States concerned. To allow the accused to do so would be to allow him to select the forum of his choice, contrary to the principles relating to coercive criminal jurisdiction. As to the entity known as the Bosnian Serb Republic, similarly, the accused as an individual, has no *locus standi*, for the reasons given above, to raise the issue of this entity's sovereignty rights should it have been endowed with all the attributes of Statehood.

42. Before leaving this question relating to the violation of the sovereignty of States, it should be noted that the crimes which the International Tribunal has been called upon to try are not crimes of a purely domestic nature. They are really crimes which are universal in nature, well recognized in international law as serious breaches of international humanitarian law, and transcending the interest of any one State. The Trial Chamber agrees that in such circumstances, the sovereign rights of States cannot and should not take precedence over the right of the international community to act appropriately as they affect the whole of mankind and shock the conscience of all nations of the world. There can therefore be no objection to an international tribunal properly constituted trying these crimes on behalf of the international community.

43. As to the invocation of *jus de non evocando*, which has been dealt with above, nothing more need be said except that the defence has in no way established that the principle is so universal in application that it amounts to a peremptory norm of international law which cannot be breached in any event. Therefore the Trial Chamber proposes to speak no more of it.

44. One final word before leaving this topic. The crimes with which the accused is charged form part of customary international law and existed well before the establishment of the International Tribunal. If the Security Council in its informed wisdom, acting well within its powers pursuant to Articles 39 and 41 under Chapter VII of the Charter, creates the International Tribunal to share the burden of bringing perpetrators of universal crimes to justice, the Trial Chamber can see no invasion into a State's jurisdiction because, as it has been rightly argued on behalf of the Prosecutor, they were never crimes within the exclusive jurisdiction of any individual State. In any event, Article 2, paragraph 7, of the Charter, as has been noted above, prohibiting intervention by the United Nations in matters essentially within a State's domestic jurisdiction, is qualified in that "this principle shall not prejudice the application of enforcement measures under Chapter VII".

...

The following is the text of the decision of the Appeals Chamber:

...

B. ADMISSIBILITY OF PLEA BASED ON THE INVALIDITY OF THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL

13. Before the Trial Chamber, the Prosecutor maintained that:

(1) The International Tribunal lacks authority to review its establishment by the Security Council (*Prosecutor Trial Brief*, at pp. 10-12); and that in any case

(2) The question whether the Security Council in establishing the International Tribunal complied with the Charter of the United Nations raises “political questions” which are “non-justiciable” (*ibid.*, at pp. 12-14).

The Trial Chamber approved this line of argument.

This position comprises two arguments: one relating to the power of the International Tribunal to consider such a plea; and another relating to the classification of the subject matter of the plea as a “political question” and, as such, “non-justiciable”, regardless of whether or not it falls within its jurisdiction.

1. *Does the International Tribunal have jurisdiction?*

14. In its decision, the Trial Chamber declares:

“[I]t is one thing for the Security Council to have taken every care to ensure that a structure appropriate to the conduct of fair trials has been created; it is an entirely different thing in any way to infer from that careful structuring that it was intended that the International Tribunal be empowered to question the legality of the law which established it. The competence of the International Tribunal is precise and narrowly defined; as described in article 1 of its Statute, it is to prosecute persons responsible for serious violations of international humanitarian law, subject to spatial and temporal limits, and to do so in accordance with the Statute. That is the full extent of the competence of the International Tribunal.” (*Decision at Trial*, para. 8.)

Both the first and the last sentences of this quotation need qualification. The first sentence assumes a subjective stance, considering that jurisdiction can be determined exclusively by reference to or inference from the intention of the Security Council, thus totally ignoring any residual powers which may derive from the requirements of the “judicial function” itself. That is also the qualification that needs to be added to the last sentence.

Indeed, the jurisdiction of the International Tribunal, which is defined in the middle sentence and described in the last sentence as “the full extent of the competence of the International Tribunal”, is not in fact so. It is what is termed in international law “original” or “primary” and sometimes “substantive” jurisdiction. But it does not include the “incidental” or “inherent” jurisdiction which derives automatically from the exercise of the judicial function.

15. To assume that the jurisdiction of the International Tribunal is absolutely limited to what the Security Council “intended” to entrust it with, is to envisage the International Tribunal exclusively as a “subsidiary organ” of the Security Council (see Charter of the United Nations, Articles 7(2) and 29), a “creation” totally fashioned to the smallest detail by its “creator” and remaining totally in its power and at its mercy. But the Council not only decided to estab-

lish a subsidiary organ (the only legal means available to it for setting up such a body), it also clearly intended to establish a special kind of “subsidiary organ”: a tribunal.

16. In treating a similar case in its advisory opinion on the *Effect of Awards of the United Nations Administrative Tribunal*, the International Court of Justice declared:

“[T]he view has been put forward that the Administrative Tribunal is a subsidiary, subordinate, or secondary organ; and that, accordingly, the Tribunal’s judgments cannot bind the General Assembly which established it.

...

The question cannot be determined on the basis of the description of the relationship between the General Assembly and the Tribunal, that is, by considering whether the Tribunal is to be regarded as a subsidiary, a subordinate, or a secondary organ, or on the basis of the fact that it was established by the General Assembly. It depends on the intention of the General Assembly in establishing the Tribunal and on the nature of the functions conferred upon it by its Statute. An examination of the language of the Statute of the Administrative Tribunal has shown that the General Assembly intended to establish a judicial body. (*Effect of Awards of Compensation made by the United Nations Administrative Tribunal, ICJ Reports 1954*, p. 47 at pp. 60-1 (Advisory Opinion of 13 July) (hereinafter “*Effect of Awards*”).<sup>17)</sup>

17. Earlier, the Court had derived the judicial nature of the United Nations Administrative Tribunal (UNAT) from the use of certain terms and language in the Statute and its possession of certain attributes. Prominent among these attributes of the judicial function figures the power provided for in article 2, paragraph 3, of the Statute of UNAT:

“In the event of a dispute as to whether the Tribunal has competence the matter shall be settled by the decision of the Tribunal. (ibid., at pp. 51-52, quoting statute of the United Nations Administrative Tribunal, article 2, para. 3.<sup>18)</sup>

18. This power, known as the principle of “*Kompetenz-Kompetenz*” in German or “*la compétence de la compétence*” in French, is part, and indeed a major part, of the incidental or inherent jurisdiction of any judicial or arbitral tribunal, consisting of its “jurisdiction to determine its own jurisdiction”. It is a necessary component in the exercise of the judicial function and does not need to be expressly provided for in the constitutive documents of those tribunals, although this is often done (see, e.g., Statute of the International Court of Justice, Article 36, para. 6). But in the words of the International Court of Justice:

“[T]his principle, which is accepted by the general international law in the matter of arbitration, assumes particular force when the international tribunal is no longer an arbitral tribunal ... but is an institution which has been pre-established by an international instrument defining its jurisdiction and regulating its operation.” (*Nottebohm Case (Liechtenstein v. Guatemala)*, *ICJ Reports 1953*, p. 7, at p. 119 (21 March).<sup>19)</sup>

This is not merely a power in the hands of the Tribunal. In international law, where there is no integrated judicial system and where every judicial or arbitral organ needs a specific constitutive instrument defining its jurisdiction, “the first obligation of the Court—as of any other judicial body—is to ascertain its own competence”. (Judge Cordova, dissenting opinion, *Advisory Opinion on Judgments of the Administrative Tribunal of ILO upon Complaints made against UNESCO*, ICJ Reports 1956, p. 77 at p. 163 (Advisory Opinion of 23 October) (Cordova J dissenting).<sup>20</sup>)

19. It is true that this power can be limited by an express provision in the arbitration agreement or in the constitutive instruments of standing tribunals, though the latter possibility is controversial, particularly where the limitation risks undermining the judicial character of the independence of the Tribunal. But it is absolutely clear that such a limitation to the extent to which it is admissible, cannot be inferred without an express provision allowing the waiver or the shrinking of such a well-entrenched principle of general international law.

As no such limitative text appears in the Statute of the International Tribunal, the International Tribunal can and indeed has to exercise its “*compétence de la compétence*” and examine the jurisdictional plea of the defence, in order to ascertain its jurisdiction to hear the case on the merits.

20. It has been argued by the Prosecutor, and held by the Trial Chamber, that:

“[T]his International Tribunal is not a constitutional court set up to scrutinize the actions of organs of the United Nations. It is, on the contrary, a criminal tribunal with clearly defined powers, involving a quite specific and limited criminal jurisdiction. If it is to confine its adjudications to those specific limits, it will have no authority to investigate the legality of its creation by the Security Council.” (Decision at Trial, pra. 5; see also para. 7, 8, 9, 17, 24.)

There is no question, of course, of the International Tribunal acting as a constitutional tribunal, reviewing the acts of the other organs of the United Nations, particularly those of the Security Council, its own “creator”. It was not established for that purpose, as is clear from the definition of the ambit of its “primary” or “substantive” jurisdiction in articles 1 to 5 of its Statute.

But this is beside the point. The question before the Appeals Chamber is whether the International Tribunal, in exercising this “incidental” jurisdiction, can examine the legality of its establishment by the Security Council, solely for the purpose of ascertaining its own “primary” jurisdiction over the case before it.

21. The Trial Chamber has sought support for its position, in some dicta of the International Court of Justice or its individual judges (see *Decision at Trial* para. 10-13.) to the effect that:

“Undoubtedly, the Court does not possess powers of judicial review or appeal in respect of decisions taken by the United Nations organs concerned.” (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, p. 16, para. 89 (Advisory Opinion of 21 June) (hereafter the “*Namibia Advisory Opinion*”).<sup>21</sup>)

All these dicta, however, address the hypothesis of the Court exercising such judicial review as a matter of “primary” jurisdiction. They do not address at all the hypothesis of examination of the legality of the decisions of other organs as a matter of “incidental” jurisdiction, in order to ascertain and be able to exercise its “primary” jurisdiction over the matter before it. Indeed, in the *Namibia Advisory Opinion*, immediately after the dictum reproduced above and quoted by the Trial Chamber (concerning its “primary” jurisdiction), the International Court of Justice proceeded to exercise the very same “incidental” jurisdiction discussed here:

“[T]he question of the validity or conformity with the Charter of General Assembly resolution 2145 (XXI) or of related Security Council resolutions does not form the subject of the request for advisory opinion. However, in the exercise of its judicial function and since objections have been advanced the Court, in the course of its reasoning, will consider these objections before determining any legal consequences arising from those resolutions. (ibid., at paragraph 89.<sup>22</sup>)

The same sort of examination was undertaken by the International Court of Justice, *inter alia*, in its advisory opinion on the *Effect of Awards Case*:

“[T]he legal power of the General Assembly to establish a tribunal competent to render judgments binding on the United Nations has been challenged. Accordingly, it is necessary to consider whether the General Assembly has been given this power by the Charter.” (*Effect of Awards*, at p. 56<sup>23</sup>)

Obviously, the wider the discretion of the Security Council under the Charter of the United Nations, the narrower the scope for the International Tribunal to review its actions, even as a matter of incidental jurisdiction. Nevertheless, this does not mean that the power disappears altogether, particularly in cases where there might be a manifest contradiction with the Principles and Purposes of the Charter.

22. In conclusion, the Appeals Chamber finds that the International Tribunal has jurisdiction to examine the plea against its jurisdiction based on the invalidity of its establishment by the Security Council.

## 2. *Is the question at issue political and as such non-justiciable?*

23. The Trial Chamber accepted this argument and classification (See *Decision at Trial*, para. 24.)

24. The doctrines of “political questions” and “non-justiciable disputes” are remnants of the reservations of “sovereignty”, “national honour”, etc., in very old arbitration treaties. They have receded from the horizon of contemporary international law, except for the occasional invocation of the “political question” argument before the International Court of Justice in advisory proceedings and, very rarely, in contentious proceedings as well.

The Court has consistently rejected this argument as a bar to examining a case. It considered it unfounded in law. As long as the case before it or the request for an advisory opinion turns on a legal question capable of a legal answer, the Court considers that it is duty-bound to exercise jurisdiction over it, regardless of the political background or the other political facets of the issue.

On this question, the International Court of Justice declared in its advisory opinion on *Certain Expenses of the United Nations*:

“[I]t has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely, the interpretation of a treaty provision.” (*Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter)*, *ICJ Reports 1962*, p. 151 at p. 155 (Advisory Opinion of 20 July).<sup>24</sup>)

This dictum applies almost literally to the present case.

25. The Appeals Chamber does not consider that the International Tribunal is barred from examination of the defence jurisdictional plea by the so-called “political” or “non-justiciable” nature of the issue it raises.

### C. THE ISSUE OF CONSTITUTIONALITY

26. Many arguments have been put forward by appellant in support of the contention that the establishment of the International Tribunal is invalid under the Charter of the United Nations or that it was not duly established by law. Many of these arguments were presented orally and in written submissions before the Trial Chamber. The appellant has asked this Chamber to incorporate into the argument before the Appeals Chamber all the points made at trial. (See *Appeal Transcript*, 7 September 1995, p. 7) Apart from the issues specifically dealt with below, the Appeals Chamber is content to allow the treatment of these issues by the Trial Chamber to stand.

27. The Trial Chamber summarized the claims of the appellant as follows:

“It is said that, to be duly established by law, the International Tribunal should have been created either by treaty, the consensual act of nations, or by amendment of the Charter of the United Nations, not by resolution of the Security Council. Called in aid of this general proposition are a number of considerations: that before the creation of the International Tribunal in 1993 it was never envisaged that such an ad hoc criminal tribunal might be set up; that the General Assembly, whose participation would at least have guaranteed full representation of the international community, was not involved in its creation; that it was never intended by the Charter that the Security Council should, under Chapter VII, establish a judicial body, let alone a criminal tribunal; that the Security Council had been inconsistent in creating this Tribunal while not taking a similar step in the case of other areas of conflict in which violations of international humanitarian law may have occurred; that the establishment of the International Tribunal had neither promoted, nor was capable of promoting, international peace, as the current situation in the former Yugoslavia demonstrates; that the Security Council could not, in any event, create criminal liability on the part of individuals and that this is what its creation of the International Tribunal

did; that there existed and exists no such international emergency as would justify the action of the Security Council; that no political organ such as the Security Council is capable of establishing an independent and impartial Tribunal; that there is an inherent defect in the creation, after the event, of ad hoc tribunals to try particular types of offences and, finally, that to give the International Tribunal primacy over national courts, is, in any event and in itself, inherently wrong.” (*Decision at Trial*, para. 2.)

These arguments raise a series of constitutional issues which all turn on the limits of the power of the Security Council under Chapter VII of the Charter of the United Nations and determining what action or measures can be taken under this Chapter, particularly the establishment of an international criminal tribunal. Put in the interrogative, they can be formulated as follows:

1. Was there really a threat to the peace justifying the invocation of Chapter VII as a legal basis for the establishment of the International Tribunal?
2. Assuming such a threat existed, was the Security Council authorized, with a view to restoring or maintaining peace, to take any measures at its own discretion, or was it bound to choose among those expressly provided for in Articles 41 and 42 (and possibly Article 40 as well)?
3. In the latter case, how can the establishment of an international criminal tribunal be justified, as it does not figure among the ones mentioned in those Articles, and is of a different nature?

1. *The power of the Security Council to invoke Chapter VII*

28. Article 39 opens Chapter VII of the Charter of the United Nations and determines the conditions of application of this Chapter. It provides:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

It is clear from this text that the Security Council plays a pivotal role and exercises a very wide discretion under this Article. But this does not mean that its powers are unlimited. The Security Council is an organ of an international organization, established by a treaty which serves as a constitutional framework for that Organization. The Security Council is thus subjected to certain constitutional limitations, however broad its powers under the constitution may be. Those powers cannot, in any case, go beyond the limits of the jurisdiction of the Organization at large, not to mention other specific limitations or those which may derive from the internal division of power within the Organization. In any case, neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law).

In particular, Article 24, after declaring, in paragraph 1, that the Members of the United Nations “confer on the Security Council primary responsibility for the maintenance of international peace and security”, imposes on it, in paragraph 3, the obligation to report annually (or more frequently) to the General Assembly, and provides more importantly, in paragraph 2, that:

“In discharging these duties the Security Council shall act in accordance with the Purpose and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.”

The Charter thus speaks the language of specific powers, not of absolute fiat.

29. What is the extent of the powers of the Security Council under Article 39 and the limits thereon, if any?

The Security Council plays the central role in the application of both parts of the Article. It is the Security Council that makes the determination that there exists one of the situations justifying the use of the “exceptional powers” of Chapter VII. And it is also the Security Council that chooses the reaction to such a situation: it either makes recommendations (i.e., opts not to use the exceptional powers but to continue to operate under Chapter VI) or decides to use the exceptional powers by ordering measures to be taken in accordance with Articles 41 and 42 with a view to maintaining or restoring international peace and security.

The situations justifying resort to the powers provided for in Chapter VII are a “threat to the peace”, a “breach of the peace” or an “act of aggression”. While the “act of aggression” is more amenable to a legal determination, the “threat to the peace” is more of a political concept. But the determination that there exists such a threat is not a totally unfettered discretion, as it has to remain, at the very least, within the limits of the Purposes and Principles of the Charter.

30. It is not necessary for the purposes of the present decision to examine any further the question of the limits of the discretion of the Security Council in determining the existence of a “threat to the peace”, for two reasons.

The first is that an armed conflict (or a series of armed conflicts) has been taking place in the territory of the former Yugoslavia since long before the decision of the Security Council to establish this International Tribunal. If it is considered an international armed conflict, there is no doubt that it falls within the literal sense of the words “breach of the peace” (between the parties or, at the very least, as a “threat to the peace” of other).

But even if it were considered merely as an “internal armed conflict”, it would still constitute a “threat to the peace” according to the settled practice of the Security Council and the common understanding of the United Nations membership in general. Indeed, the practice of the Security Council is rich with cases of civil war or internal strife which it classified as a “threat to the peace” and dealt with under Chapter VII, with the encouragement or even at the behest of the General Assembly, such as the Congo crisis at the beginning of the 1960s and, more recently, Liberia and Somalia. It can thus be said that there is a common understanding, manifested by the “subsequent practice” of the membership of the United Nations at large, that the “threat to the peace” of Article 39 may include, as one of its species, internal armed conflicts.

The second reason, which is more particular to the case at hand, is that appellant has amended his position from that contained in the Brief submitted to the Trial Chamber. Appellant no longer contests the Security Council’s power to determine whether the situation in the former Yugoslavia constituted a threat to

the peace, nor the determination itself. He further acknowledges that the Security Council “has the power to address to [*sic*] such threats ... by appropriate measures”. ([Defence] Brief to Support the Notice of (Interlocutory) Appeal, 25 August 1995 (Case No. IT-94-1-AR72), para. 5.1 (hereinafter “*Defence Appeal Brief*”).) But he continues to contest the legality and appropriateness of the measures chosen by the Security Council to that end.

## 2. *The range of measures envisaged under Chapter VII*

31. Once the Security Council determines that a particular situation poses a threat to the peace or that there exists a breach of the peace or an act of aggression, it enjoys a wide margin of discretion in choosing the course of action: as noted above (see para. 29) it can either continue, in spite of its determination, to act via recommendations, i.e., as if it were still within Chapter VI (“Pacific Settlement of Disputes”) or it can exercise its exceptional powers under Chapter VII. In the words of Article 39, it would then “decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”. (Charter, Article 39.)

A question arises in this respect as to whether the choice of the Security Council is limited to the measures provided for in Articles 41 and 42 of the Charter (as the language of Article 39 suggests), or whether it has even larger discretion in the form of general powers to maintain and restore international peace and security under Chapter VII at large. In the latter case, one of course does not have to locate every measure decided by the Security Council under Chapter VII within the confines of Articles 41 and 42, or possibly Article 40. In any case, under both interpretations, the Security Council has a broad discretion in deciding on the course of action and evaluating the appropriateness of the measures to be taken. The language of Article 39 is quite clear as to the channeling of the very broad and exceptional powers of the Security Council under Chapter VII through Articles 41 and 42. These two Articles leave to the Security Council such a wide choice as not to warrant searching, on functional or other grounds, for even wider and more general powers than those already expressly provided for in the Charter.

These powers are coercive vis-à-vis the culprit State or entity. But they are also mandatory vis-à-vis the other Member States, who are under an obligation to cooperate with the Organization (Article 2, paragraph 5, Articles 25, 48) and with one another (Article 49), in the implementation of the action or measures decided by the Security Council.

## 3. *The establishment of the International Tribunal as a measure under Chapter VII*

32. As with the determination of the existence of a threat to the peace, a breach of the peace or an act of aggression, the Security Council has a very wide margin of discretion under Article 39 to choose the appropriate course of action and to evaluate the suitability of the measures chosen, as well as their potential contribution to the restoration or maintenance of peace. But here again, this discretion is not unfettered; moreover, it is limited to the measures provided for in Articles 41 and 42. Indeed, in the case at hand, this last point serves as a basis for the appellant’s contention of invalidity of the establishment of the International Tribunal.

In its resolution 827 (1993), the Security Council considers that “in the particular circumstances of the former Yugoslavia”, the establishment of the International Tribunal “would contribute to the restoration and maintenance of peace” and indicates that, in establishing it, the Security Council was acting under Chapter VII. However, it did not specify a particular Article as a basis for this action.

Appellant has attacked the legality of this decision at different stages before the Trial Chamber as well as before this Chamber on at least three grounds:

(a) That the establishment of such a tribunal was never contemplated by the framers of the Charter as one of the measures to be taken under Chapter VII; as witnessed by the fact that it figures nowhere in the provisions of that Chapter, and more particularly in Articles 41 and 42 which detail these measures;

(b) That the Security Council is constitutionally or inherently incapable of creating a judicial organ, as it is conceived in the Charter as an executive organ, hence not possessed of judicial powers which can be exercised through a subsidiary organ;

(c) That the establishment of the International Tribunal has neither promoted, nor was capable of promoting, international peace, as demonstrated by the current situation in the former Yugoslavia.

(a) What article of Chapter VII serves as a basis for the establishment of a tribunal?

33. The establishment of an international criminal tribunal is not expressly mentioned among the enforcement measures provided for in Chapter VII, and more particularly in Article 41 and 42.

Obviously, the establishment of the International Tribunal is not a measure under Article 42, as these are measures of a military nature, implying the use of armed force. Nor can it be considered a “provisional measure” under Article 40. These measures, as their denomination indicates, are intended to act as a “holding operation”, producing a “stand-still” or a “cooling-off” effect, “without prejudice to the rights, claims or position of the parties concerned”. They are akin to emergency police action rather than to the activity of a judicial organ dispensing justice according to law. Moreover, not being enforcement action, according to the language of Article 40 itself (“before making the recommendations or deciding upon the measures provided for in Article 39”), such provisional measures are subject to the Charter limitation of Article 2, paragraph 7, and the question of their mandatory or recommendatory character is subject to great controversy; all of which renders inappropriate the classification of the International Tribunal under these measures.

34. Prima facie, the International Tribunal matches perfectly the description in Article 41 of “measures not involving the use of force”. Appellant, however, has argued before both the Trial Chamber and this Appeals Chamber, that:

“... [I]t is clear that the establishment of a war crimes tribunal was not intended. The examples mentioned in this article focus upon economic and political measures and do not in any way suggest judicial measures. (Brief

to Support the Motion [of the defence] on the Jurisdiction of the Tribunal before the Trial Chamber of the International Tribunal, 23 June 1995 (Case No. IT-94-1-T), para. 3.2.1 (hereinafter “*Defence Trial Brief*”).)

It has also been argued that the measures contemplated under Article 41 are all measures to be undertaken by Member States, which is not the case with the establishment of the International Tribunal.

35. The first argument does not stand by its own language. Article 41 reads as follows:

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

It is evident that the measures set out in Article 41 are merely illustrative *examples* which obviously do not exclude other measures. All the Article requires is that they do not involve “the use of force”. It is a negative definition.

That the examples to not suggest judicial measures goes some way towards the other argument that the Article does not contemplate institutional measures implemented directly by the United Nations through one of its organs but, as the given examples suggest, only action by Member States, such as economic sanctions (though possibly coordinated through an organ of the Organization). However, as mentioned above, nothing in the Article suggest the limitation of the measures to those implemented by States. The Article only prescribes what these measures cannot be. Beyond that it does not say or suggest what they have to be.

Moreover, even a simple literal analysis of the Article shows that the first phrase of the first sentence carries a very general prescription which can accommodate both institutional and Member State action. The second phrase can be read as referring particularly to one species of this very large category of measures referred to in the first phrase, but not necessarily the only one, namely, measures undertaken directly by States. It is also clear that the second sentence, starting with “These [measures]” not “Those [measures]”, refers to the species mentioned in the second phrase rather than to the “genus” referred to in the first phrase of this sentence.

36. Logically, if the Organization can undertake measures which have to be implemented through the intermediary of its Members, it can a fortiori undertake measures which it can implement directly via its organs, if it happens to have the resources to do so. It is only for want of such resources that the United Nations has to act through its Members. But it is of the essence of “collective measures” that they are collectively undertaken. Action by Member States on behalf of the Organization is but a poor substitute *faute de mieux*, or a “second best” for want of the first. This is also the pattern of Article 42 on measures involving the use of armed force.

In sum, the establishment of the International Tribunal falls squarely within the powers of the Security Council under Article 41.

(b) Can the Security Council establish a subsidiary organ with judicial powers?

37. The argument that the Security Council, not being endowed with judicial powers, cannot establish a subsidiary organ possessed of such powers is untenable: it results from a fundamental misunderstanding of the constitutional set-up of the Charter.

Plainly, the Security Council is not a judicial organ and is not provided with judicial powers (though it may incidentally perform certain quasi-judicial activities such as effecting determinations or findings). The principal function of the Security Council is the maintenance of international peace and security, in the discharge of which the Security Council exercises both decision-making and executive powers.

38. The establishment of the International Tribunal by the Security Council does not signify, however, that the Security Council has delegated to it some of its own functions or the exercise of some of its own powers. Nor does it mean, in reverse, that the Security Council was usurping for itself part of a judicial function which does not belong to it but to other organs of the United Nations according to the Charter. The Security Council has resorted to the establishment of a judicial organ in the form of an international criminal tribunal as an instrument for the exercise of its own principal function of maintenance of peace and security, i.e., as a measure contributing to the restoration and maintenance of peace in the former Yugoslavia.

The General Assembly did not need to have military and police functions and powers in order to be able to establish the United Nations Emergency Force in the Middle East (UNEF) in 1956. Nor did the General Assembly have to be a judicial organ possessed of judicial functions and powers in order to be able to establish UNAT. In its advisory opinion in the *Effect of Awards*, the International Court of Justice, in addressing practically the same objection, declared:

“[T]he Charter does not confer judicial functions on the General Assembly ... By establishing the Administrative Tribunal, the General Assembly was not delegating the performance of its own functions: it was exercising a power which it had under the Charter to regulate staff relations.” (*Effect of Awards*, at p. 61<sup>25</sup>)

(c) Was the establishment of the International Tribunal an appropriate measure?

39. The third argument is directed against the directionary power of the Security Council in evaluating the appropriateness of the chosen measure and its effectiveness in achieving its objective, the restoration of peace.

Article 39 leaves the choice of means and their evaluation to the Security Council, which enjoys wide discretionary powers in this regard; and it could not have been otherwise, as such a choice involves political evaluation of highly complex and dynamic situations.

It would be a total misconception of what are the criteria of legality and validity in law to test the legality of such measures *ex post facto* by their success or failure to achieve their ends (in the present case, the restoration of peace in the former Yugoslavia, in question of which the establishment of the International Tribunal is but one of many measures adopted by the Security Council).

40. For the aforementioned reasons, the Appeals Chamber considers that the International Tribunal has been lawfully established as a measure under Chapter VII of the Charter.

4. *Was the establishment of the International Tribunal contrary to the general principle whereby courts must be “established by law”?*

41. The appellant challenges the establishment of the International Tribunal by contending that it has not been established by law. The entitlement of an individual to have a criminal charge against him determined by a tribunal which has been established by law is provided in Article 14, paragraph 1, of the International Covenant on Civil and Political Rights. It provides:

“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Similar provisions can be found in article 6, paragraph 1, of the European Convention on Human Rights, which states:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...” (European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, article 6, paragraph 1, 213 UNTS 222 (hereinafter “ECHR”))

and in article 8, paragraph 1, of the American Convention on Human Rights, which provides:

“Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law.” (American Convention on Human Rights, 22 November 1969, article 8, paragraph 1, OAS Treaty Series No. 36 at 1 (hereinafter “ACHR”))

The appellant argues that the right to have a criminal charge determined by a tribunal established by law is one which forms part of international law as a “general principle of law recognized by civilized nations”, one of the sources of international law in Article 38 of the Statute of the International Court of Justice. In support of this assertion, appellant emphasizes the fundamental nature of the “fair trial” or “due process” guarantees afforded in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights. The appellant asserts that they are minimum requirements in international law for the administration of criminal justice.

42. For the reasons outlined below, the appellant has not satisfied this Chamber that the requirements laid down in these three conventions must apply not only in the context of national legal systems but also with respect to proceedings conducted before an international court. This Chamber is, however, satisfied that the principle that a tribunal must be established by law, as explained below, is a general principle of law imposing an international obligation

which only applies to the administration of criminal justice in a municipal setting. It follows from this principle that it is incumbent on all States to organize their system of criminal justice in such a way as to ensure that all individuals are guaranteed the right to have a criminal charge determined by a tribunal established by law. This does not entail however that, by contrast, an international criminal court could be set up at the mere whim of a group of governments. Such a court ought to be rooted in the rule of law and offer all guarantees embodied in the relevant international instruments. Then the court may be said to be “established by law”.

43. Indeed, there are three possible interpretations of the term “established by law”. First, as the appellant argues, “established by law” could mean established by a legislature. Appellant claims that the International Tribunal is the product of a “mere executive order” and not of a “decision making process under democratic control, necessary to create a judicial organization in a democratic society”. Therefore the appellant maintains that the International Tribunal has not been “established by law”. (*Defence Appeal Brief*, para. 5.4)

The case law applying the words “established by law” in the European Convention on Human Rights has favoured this interpretation of the expression. This case law bears out the view that the relevant provision is intended to ensure that tribunals in a democratic society must not depend on the discretion of the executive; rather they should be regulated by law emanating from Parliament. (See *Zand v. Austria*, App. No. 7360/76, 15 Eur. Comm’n HR Dec. & Rep. 70, at p. 80 (1979); *Piersack v. Belgium*, App. No. 8692/79, 47 Eur. Ct HR (Ser. B) at p. 12 (1981); *Crociani, Palmiotti, Tanassi and D’Ovidio v. Italy*, App. Nos. 8603/79, 8722/79, 8723/79 and 8729/79 (joined) 22 Eur. Comm’n HR Dec. & Rep. 147, at p. 219 (1981).)

Or, put another way, the guarantee is intended to ensure that the administration of justice is not a matter of executive discretion, but is regulated by laws made by the legislature.

It is clear that the legislative, executive and judicial division of powers which is largely followed in most municipal system does not apply to the international setting nor, more specifically, to the setting of an international organization such as the United Nations. Among the principal organs of the United Nations the divisions between judicial, executive and legislative functions are not clear cut. Regarding the judicial function, the International Court of Justice is clearly the “principal judicial organ” (see Charter of the United Nations, Article 92). There is, however, no legislature, in the technical sense of the term, in the United Nations system, and more generally, no Parliament in the world community. That is to say, there exists no corporate organ formally empowered to enact laws directly binding on international legal subjects.

It is clearly impossible to classify the organs of the United Nations into the above-discussed divisions which exist in the national law of States. Indeed, the appellant has agreed that the constitutional structure of the United Nations does not follow the division of powers often found in national constitutions. Consequently the separation of powers element of the requirement that a tribunal be “established by law” finds no application in an international law setting. The aforementioned principle can only impose an obligation on States concerning the functioning of their own national systems.

44. A second possible interpretation is that the words “established by law” refer to establishment of international courts by a body which, though not a Parliament, has a limited power to take binding decisions. In our view, one such body is the Security Council when, acting under Chapter VII of the Charter of the United Nations, it makes decisions binding by virtue of Article 25 of the Charter.

According to the appellant, however, there must be something more for a tribunal to be “established by law”. The appellant takes the position that, given the differences between the United Nations system and national division of powers, discussed above, the conclusion must be that the United Nations system is not capable of creating the International Tribunal unless there is an amendment to the Charter. We disagree. It does not follow from the fact that the United Nations has no legislature that the Security Council is not empowered to set up this International Tribunal if it is acting pursuant to an authority found within its constitution, the Charter. As set out above, para. 28-40) we are of the view that the Security Council was endowed with the power to create this International Tribunal as a measure under Chapter VII in the light of its determination that there exists a threat to the peace.

In addition, the establishment of the International Tribunal has been repeatedly approved and endorsed by the “representative” organ of the United Nations, the General Assembly: that body not only participated in its setting up, by electing the judges and approving the budget, but also expressed its satisfaction with and encouragement of the activities of the International Tribunal in various resolutions. (See General Assembly resolutions 48/88 (20 December 1993), 48/143 (20 December 1993), 49/10 (8 November 1994) and 49/205 (23 December 1994).)

45. The third possible interpretation of the requirement that the International Tribunal be “established by law” is that its establishment must be in accordance with the rule of law. This appears to be the most sensible and most likely meaning of the term in the context of international law. For a tribunal such as this one to be established according to the rule of law, it must be established in accordance with the proper international standards; it must provide all the guarantees of fairness, justice and even-handedness, in full conformity with internationally recognized human rights instruments.

This interpretation of the guarantee that a tribunal be “established by law” is borne out by an analysis of the International Covenant on Civil and Political Rights. As noted by the Trial Chamber, at the time article 14 of the International Covenant on Civil and Political Rights was being drafted, it was sought, unsuccessfully, to amend it to require that tribunals should be “pre-established” by law and not merely “established by law” (*Decision at Trial*, para. 34). Two similar proposals to this effect were made (one by the representative of Lebanon and one by the representative of Chile); if adopted, their effect would have been to prevent all ad hoc tribunals. In response, the delegate from the Philippines noted the disadvantages of using the language of “pre-established by law”:

“If [the Chilean or Lebanese proposal was approved], a country would never be able to reorganize its tribunals. Similarly it could be claimed that the Nürnberg tribunal was not in existence at the time the war criminals had committed their crimes.” (See E/CN.4/SR 109. Economic and Social Council, Commission on Human Rights, Fifth Session, Summary Records, 8 June 1949, document 6.)

As noted by the Trial Chamber in its decision, there is wide agreement that, in most respects, the International Military Tribunals at Nürnberg and Tokyo gave the accused a fair trial in a procedural sense (*Decision at Trial*, at para. 34). The important consideration in determining whether a tribunal has been “established by law” is not whether it was pre-established or established for a specific purpose or situation; what is important is that it be set up by a competent organ in keeping with the relevant legal procedures, and that it observes the requirements of procedural fairness.

This concern about ad hoc tribunals that function in such a way as not to afford the individual before them basic fair trial guarantees also underlies United Nations Human Rights Committee’s interpretation the phrase “established by law” contained in article 14, paragraph 1, of the International Covenant on Civil and Political Rights. While the Human Rights Committee has not determined that “extraordinary” tribunals or “special” courts are incompatible with the requirement that tribunals be established by law, it has taken the position that the provision is intended to ensure that any court, be it “extraordinary” or not, should genuinely afford the accused the full guarantees of fair trial set out in article 14 of the International Covenant on Civil and Political Rights. (See *General Comment on Article 14*, HR comm. 43<sup>rd</sup> Sess., Official Records of the General Assembly Fifty-third Session, Suppl. No. 40 (A/43/40) (1998), para. 4, *Cariboni v. Uruguay*, HR Comm. 159/83, (ibid., Thirty-ninth Session, Suppl. No. 40) (A/39/40). A similar approach has been taken by the Inter-American Commission (see, e.g., Inter-Am CHR, Annual Report 1972, OEA/Ser. P, AG/document 305/73/Rev. 1, 14 March 1973, p. 1; ibid., 1978, OEA/Ser. P, AG/document. 409/174, 5 March 1974, pp. 2-4.) The practice of the Human Rights Committee with respect to State reporting obligations indicates its tendency to scrutinize closely “special” or “extraordinary” criminal courts in order to ascertain whether they ensure compliance with the fair trial requirements of article 14.

46. An examination of the Statute of the International Tribunal, and of the Rules of Procedure and Evidence adopted pursuant to that Statute, leads to the conclusion that it has been established in accordance with the rule of law. The fair trial guarantees in article 14 of the International Covenant on Civil and Political Rights have been adopted almost verbatim in article 21 of the Statute. Other fair trial guarantees appear in the Statute and the Rules of Procedure and Evidence. For example, article 13, paragraph 1, of the Statute ensures the high moral character, impartiality, integrity and competence of the judges of the International Tribunal, while various other provisions in the Rules ensure equality of arms and fair trial.

47. In conclusion, the Appeals Chamber finds that the International Tribunal has been established in accordance with the appropriate procedures under the Charter of the United Nations and provides all the necessary safeguards of a fair trial. It is thus “established by law”.

48. The first ground of appeal, unlawful establishment of the International Tribunal, is accordingly dismissed.

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NOTES

<sup>1</sup>For full texts of the decisions, see *International Law Reports*, vol. 105, pp. 419-648.

<sup>2</sup>For earlier proceedings in this case, see 101 *ILR* 1. For the decision of the Trial Chamber in *Prosecutor v. Tadic (Protective Measures)*, see below [not included in present extract].

<sup>3</sup>The International Tribunal for the Former Yugoslavia was established by Security Council resolution 827 (1993). The Statute of the Tribunal is reproduced in 32 *ILM* (1993), p. 1192;

<sup>4</sup>These articles confer jurisdiction in respect of offences allegedly committed within the territory of the former Yugoslavia since 1 January 1991. Articles 2, 3 and 5 are in the following terms:

<sup>5</sup>36 *ILR* 277

<sup>6</sup>99 *ILR* 143

<sup>7</sup>The texts of article 25 and rule 72(B) are set out in Judge Sidhwa's opinion [not included in present extract].

<sup>8</sup>34 *ILR* 281, at 297.

<sup>9</sup>49 *ILR* 2 at 35.

<sup>10</sup>94 *ILR* 596 (note). The text of the decision of the International Court of Justice in the *Lockerbie* case concerning the United States is not reproduced in full in the *International Law Reports*. The full decision of the Court in the case concerning the United Kingdom is, however, reproduced in full and is substantially identical to that delivered in the United States case. The reference made here can be found, in the United Kingdom case, at 94 *ILR* 478 at 548-9.

<sup>11</sup>49 *ILR* 2 at 35.

<sup>12</sup>In the United Kingdom case at 94 *ILR* 478, at 548-9.

<sup>13</sup>In the United Kingdom case at 94 *ILR* 478, at 549.

<sup>14</sup>In the United Kingdom case at 94 *ILR* 478, at 549.

<sup>15</sup>21 *ILR* 310, at 314.

<sup>16</sup>21 *ILR* 310, at 317-322.

<sup>17</sup>21 *ILR* 310 at 321.

<sup>18</sup>21 *ILR* 310 at 312.

<sup>19</sup>20 *ILR* 567 at 572.

<sup>20</sup>23 *ILR* 517.

<sup>21</sup>49 *ILR* 2 at 35

<sup>22</sup>49 *ILR* 2 at 35

<sup>23</sup>21 *ILR* 310 at 317

<sup>24</sup>34 *ILR* 281 at 285.

<sup>25</sup>21 *ILR* 310 at 321.

## Chapter VIII

### DECISIONS OF NATIONAL TRIBUNALS

#### United States of America

##### 1. *United States Federal Communications Commission*

###### ORDER ON RECONSIDERATION REGARDING INTERNATIONAL TELEPHONE “CALLBACK” SERVICE<sup>1</sup>

In June 1995, the Federal Communications Commission (FCC) in the United States adopted an Order on Reconsideration confirming that international telephone “callback” service using uncompleted call signaling violated neither United States nor international law. (Callback offerings enable customers abroad to access United States international service and pay United States rates for international calls rather than the generally higher prices charged by foreign carriers.) The Commission said that callback is in the public interest because the resulting competition between United States callback providers and foreign carriers charging higher rates ultimately lowers foreign rates to the benefit of consumers and industry abroad and in the United States. The Commission added, however, that United States-based callback operators may not provide callback using uncompleted call signaling in foreign countries where this offering is expressly prohibited by law.

After the Commission in 1994 authorized United States companies to resell international switched services and offer callback, AT&T requested reconsideration on the grounds that callback violated the federal wire fraud statute and the United States Communications Act. The Commission subsequently expanded the proceeding to address questions of international law and comity which had been presented by a number of foreign Governments and carriers.

The Commission concluded that callback using uncompleted call signaling does not violate international law. It agreed with the United State Department of State that callback is not prohibited or otherwise restricted by regulations adopted by the International Telecommunication Union (International Telecommunication Regulations; Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne 1988). FCC noted, however, that some foreign countries have prohibited this offering within their territories and reaffirmed its view that, as a matter of international comity, United States-based callback operators are not authorized to provide callback in those countries whose laws explicitly prohibit this offering. The FCC Order will be communicated to foreign Governments, and any such Governments which prohibit callback may so notify the United States Government, which will maintain a file of all such communications.

2. *S. KADIC, on her own behalf and on behalf of her infant sons Benhaim and Ognjen, Internationalna Inicijativa Zena Bosne I Hercegovine "Biser," and Zena Bosne I Hercegovine, Plaintiffs-Appellants, v. Radovan KARADZIC, Defendant-Appellee*

Jane Doe I, on behalf of herself and all other similarly situated; and Jane Doe II, on behalf of herself and as administratrix of the estate of her deceased mother, and on behalf of all others similarly situated, Plaintiffs-Appellants, v. Radovan Karadzic, Defendant-Appellee.<sup>2</sup>

Nos. 1541, 1544, Dockets 94-9035, 94-9069.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

ARGUED 20 JUNE 1995

DECIDED 13 OCTOBER 1995

REHEARING DENIED 6 JANUARY 1996

Two groups of victims from Bosnia and Herzegovina brought actions against the self-proclaimed president of unrecognized Bosnian-Serb entity under, inter alia, Alien Tort Claims Act for violations of international law. The United States District Court for the Southern District of New York, Peter K. Leisure, J., 866 F. Supp. 734, dismissed actions for lack of subject-matter jurisdiction, and plaintiffs appealed. The Court of Appeals, Jon O. Newman, Chief Judge, held that: (1) plaintiffs sufficiently alleged violations of customary international law and law of war for purposes of Alien Tort Claims Act; (2) plaintiffs sufficiently alleged that unrecognized Bosnia-Serb entity of "Srpska" was a "State," and that defendant had acted under colour of law for purposes of international law violations requiring official action; defendant was not immune from personal service of process while invitee of United Nations; (4) actions were not precluded by political question doctrine; and (5) defence under act of state doctrine was waived.

Reversed and remanded.

Beth Stephens, New York City (Matthew J. Chachère, Jennifer Green, Peter Weiss, Michael Ratner, Jules Lobel, Center for Constitutional Rights, New York City; Rhonda Copelon, Celina Romany, International Women's Human Rights Clinic, Flushing, NY; Judith Levin, International League of Human Rights, New York City; Harold Hongju Koh, Ronald C. Slye, Swati Agrawal, Bruce Brown, Charlotte Burrows, Carl Goldfarb, Linda Keller, Jon Levitsky, Daniyal Mueenuddin, Steve Parker, Maxwell S. Peltz, Amy Valley, Wendy Weiser, Allard K. Lowenstein International Human Rights Clinic, New Haven, CT, on the brief), for plaintiffs-appellants, Jane Doe I and Jane Doe II.

Catharine A. MacKinnon, Ann Arbor, MI (Martha F. Davis, Deborah A. Ellis, Yolanda S. Wu, NOW Legal Defense and Education Fund, New York City, on the brief), for plaintiffs-appellants Kadac, Internationalna Inicijativa Zena Bosne I Hercegovine, and Zena Bosne I Bosne I Hercegovine.

Ramsey Clark, New York City (Lawrence W. Schilling, New York City, on the brief), for defendant-appellee.

Drew S. Days, III, Solicitor General, and Conrad K. Harper, Legal Adviser, Department of State, Washington, DC submitted a Statement of Interest of the United States; Frank W. Hunger, Assistant Attorney General, and Douglas Letter, Appellate Litigation Counsel, on the brief.

Karen Honeycut, Vladeck, Waldman, Elias & Engelhard, New York, NY, submitted a brief for amici curiae Law Professors Frederick M. Abbott et al.

Nancy Kelly, Women Refugee Project, Harvard Immigration and Refugee Program, Cambridge and Somerville Legal Services, Cambridge, Mass., submitted a brief for amici curiae Alliances—an African Women’s Network et al.

Juan E. Mendez, Joanne Mariner, Washington, DC; Professor Ralph G. Steinhardt, George Washington University School of Law, Washington, DC; Paul L. Hoffman, Santa Monica, CA; Professor Joan Fitzpatrick, University of Washington School of Law, Seattle, WA, submitted a brief for amicus curiae Human Rights Watch.

Stephen M. Schneebaum, Washington, DC, submitted a brief for amici curiae The International Human Rights Law Group et al.

Before: NEWMAN, Chief Judge, FEINBERG and WALKER, Circuit Judges.

Jon O. NEWMAN, Chief Judge:

Most Americans would probably be surprised to learn that victims of atrocities committed in Bosnia are suing the leader of the insurgent Bosnian-Serb forces in a United States District Court in Manhattan. Their claims seek to build upon the foundation of this Court’s decision in *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir.1980), which recognized the important principle that the venerable Alien Tort Act, 28 U.S.C. § 1350 (1988), enacted in 1789 but rarely invoked since then, validly creates federal court jurisdiction for suits alleging torts committed anywhere in the world against aliens in violation of the law of nations. The pending appeals pose additional significant issues as to the scope of the Alien Tort Act: whether some violations of the law of nations may be remedied when committed by those not acting under the authority of a State; if so, whether genocide, war crimes, and crimes against humanity are among the violations that do not require State action; and whether a person, otherwise liable for a violation of the law of nations, is immune from service of process because he is present in the United States as an invitee of the United Nations.

These issues arise on appeals by two groups of plaintiffs-appellants from the 19 November 1994 judgment of the United States District Court for the Southern District of New York (Peter K. Leisure, Judge), dismissing, for lack of subject-matter jurisdiction, their suits against defendant-appellee Radovan Karadzic, President of the self-proclaimed Bosnian-Serb republic of “Srpska.” *Doe v. Karadzic*, 866 F.Supp. 734 (S.D.N.Y. 1994) (“*Doe*”). For the reasons set forth below, we hold that subject-matter jurisdiction exists, that Karadzic may be found liable for genocide, war crimes and crimes against humanity in his private capacity and for other violations in his capacity as a State actor, and that he is not immune from service of process. We therefore reverse and remand.

## BACKGROUND

The plaintiffs-appellants are Croat and Muslim citizens of the internationally recognized nation of Bosnia and Herzegovina, formerly a republic of Yugoslavia. Their complaints, which we accept as true for purposes of this appeal, allege that they are victims, and representatives of victims, of various atrocities, including brutal acts of rape, forced prostitution, forced impregnation, torture and summary execution, carried out by Bosnian-Serb military forces as part of a genocidal campaign conducted in the course of the Bosnian civil war. Karadzic, formerly a citizen of Yugoslavia and now a citizen of Bosnia and Herzegovina, is the President of a three-man presidency of the self-proclaimed Bosnian-Serb republic within Bosnia and Herzegovina, sometimes referred to as "Srpska," which claims to exercise lawful authority, and does in fact exercise actual control, over large parts of the territory of Bosnia and Herzegovina. In his capacity as President, Karadzic possesses ultimate command authority over the Bosnian-Serb military forces, and the injuries perpetrated upon plaintiffs were committed as part of a pattern of systematic human rights violations that was directed by Karadzic and carried out by the military forces under his command. The complaints allege that Karadzic acted in an official capacity either as the titular head of Srpska or in collaboration with the government of the recognized nation of the former Yugoslavia and its dominant constituent republic, Serbia.

The two groups of plaintiffs asserted causes of action for genocide, rape, forced prostitution and impregnation, torture and other cruel, inhuman and degrading treatment, assault and battery, sex and ethnic inequality, summary execution and wrongful death. They sought compensatory and punitive damages, attorney's fees, and, in one of the cases, injunctive relief. Plaintiffs grounded subject-matter jurisdiction in the Alien Tort Act, the Torture Victim Protection Act of 1991 ("Torture Victim Act"), Pub.L. No. 102-256, 106 Stat. 73 (1992), codified at 28 U.S.C. § 1350 note (Supp. V 1993), the general federal-question jurisdictional statute, 28 U.S.C. § 1331 (1988), and principles of supplemental jurisdiction, 28 U.S.C. § 1367 (Supp. V 1993).

In early 1993, Karadzic was admitted to the United States on three separate occasions as an invitee of the United Nations. According to affidavits submitted by the plaintiffs, Karadzic was personally served with the summons and complaint in each action during two of these visits while he was physically present in Manhattan. Karadzic admits that he received the summons and complaint in the *Kadic* action, but disputes whether the attempt to serve him personally in the *Doe* action was effective.

In the District Court, Karadzic moved for dismissal of both actions on the grounds of insufficient service of process, lack of personal jurisdiction, lack of subject-matter jurisdiction, and nonjusticiability of plaintiffs' claims. However, Karadzic submitted a memorandum of law and supporting papers only on the issues of service of process and personal jurisdiction, while reserving the issues of subject-matter jurisdiction and non-justiciability for further briefing, if necessary. The plaintiffs submitted papers responding only to the issues raised by the defendant.

Without notice or a hearing, the District Court bypassed the issues briefed by the parties and dismissed both actions for lack of subject-matter jurisdiction. In an Opinion and Order, reported at 866 F.Supp. 734, the District Judge pre-

liminarily noted that the Court might be deprived of jurisdiction if the Executive Branch were to recognize Karadzic as the head of State of a friendly nation, *see Lafontant v. Aristide*, 844 F.Supp. 128 (E.D.N.Y.1994) (head-of-State immunity), and that this possibility could render the plaintiffs' pending claims requests for an advisory opinion. The District Judge recognized that this consideration was not dispositive but believed that it "militates against this Court exercising jurisdiction." *Doe*, 866 F.Supp. at 738

Turning to the issue of subject-matter jurisdiction under the Alien Tort Act, the Court concluded that "acts committed by non-State actors do not violate the law of nations, *idem* at 739. Finding that "[t]he current Bosnian-Serb warring military faction does not constitute a recognized state," *idem* at 741, and that "the members of Karadzic's faction do not act under the color of any recognized State law," *idem* the Court concluded that "the acts alleged in the instant action[s], while grossly repugnant, cannot be remedied through [the Alien Tort Act]," *idem* at 740-41. The Court did not consider the plaintiffs' alternative claim that Karadzic acted under colour of law by acting in concert with the Serbian Republic of the former Yugoslavia, a recognized nation.

The District Judge also found that the apparent absence of State action barred plaintiffs' claims under the Torture Victim Act, which expressly requires that an individual defendant act "under actual or apparent authority, or colour of law, of any foreign nation," Torture Victim Act 2(a). With respect to plaintiffs' further claims that the law of nations, as incorporated into federal common law, gives rise to an implied cause of action over which the Court would have jurisdiction pursuant to section 1331, the judge found that the law of nations does not give rise to implied rights of action absent specific Congressional authorization, and that, in any event, such an implied right of action would not lie in the absence of State action. Finally, having dismissed all of plaintiffs' federal claims, the Court declined to exercise supplemental jurisdiction over their state-law claims.

## DISCUSSION

Though the District Court dismissed for lack of subject-matter jurisdiction, the parties have briefed not only that issue but also the threshold issues of personal jurisdiction and justiciability under the political question doctrine. Karadzic urges us to affirm on any one of these three grounds. We consider each in turn.

### I. *Subject-matter jurisdiction*

Appellants allege three statutory bases for the subject-matter jurisdiction of the District Court—the Alien Tort Act, the Torture Victim Act, and the general federal-question jurisdictional statute.

#### A. THE ALIEN TORT ACT

##### 1. *General Application to Appellants' Claims*

[I] The Alien Tort Act provides: The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

28 U.S.C. § 1350 (1988). Our decision in *Filártiga* established that this statute confers federal subject-matter jurisdiction when the following three conditions are satisfied: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations (i.e., international law).<sup>3</sup> 630 F.2d at 887; see also *Amerada Hess Shipping Corp. v. Argentine Republic*, 830 F.2d 421, 425 (2d Cir.1987), *rev'd on other grounds*, 488 U.S. 428, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). The first two requirements are plainly satisfied here, and the only disputed issue is whether plaintiffs have pleaded violations of international law.

Because the Alien Tort Act requires that plaintiffs plead a “violation of the law of nations” at the jurisdictional threshold, this statute requires a more searching review of the merits to establish jurisdiction than is required under the more flexible “arising under” formula of section 1331. See *Filártiga*, 630 F.2d at 887-88. Thus, it is not a sufficient basis for jurisdiction to plead merely a colorable violation of the law of nations. There is no federal subject-matter jurisdiction under the Alien Tort Act unless the complaint adequately pleads a violation of the law of nations (or treaty of the United States).

[2,3]*Filártiga* established that courts ascertaining the content of the law of nations “must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today.” *Idem* at 881; see also *Amerada Hess*, 830 F.2d at 425. We find the norms of contemporary international law by “consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law.” *Filártiga*, 630 F.2d at 880 (quoting *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61, 5 L.Ed. 57 (1820)). If this inquiry discloses that the defendant’s alleged conduct violates “well-established, universally recognized norms of international law,” *idem* at 888 as opposed to “idiosyncratic legal rules,” *idem* at 881, then federal jurisdiction exists under the Alien Tort Act.

Karadzic contends that appellants have not alleged violations of the norms of international law because such norms bind only States and persons acting under colour of a State’s law, not private individuals. In making this contention, Karadzic advances the contradictory positions that he is not a State actor, see Brief for Appellee at 19, even as he asserts that he is the President of the self-proclaimed Republic of Srpska, see statement of Radovan Karadzic, 3 May 1993, submitted with Defendant’s Motion to Dismiss. For their part, the Kadic appellants also take somewhat inconsistent positions in pleading defendant’s role as President of Srpska, Kadic Complaint ¶ 13, and also contending that “Karadzic is not an official of any Government,” Kadic Plaintiffs’ Memorandum in Opposition to Defendant’s Motion to Dismiss at 21 n. 25.

Judge Leisure accepted Karadzic’s contention that “acts committed by non-State actors do not violate the law of nations,” *Doe*, 866 F.Supp. at 739, and considered him to be a non-state actor.<sup>4</sup> The judge appears to have deemed State action required primarily on the basis of cases determining the need for State action as to claims of official torture, see, e.g., *Carmichael v. United Technologies Corp.*, 835 F.2d 109 (5<sup>th</sup> Cir.1998), without consideration of the substantial body of law, discussed below, that renders private individuals liable for some international law violations.

[4] We do not agree that the law of nations, as understood in the modern era, confines its reach to State action. Instead, we hold that certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a State or only as private individuals. An early example of the application of the law of nations to the acts of private individuals is the prohibition against piracy. See *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 161, 5 L.Ed. 57 (1820); *United States v. Furlong*, 18 U.S. (5 What.) 184, 196-97, 5 L.Ed. 64 (1820). In *The Brig Malek Adhel*, 43 U.S. (2 How.) 210, 232, 11 L. Ed. 239 (1844), the Supreme Court observed that pirates were “*hostis humani generis*” (an enemy of all mankind) in part because they acted “without...any pretense of public authority.” See generally 4 William Blackstone, *Commentaries on the Laws of England* 68 (facsimile of 1<sup>st</sup> ed. 1765-1769, Univ. of Chicago, ed., 1979). Later examples are prohibitions against the slave trade and certain war crimes. See M. Cherif Barriouni, “*Crimes Against Humanity*” in *International Criminal Law* 193 (1993); Jordan Paust, *The Other Side of Right: Private Duties Under Human Rights Law*, 5 Harv. Hum.Rts.J. 51 (1992).

The liability of private persons for certain violations of customary international law and the availability of the Alien Tort Act to remedy such violations was early recognized by the Executive Branch in an opinion of Attorney General Bradford in reference to acts of American citizens aiding the French fleet to plunder British property off the coast of Sierra Leone in 1795. See *Breach of Neutrality*, 1 Op. Att’y Gen. 57, 59 (1795). The Executive Branch has emphatically restated in this litigation its position that private persons may be found liable under the Alien Tort Act for acts of genocide, war crimes and other violations of international humanitarian law. See *Statement of Interest of the United States* at 5-13.

The Restatement (third) of the Foreign Relations Law of the United States (1986) (“*Restatement (Third)*”) proclaims: “Individuals may be held liable for offences against international law, such as piracy, war crimes, and genocide.” *Restatement (Third)* pt. II, introductory note. The Restatement is careful to identify those violations that are actionable when committed by a State, *Restatement (Third)* § 702<sup>5</sup>, and a more limited category of violations of “universal concern,” *idem* 404<sup>6</sup> partially overlapping with those listed in section 702. Though the immediate focus of section 404 is to identify those offences for which a State has jurisdiction to punish without regard to territoriality or the nationality of the offenders, cf. *idem*. 402(1)(a), (2), the inclusion of piracy and slave trade from an earlier era and aircraft hijacking from the modern era demonstrates that the offences of “universal concern” include those capable of being committed by non-State actor. Although the jurisdiction authorized by section 404 is usually exercised by application of criminal law, international law also permits States to establish appropriate civil remedies, *idem* 404 cmt. B, such as the tort actions authorized by the Alien Tort Act. Indeed, the two cases invoking the Alien Tort Act prior to *Filártiga* both applied the civil remedy to private action. See *Adra v. Clift*, 195 F.Supp. 857 (D.Md.1961); *Bolchos v. Darrel*, 3 F.Cas.810 (D.S.C.1795) (No. 1,607).

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

- (a) Genocide,
- (b) Slavery or slave trade,
- (c) The murder or causing the disappearance of individuals,

- (d) Torture or other cruel, inhuman, or degrading treatment or punishment,
- (e) Prolonged arbitrary detention
- (f) Systematic racial discrimination, or
- (g) A consistent pattern of gross violations of internationally recognized human rights.

A State has jurisdiction to define and prescribe punishment for certain offences recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes and perhaps certain acts of terrorism, even where [no other basis of jurisdiction] is present.

Karadzic disputes the application of the law of nations to any violations committed by private individuals, relaying on *Filártiga* and the concurring opinion of Judge Edwards in *Tel-REN v. Libyan Arab Republic*, 726 F.2d 774,775 (D.C.Cir.1984), cert. Denied, 470 U.S. 1003, 105 S.Ct. 1354, 84 L.Ed.2d 377 (1985).<sup>7</sup> *Filártiga* involved an allegation of torture committed by a State official. Relying on the United Nations' Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), Annex) (hereinafter "Declaration on Torture"), as a definitive statement of norms of customary international law prohibiting States from permitting torture, we ruled that "official torture is now prohibited by the law of nations." *Filártiga*, 630 F.2d at 884 (emphasis added). We had no occasion to consider whether international law violations other than torture are actionable against private individuals, and nothing in *Filártiga* purports to preclude such a result.

Nor did Judge Edwards in his scholarly opinion in *Tel-Oren* reject the application of international law to any private action. On the contrary, citing piracy and slave-trading as early examples, he observed that there exists a "handful of crimes to which the law of nations attributes individual responsibility," 726 F.2d at 795. Reviewing authorities similar to those consulted in *Filártiga*, he merely concluded that torture—the specific violation alleged in *Tel-Oren*—was not within the limited category of violations that do not require state action.

Karadzic also contends that Congress intended the State-action requirement of the Torture Victim Act to apply to actions under the Alien Tort Act. We disagree. Congress enacted the Torture Victim Act to codify the cause of action recognized by this Circuit in *Filártiga*, and to further extend that cause of action to plaintiffs who are United States citizens. See H.R.Rep. No. 367, 102d Cong., 2d Sess., at 4 (1991), reprinted in 1992 U.S.C.C.A.N. 84, 86 (explaining that codification of *Filártiga* was necessary in the light of skepticism expressed by Judge Bork's concurring opinion in *Tel-Oren*). At the same time, Congress indicated that the Alien Tort Act "has other important uses and should not be replaced," because:

"Claims based on torture and summary executions do not exhaust the list of actions that may appropriately be covered [by the Alien Tort Act]. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law." *Idem*

The scope of the Alien Tort Act remains undiminished by enactment of the Torture Victim Act.

## 2. *Specific Application of Alien Tort Act to Appellants' Claims*

In order to determine whether the offences alleged by the appellants in this litigation are violations of the law of nations that may be the subject of Alien Tort Act claims against a private individual, we must make a particularized examination of these offences mindful of the important precept that “evolving standards of international law govern who is within the [Alien Tort Act’s] jurisdictional grant.” *Amerada Hess*, 830 F.2d at 425. In making that inquiry, it will be helpful to group the appellants’ claims into three categories: (a) genocide, (b) war crimes, and (c) other instances of inflicting death, torture, and degrading treatment.

[5] (a) Genocide. In the aftermath of the atrocities committed during the Second World War, the condemnation of genocide as contrary to international law quickly achieved broad acceptance by the community of nations. In 1946, the General Assembly of the United Nations in resolution 96 (I) of 11 December 1946, declared that genocide is a crime under international law that is condemned by the civilized world, whether the perpetrators are “private individuals, public officials or statesmen.” The General Assembly also affirmed the principles of article 6 of the Agreement and Charter Establishing the Nürnberg War Crimes Tribunal for punishing “persecutions on political racial, or religious grounds,” regardless of whether the offenders acted “as individuals or as members of organizations.” *In re Extradition of Demjanjuk*, 612 F.Supp. 544, 555 n. 11 (N.D. Ohio 1985) (quoting article 6). See General Assembly resolution 95(I) of 11 December 1946.

The Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force on 12 January 1951, for the United States 23 February 1989 (hereinafter “Convention on Genocide”), provides a more specific articulation of the prohibition of genocide in international law. The Convention, which has been ratified by more than 120 nations, including the United States, see U.S. Dept. of State, *Treaties in Force* 345 (1994), defines “genocide” to mean:

“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births with the group;
- (e) Forcibly transferring children of the group to another group. (art. II)”

Especially pertinent to the pending appeal, the Convention makes clear that “[p]ersons committing genocide ... shall be punished, *whether they are constitutionally responsible rulers, public officials or private individuals.*” (art. IV, emphasis added). These authorities unambiguously reflect that, from its incorporation into international law, the proscription of genocide has applied equally to State and non-State actors.

The applicability of this norm to private individuals is also confirmed by the Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091 (1988), which criminalizes acts of genocide without regard to whether the offender is acting under colour of law, *see idem* 1091 (a) (“[w]hoever” commits genocide shall be punished), if the crime is committed within the United States or by a United States national, *idem* § 1091(d). Though Congress provided that the Genocide Convention Implementation Act shall not “be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding,” *idem* § 1092, the legislative decision not to create a new private remedy does not imply that a private remedy is not already available under the Alien Tort Act. Nothing in the Genocide Convention Implementation Act or its legislative history reveals an intent by Congress to repeal the Alien Tort Act insofar as it applies to genocide,<sup>8</sup> and the two statutes are surely not repugnant to each other. Under these circumstances, it would be improper to construe the Genocide Convention Implementation Act as repealing the Alien Tort Act by implication. *See Rodriguez v. United States*, 480 U.S. 522, 524, 107 S.Ct. 1391, 1392, 94 L.Ed.2d 533 (1987) (“[R]epeals by implication are not favored and will not be found unless an intent to repeal is clear and manifest.”) (citations and internal quotation marks omitted); *United States v. Cook*, 922 F.2d 1026, 1034 (2d Cir.) (“mutual exclusivity” of statutes is required to demonstrate Congress’s “clear, affirmative intent to repeal”), *cert. denied*, 500 U.S. 941, 111, S.Ct.2235, 114 L.Ed.2d 477 (1991).

[6] Appellants’ allegations that Karadzic personally planned and ordered a campaign of murder, rape, forced impregnation and other forms of torture designed to destroy the religious and ethnic groups of Bosnian Muslims and Bosnian Croats clearly state a violation of the international law norm proscribing genocide, regardless of whether Karadzic acted under colour of law or as a private individual. The District Court has subject-matter jurisdiction over these claims pursuant to the Alien Tort Act.

[7,8](b) *War crimes*. Plaintiffs also contend that the acts of murder, rape, torture and arbitrary detention of civilians, committed in the course of hostilities, violate the law of war. Atrocities of the types alleged here have long been recognized in international law as violations of the law of war. *See In re Yamashita*, 327 U.S. 1, 14, 66 S.Ct. 340, 347, 90 L.Ed. 499 (1946). Moreover, international law imposes an affirmative duty on military commanders to take appropriate measures within their power to control troops under their command for the prevention of such atrocities. *Idem* at 15-16, 66 S.Ct. at 347-38.

[9] After the Second World War, the law of war was codified in the four Geneva Conventions,<sup>9</sup> which have been ratified by more than 180 nations, including the United States, *see Treaties in Force, supra*. at 398-399. Common article 3, which is substantially identical in each of the four Conventions, applies to “armed conflict[s] not of an international character” and binds “each Party to the conflict ... to apply, as a minimum, the following provisions”:

“Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court...” (Geneva Convention I art. 3(1).)

Thus, under the law of war as codified in the Geneva Conventions, all “parties” to a conflict—which includes insurgent military groups—are obliged to adhere to these most fundamental requirements of the law of war.<sup>10</sup>

At this stage in the proceedings, however, it is unnecessary for us to decide whether the requirements of Protocol II have ripened into universally accepted norms of international law, or whether the provisions of the Geneva Conventions applicable to international conflicts apply to be Bosnian-Serb forces on either theory advanced by plaintiffs.

[10] The offences alleged by the appellants, if proved, would violate the most fundamental norms of the law of war embodied in common article 3, which binds parties to internal conflicts regardless of whether they are recognized nations or roving hordes of insurgents. The liability of private individuals for committing war crimes has been recognized since the First World War and was confirmed at Nürnberg after the Second World War, see Telford Taylor, *Nuremberg Trials: War Crimes and International Law*, 450 Int’l Conciliation 304 (April 1949) (collecting cases), and remains today an important aspect of international law, see Jordan Paust, *After My Lai: The Case for War Crimes Jurisdiction Over Civilians in Federal District Courts*, in 4 *The Vietnam War and International Law* 447 (R.Falk ed., 1976). The District Court has jurisdiction pursuant to the Alien Tort Act over appellants’ claims of war crimes and other violations of international humanitarian law.

[11] (c) *Torture and summary execution*. In *Filártiga*, we held that official torture is prohibited by universally accepted norms of international law, see 630 F.2d at 885, and the Torture Victim Act confirms this holding and extends it to cover summary execution. Torture Victim Act confirms this holding and extends it to cover summary execution. Torture Victim Act §§ 2(a), 3(a). However, torture and summary execution—when not perpetrated in the course of genocide or war crimes—are proscribed by international law only when committed by State officials or under colour of law. See Declaration on Torture art. 1 (defining torture as being “inflicted by or at the instigation of a public official”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pt. I, art. 1, 23 I.L.M. 1027 (1984), as modified, 24 I.L.M. 535 (1985), entered into force June 26, 1987, ratified by United States Oct. 21, 1994, 34 I.L.M. 590, 591 (1995) (defining torture as “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”); Torture Victim Act § 2(a) (imposing liability on individuals acting “under actual or apparent authority, or colour of law, of any foreign nation”).

In the present case, appellants allege that acts of rape, torture and summary execution were committed during hostilities by troops under Karadzic's command and with the specific intent of destroying appellants' ethnic-religious groups. Thus, many of the alleged atrocities are already encompassed within the appellants' claims of genocide and war crimes. Of course, at this threshold stage in the proceedings it cannot be known whether appellants will be able to prove the specific intent that is an element of genocide, or prove that each of the alleged torts were committed in the course of an armed conflict, as required to establish war crimes. It suffices to hold at this stage that the alleged atrocities are actionable under the Alien Tort Act, without regard to State action, to the extent that they were committed in pursuit of genocide or war crimes, and otherwise may be pursued against Karadzic to the extent that he is shown to be a State actor. Since the meaning of the State action requirement for purposes of international law violations will likely arise on remand and has already been considered by the District Court, we turn next to that requirement.

### 3. *The State action requirement for international law violations*

In dismissing plaintiffs' complaints for lack of subject-matter jurisdiction, the District Court concluded that the alleged violations required State action and that the "Bosnian-Serb entity" headed by Karadzic does not meet the definition of a state. *Doe*, 866 F.Supp. at 741 n. 12. Appellants contend that they are entitled to prove that Srpska satisfies the definition of a State for purposes of international law violations and, alternatively, that Karadzic acted in concert with the recognized State of the former Yugoslavia and its constituent republic, Serbia.

[12,13] (a) *Definition of a State is international law.* The definition of a State is well established in international law:

"Under international law, a State is an entity that has a defined territory and a permanent population, under the control of its own Government, and that engages in, or has the capacity to engage in, formal relations with other such entities."

*Restatement (Third); accord Kilinghoffer*, 937 F.2d at 47; *National Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 553 (2d Cir.1988); *see also Texas v. White*, 74 U.S. (7 Wall.) 700, 720, 19 L.Ed. 227(1868), "[A]ny Government, however violent and wrongful in its origin, must be considered a de facto Government if it was in the full and actual exercise of sovereignty over a territory and people large enough for a nation." *Ford v. Surget*, 97 U.S. (7 Otto) 594, 620, 24 L.Ed. 1018 (1878) (Clifford, J., concurring).

Although the Restatement's definition of statehood requires the capacity to engage in formal relations with other States, it does not require recognition by other States. *See Restatement (Third)* § 202 cmt. B ("An entity that satisfies the requirements of § 201 is a state whether or not its statehood is formally recognized by other states."). Recognized States enjoy certain privileges and immunities relevant to judicial proceedings, *see, e.g. Pfizer Inc. v. India*, 434 U.S. 308, 318-320, 98 S.Ct. 584, 590-591, 54 L.Ed.2d 563 (1978) (diversity jurisdiction); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 408-412, 84 S.Ct. 923, 929-932, 11 L.Ed.2d 804 (1964) (access to U.S. courts); *Lafontant*, 844 F.Supp. at 131 (head-of-state immunity), but an unrecognized State is not a

judicial nullity. Our courts have regularly given effect to the “State” action of unrecognized States. See, e.g., *United States v. Insurance Cos.*, 89 U.S. (22 Wall.) 99, 101-103, 22 L.Ed. 816 (1875) (seceding states in Civil War); *Thorington v. Smith*, 75 U.S. (8 Wall.) 1, 9-12, 19 L.Ed.361 (1868) (same); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 699 (2d Cir.1970), *cert. denied*, 403 U.S. 905, 91 S.Ct. 2205, 29 L.Ed.2d 680 (1971) (post-World War II East Germany).

[14] The customary international law of human rights, such as the proscription of official torture, applies to States without distinction between recognized and unrecognized States. See *Restatement (Third)* §§ 207, 702. It would be anomalous indeed if non-recognition by the United States, which typically reflects disfavour with a foreign regime—sometimes owing to human rights abuses—had the perverse effect of shielding officials of the unrecognized regime from liability for those violations of international law norms that apply only to State actors.

[15] Appellants’ allegations entitle them to prove that Karadzic’s regime satisfies the criteria for a State, for purposes of those international law violations requiring State action. Srpska is alleged to control defined territory, control populations within its power and to have entered into agreements with other Governments. It has a president, a legislature and its own currency. These circumstances readily appear to satisfy the criteria for a State in all aspects of international law. Moreover, it is likely that the State action concept, where applicable for some violations like “official” torture, requires merely the semblance of official authority. The inquiry, after all, is whether a person purporting to wield official power has exceeded internationally recognized standards of civilized conduct, not whether statehood in all its formal aspects exists.

[16-18] (b) *Acting in concert with a foreign State*. Appellants also sufficiently alleged that Karadzic acted under colour of law insofar as they claimed that he acted in concert with the former Yugoslavia, the statehood of which is not disputed. The “colour of law” jurisprudence of 42 U.S.C. § 1983 is a relevant guide to whether a defendant has engaged in official action for purposes of jurisdiction under the Alien Tort Act. See *Forti v. Suarez-Mason*, 672 F.Supp. 1531, 1546 (N.D.Cal.1987), *reconsideration granted in part on other grounds*, 694 F.Supp. 707 (N.D.Cal.1988). A private individual acts under colour of law within the meaning of section 1983 when he acts together with State officials or with significant State aid. See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 2753-54, 73 L.Ed.2d. 482 (1982). The appellants are entitled to prove their allegations that Karadzic acted under colour of law of Yugoslavia by acting in concert with Yugoslav officials or with significant Yugoslavian aid.

## B. THE TORTURE VICTIM PROTECTION ACT

The Torture Victim Act, enacted in 1992, provides a cause of action for official torture and extrajudicial killing:

“An individual who, under actual or apparent authority, or colour of law, of any foreign nation:

(1) Subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) Subjects an individual to extrajudicial killing shall, in a civil action, be liable for damage to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death." (Torture Victim Act. § 2 (a))

The statute also requires that a plaintiff exhaust adequate and available local remedies, idem § 2(b), imposes a 10-year statute of limitations, idem § 2(c), and defines the terms "extrajudicial killing" and "torture," idem § 3.

[19] By its plain language, the Torture Victim Act renders liable only those individuals who have committed torture or extrajudicial killing under actual or apparent authority, or colour of law, of any foreign nation." Legislative history confirms that this language was intended to "make[ ] clear that the plaintiff must establish some governmental involvement in the torture or killing to prove a claim," and that the statute "does not attempt to deal with torture or killing by purely private groups." H.R.Rep. No. 367, 102d Cong., 2d Sess., at 5 (1991), reprinted in 1992 U.S.C.C.A.N. 84, 87. In construing the terms "actual or apparent authority" and "colour of law," courts are instructed to look to principles of agency law and to jurisprudence under 42 U.S.C. § 1983, respectively, idem.

[20,21] Though the Torture Victim Act creates a cause of action for official torture, this statute, unlike the Alien Tort Act, is not itself a jurisdictional statute. The Torture Victim Act permits the appellants to pursue their claims of official torture under the jurisdiction conferred by the Alien Tort Act and also under the general federal question jurisdiction of section 1331, see *Xuncax v. Gramajo*, 886 F.Supp. 162, 178 (D.Mass.1995), to which we now turn.

### C. SECTION 1331

The appellants contend that section 1331 provides an independent basis for subject-matter jurisdiction over all claims alleging violations of international law. Relying on the settled proposition that federal common law incorporates international law, see *The Paquete Habana*, 175 U.S. 677, 700, 20 S.Ct. 290, 299, 44 L.Ed. 320 (1900); *In re Estate of Ferdinand E. Marcos Human Rights Litigation (Marcos I)*, 978 F.2d 493, 502 (9<sup>th</sup> Cir. 1992), cert. denied, U.S., 113 S.Ct. 2960, 125 L.Ed.2d 661 (1993); *Filártiga*, 630 F.2d at 886, they reason that causes of action for violations of international law "arise under" the laws of the United States for purposes of jurisdiction under section 1331. Whether that is so is an issue of some uncertainty that need not be decided in this case.

In *Tel-Oren*, Judge Edwards expressed the view that section 1331 did not supply jurisdiction for claimed violations of international law unless the plaintiffs could point to a remedy granted by the law of nations or argue successfully that such a remedy was implied. *Tel-Oren*, 726 F.2d at 779-80 n. 4. The law of nations generally does not create private causes of action to remedy its violations, but leaves to each nation the task of defining the remedies that are available for international law violations. Idem at 778 (Edwards, J., concurring). Some district courts, however, have upheld section 1331 jurisdiction for international law violations. See *Abebe-Jiri v. Negewo*, No. 90-2010 (N.D.Ga. Aug. 20, 1993), appeal argued, No. 93-9133 (11<sup>th</sup> Cir. Jan. 10, 1995); *Martinez-Baca v. Suarez-Mason*, No. 87-2057, slip op. at 4-5 (N.D.Cal. Apr. 22, 1988); *Forti v. Suarez-Mason*, 672 F.Supp. 1531, 1544 (N.D.Cal.1987).

We recognized the possibility of section 1331 jurisdiction in *Filártiga*, 630 F.2d at 887 n. 22, but rested jurisdiction solely on the applicable Alien Tort Act. Since that Act appears to provide a remedy for the appellants' allegations of violations related to genocide, war crimes and official torture and the Torture Victim Act also appears to provide a remedy for their allegations of official torture, their causes of action are statutorily authorized and, as in *Filártiga*, we need not rule definitively on whether any causes of action not specifically authorized by statute may be implied by international law standards as incorporated into United States law and grounded on section 1331 jurisdiction.

## II. *Service of process and personal jurisdiction*

Appellants aver that Karadzic was personally served with process while he was physically present in the Southern District of New York. In the *Doe* action, the affidavits detail that on 11 February 1993, process servers approached Karadzic in the lobby of the Hotel Intercontinental at 111 East 48<sup>th</sup> St. in Manhattan, called his name and identified their purpose, and attempted to hand him the complaint from a distance of 2 feet, that security guards seized the complaint papers and that the papers fell to the floor. Karadzic submitted an affidavit of a State Department security officer, who generally confirmed the episode, but stated that the process server did not come closer than 6 feet of the defendant. In the *Kadic* action, the plaintiffs obtained from Judge Owen an order for alternate means of service, directing service by delivering the complaint to a member of defendant's State Department security detail, who was ordered to hand the complaint to the defendant. The security officer's affidavit states that he received the complaint and handed it to Karadzic outside the Russian Embassy in Manhattan. Karadzic's statement confirms that this occurred during his second visit to the United States, sometime between 27 February and 8 March 1993. Appellants also allege that during his visits to New York City, Karadzic stayed at hotels outside the headquarters district of the United Nations and engaged in non-United Nations-related activities such as fund-raising.

Fed.R.Civ.P. 4(e)(2) specifically authorizes personal service of a summons and complaint upon an individual physically present within a judicial district of the United States, and such personal service comports with the requirements of due process for the assertion of personal jurisdiction. *See Burnham v. Superior Court of California*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990).

Nevertheless, Karadzic maintains that his status as an invitee of the United Nations during his visits to the United States rendered him immune from service of process. He relies on both the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, *reprinted at* 22 U.S.C. § 287 note (1988) ("Headquarters Agreement"), and a claimed federal common law immunity. We reject both bases for immunity from service.

### A. HEADQUARTERS AGREEMENT

[22] The Headquarters Agreement provides for immunity from suit only in narrowly defined circumstances. First, "service of legal process ... may take place within the Headquarters district only with the consent of and under conditions approved by the Secretary-General." *Idem* § 9(a). This provision is of no

benefit to Karadzic, because he was not served within the well-defined confines of the Headquarters district, which is bounded by Franklin D. Roosevelt Drive, 1<sup>st</sup> Avenue, 42<sup>nd</sup> Street, and 48<sup>th</sup> Street, see *idem* annex 1. Second, certain representatives of Members of the United Nations, whether residing inside or outside of the Headquarters district, shall be entitled to the same privileges and immunities as the United States extends to accredited diplomatic envoys. *Idem* 15. This provision is also of no benefit to Karadzic, since he is not a designated representative of any member of the United Nations.

A third provision of the Headquarters Agreement prohibits federal, state, and local authorities of the United States from “impos[ing] any impediments to transit to or from the Headquarters district of ... persons invited to the Headquarters district by the United Nations ... on official business.” *Idem* § 11. Karadzic maintains that allowing service of process upon a United Nations invitee who is on official business would violate this section, presumably because it would impose a potential burden—exposure to suit—on the invitee’s transit to and from the Headquarters district. However, this Court has previously refused “to extend the immunities provided by the Headquarters Agreement beyond those explicitly stated.” See *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 48 (2d Cir.1991). We therefore reject Karadzic’s proposed construction of section 11, because it would effectively create an immunity from suit for United Nations invitees where none is provided by the express terms of the Headquarters Agreement.<sup>11</sup>

The parties to the Headquarters Agreement agree with our construction of it. In response to a letter from plaintiffs’ attorneys opposing any grant of immunity to Karadzic, a responsible State Department official wrote: “Mr. Karadzic’s status during his recent visits to the United States has been solely as an ‘invitee’ of the United Nations, and as such he enjoys no immunity from the jurisdiction of the courts of the United States.” Letter from Michael J. Habib, Director of Eastern European Affairs, United States Department of State, to Beth Stephens (24 March 1993) (“Habib Letter”). Counsel for the United Nations has also issued an opinion stating that although the United States must allow United Nations invitees access to the Headquarters district, invitees are not immune from legal process while in the United States at locations outside the Headquarters district. See *In re Galvao*, [1963] U.N.Jur.Y.B. 164 (opinion of United Nations legal counsel); see also *Restatement (Third) § 469* reporter’s note 8 (United Nations invitee “is not immune from suit or legal process outside the Headquarters district during his sojourn in the United States”).

## B. FEDERAL COMMON LAW IMMUNITY

Karadzic nonetheless invites us to fashion a federal common law immunity for those within a judicial district as a United Nations invitee. He contends that such a rule is necessary to prevent private litigants from inhibiting the United Nations in its ability to consult with invited visitors. Karadzic analogizes his proposed rule to the “government contacts exception” to the District of Columbia’s long-arm statute, which has been broadly characterized to mean that “mere entry [into the District of Columbia] by non-residents for the purpose of contacting federal government agencies cannot serve as a basis for in personam jurisdiction,” *Rose v. Silver*, 394 A.2d 1368, 1370 (D.C.1978); see

*also Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 785-87 (D.C.Cir.1983) (construing government contacts exception to District of Columbia's long-arm statute), *cert. denied*, 467 U.S. 1210, 104 S.Ct. 2399, 81 L.Ed.2d 355 (1984). He also points to a similar restriction upon assertion of personal jurisdiction on the basis of the presence of an individual who has entered a jurisdiction in order to attend court or otherwise engage in litigation. *See generally* 4 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1076 (2d ed. 1987).

Karadzic also endeavours to find support for a common law immunity in our decision in *Klinghoffer*. Though, as noted above, *Klinghoffer* declined to extend the immunities of the Headquarters Agreement beyond those provided by its express provisions, the decision applied immunity considerations to its construction of New York's long-arm statute, N.Y.Civ.Pract.L. & R. 301 (McKinney 1990), in deciding whether the Palestine Liberation Organization (PLO) was doing business in the state. *Klinghoffer* construed the concept of "doing business" to cover only those activities of the PLO that were not United Nations-related. *See* 937 F.2d at 51.

Despite the considerations that guided *Klinghoffer* in its narrowing construction of the general terminology of New York's long-arm statute as applied to United Nations activities, we decline the invitation to create a federal common law immunity as an extension of the precise terms of a carefully crafted treaty that struck the balance between the interests of the United Nations and those of the United States.

[23] Finally, we note that the mere possibility that Karadzic might at some future date be recognized by the United States as the head of State of a friendly nation and might thereby acquire head-of-State immunity does not transform the appellants' claims into a nonjusticiable request for an advisory opinion, as the District Court intimated. Even if such future recognition, determined by the Executive Branch, *see Lafontant*, 88 F.Supp. at 133, would create head-of-State immunity, *but see In re Doe*, 860 F.2d 40, 45 (2d Cir.1988) (passage of Foreign Sovereign Immunities Act leaves scope of head-of-State immunity uncertain), it would be entirely inappropriate for a court to create the functional equivalent of such an immunity based on speculation about what the Executive Branch *might* do in the future. *See Mexico v. Hoffman*, 324 U.S. 30, 35, 65 S.Ct. 530, 532, 89 L.Ed. 729 (1945) ("[I]t is the duty of the courts, in a matter so intimately associated with our foreign policy ... not to enlarge an immunity to an extent which the government ... has not seen fit to recognize.").

In sum, if appellants personally served Karadzic with the summons and complaint while he was in New York but outside of the United Nations Headquarters district, as they are prepared to prove, he is subject to the personal jurisdiction of the District Court.

### III. *Justiciability*

We recognize that cases of this nature might pose special questions concerning the judiciary's proper role when adjudication might have implications in the conduct of this nation's foreign relations. We do not read *Filartiga* to mean that the federal judiciary must always act in ways that risk significant interference with United States foreign relations. To the contrary, we recognize

that suits of this nature can present difficulties that implicate sensitive matters of diplomacy historically reserved to the jurisdiction of the political branches. See *First National Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767, 92 S.Ct. 1808, 1813, 32 L.Ed.2d 466 (1972). We therefore proceed to consider whether, even though the jurisdictional threshold is satisfied in the pending cases, other considerations relevant to justiciability weigh against permitting the suits to proceed.

[24] Two non-jurisdictional, prudential doctrines reflect the judiciary's concerns regarding separation of powers: the political question doctrine and the act of state doctrine. It is the "'constitutional' underpinnings" of these doctrines that influenced the concurring opinions of Judge Robb and Judge Bork in *Tel-Oren*. Although we too recognize the potentially detrimental effects of judicial action in cases of this nature, we do not embrace the rather categorical views as to the inappropriateness of judicial action urged by Judges Robb and Bork. Not every case "touching foreign relations" is non-justiciable, see *Baker v. Carr*, 369 U.S. 186, 211, 82 S.Ct. 691, 707, 7 L.Ed.2d 663 (1962); *Lamont v. Woods*, 948 F.2d 825, 831-32 (2d Cir.1991), and judges should not reflexively invoke these doctrines to avoid difficult and somewhat sensitive decisions in the context of human rights. We believe a preferable approach is to weigh carefully the relevant considerations on a case-by-case basis. This will permit the judiciary to act where appropriate in the light of the express legislative mandate of the Congress in section 1350, without compromising the primacy of the political branches in foreign affairs.

Karadzic maintains that these suits were properly dismissed because they presented non-justiciable political questions. We disagree. Although these cases present issues that arise in a politically charged context, that does not transform them into cases involving non-justiciable political questions. "[T]he doctrine 'is one of 'political questions,' not one of 'political cases.''" *Klinghoffer*, 937 F.2d at 49 (quoting *Baker*, 369 U.S. at 217, 82 S.Ct. at 710).

[25] A non-justiciable political question would ordinarily involve one or more of the following factors:

"[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of justiciably discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

*Baker v. Carr*, 369 U.S. at 217, 82 S.Ct. at 710; see also *Can v. United States*, 14 F.3d 160, 163 (2d Cir.1994). With respect to the first three factors, we have noted in a similar context involving a tort suit against the PLO that "[t]he department to whom this issue has been 'constitutionally committed' is none other than our own—the Judiciary." *Klinghoffer*, 938 F.2d at 49. Although the present actions are not based on the common law of torts, as was *Klinghoffer*,

our decision in *Filártiga* established that universally recognized norms of international law provide judicially discoverable and manageable standards for adjudicating suits brought under the Alien Tort Act, which obviates any need to make initial policy decisions of the kind normally reserved for nonjudicial discretion. Moreover, the existence of judicially discoverable and manageable standards further undermines the claim that such suits relate to matters that are constitutionally committed to another branch. See *Nixon v. United States*, 506 U.S. 224, 227-229, 113 S.Ct. 732, 735, 122 L.Ed.2d 1 (1993).

The fourth through sixth *Baker* factors appear to be relevant only if judicial resolution of a question would contradict prior decisions taken by a political branch in those limited contexts where such contradiction would seriously interfere with important governmental interests. Disputes implicating foreign policy concerns have the potential to raise political question issues, although, as the Supreme Court has wisely cautioned, “it is ‘error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.’” *Japan Whaling Ass’n v. American Cetacean Society*, 478 U.S. 221, 229-230, 106 S.Ct. 2860, 28665-66, 92 L.Ed.2d 166 (1986) (quoting *Baker*, 369 U.S. at 211, 82 S.Ct. at 706-07).

The act of State doctrine, under which courts generally refrain from judging the acts of a foreign State within its territory, see *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. at 418, 84 S.Ct. 923, 940, 11 L.Ed.2d 804; *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897), might be implicated in some cases arising under section 1350. However, as in *Filártiga*, 630 F.2d at 889, we doubt that the acts of even a State official, taken in violation of a nation’s fundamental law and wholly ungratified by that nation’s Government, could properly be characterized as an act of State.

[26] In the pending appeal, we need have no concern that interference with important governmental interests warrants rejection of appellants’ claims. After commencing their action against Karadzic, attorneys for the plaintiffs in *Doe* wrote to the Secretary of State to oppose reported attempts by Karadzic to be granted immunity from suit in the United States; a copy of plaintiffs’ complaint was attached to the letter. Far from intervening in the case to urge rejection of the suit on the ground that it presented political questions, the Department responded with a letter indicating that Karadzic was not immune from suit as an invitee of the United Nations. See *Habib Letter*, *supra*.<sup>12</sup> After oral argument in the pending appeals, this Court wrote to the Attorney General to inquire whether the United States wished to offer any further views concerning any of the issues raised. In a “Statement of Interest,” signed by the Solicitor General and the State Department’s Legal Adviser, the United States has expressly disclaimed any concern that the political question doctrine should be invoked to prevent the litigation of these lawsuits: “Although there might be instances in which federal courts are asked to issue rulings under the Alien Tort Statute or the Torture Victim Protection Act that might raise a political question, this is not one of them.” Statement of Interest of the United States, p. 3. Though even an assertion of the political question doctrine by the Executive Branch, entitled to respectful consideration, would not necessarily preclude adjudication, the Government’s reply to our inquiry reinforces our view that adjudication may properly proceed.

[27] As to the act of State doctrine, the doctrine was not asserted in the District Court and is not before us on this appeal. See *Filártiga*, 630 F.2d at 889. Moreover, the appellee has not had the temerity to assert in this Court that the acts he allegedly committed are the officially approved policy of a State. Finally, as noted, we think it would be a rare case in which the act of State doctrine precluded suit under section 1350. *Banco Nacional* was careful to recognize the doctrine “in the absence of ... unambiguous agreement regarding controlling legal principles,” 376 U.S. at 428, 84 S.Ct. at 940, such as exist in the pending litigation, and applied the doctrine only in a context—expropriation of an alien’s property—in which world opinion was sharply divided, *see idem* at 428-30, 84 S.Ct. at 940-41.

Finally, we note that at this stage of the litigation no party has identified a more suitable forum, and we are aware of none. Though the Statement of the United States suggests the general importance of considering the doctrine of *forum non conveniens*, it seems evident that the courts of the former Yugoslavia, either in Serbia or war-torn Bosnia, are not now available to entertain plaintiffs’ claims, even if circumstances concerning the location of witnesses and documents were presented that were sufficient to overcome the plaintiffs’ preference for a United States forum.

#### CONCLUSION

The judgment of the District Court dismissing appellants’ complaints for lack of subject-matter jurisdiction is reversed, and the cases are remanded for further proceedings in accordance with this opinion.

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#### NOTES

<sup>1</sup> ITU provided summary of FCC Order on Reconsideration

<sup>2</sup> 70 F. 3d 232 (2<sup>nd</sup> Cir. 1995).

<sup>3</sup> *Filártiga* did not consider the alternative prong of the Alien Tort Act: suits by aliens for a tort committed in violation of “a treaty of the United States.” See 630 F.2d at 880. As in *Filártiga*, plaintiffs in the instant cases “primarily rely upon treaties and other international instruments as evidence of an emerging norm of customary international law, rather th[a]n independent sources of law,” *idem* at 880 n. 7.

<sup>4</sup> Two passages of the District Court’s opinion arguably indicate that Judge Leisure found the pleading of a violation of the law of nations inadequate because Srpska, even if a State, is not a State “recognized” by other nations. “The current Bosnian-Serb warring military faction does not constitute a recognized state...” *Doe*, 866 F.Supp at 741; “[i]he Bosnian-Serbs have achieved neither the level of organization nor the recognition that was attained by the PLO [*in Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C.Cir.1984)],” *idem*. However, the opinion, read as a whole, makes clear that the judge believed that Srpska is not a State and was not relying on lack of recognition by other States. *See, e.g.* *idem* at 741 n. 12 (“The Second Circuit has limited the definition of ‘state’ to ‘entities that have a defined [territory] and a permanent population, that are under the control of their own Government, and that engage in or have the capacity to engage in, formal relations with other entities.’ *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 47 (2d Cir.1991) (quotation, brackets and citation omitted). The current Bosnian-Serb entity fails to meet this definition.”). We quote Judge Leisure’s quotation from *Klinghoffer* with the word “territory,” which was inadvertently omitted.

<sup>5</sup> Section 702 provides:

<sup>6</sup> Section 404 provides:

<sup>7</sup> Judge Edwards was the only member of the *Tel-Oren* panel to confront the issue whether the law of nations applies to non-State actors. Then-Judge Bork, relying on separation of powers principles, concluded, in disagreement with *Filártiga*, that the Alien Tort Act did not apply to most violations of the law of nations. *Tel-Oren*, 726 F.2d at 798. Judge Robb concluded that the controversy was nonjusticiable. *Idem* at 823.

<sup>8</sup> The Senate report merely repeats the language of section 1092 and does not provide any explanation of its purpose. See S. Rep. 333, 100<sup>th</sup> Cong. 2d Sess., at 5 (1988), *reprinted at* 1988 U.S.C.C.A.N. 4156, 4160. The House report explains that section 1092 “clarifies that the bill creates no *new* federal cause of action in civil proceedings.” H.R. Rep. 566, 100<sup>th</sup> Cong., 2d Sess., at 8 (1988) (emphasis added). This explanation confirms our view that the Genocide Convention Implementation Act was not intended to abrogate civil causes of action that might be available under *existing* laws, such as the Alien Tort Act.

<sup>9</sup> Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31 (hereinafter “Geneva Convention I”); Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3217, T.I.A.S. 3363, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3316, T.I.A.S. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3516, T.I.A.S., 75 U.N.T.S. 287.

<sup>10</sup> Appellants also maintain that the forces under Karadzic’s command are bound by the Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts, 16 I.L.M. 1442 (1977) (“Protocol II”), which has been signed but not ratified by the United States, *see* International Committee of the Red Cross: *Status of Four Geneva Conventions and Additional Protocols I and II*, 30 I.L.M. 397 (1991). Protocol II supplements the fundamental requirements of common article 3 for armed conflicts that “take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” *Id.* Art. 1. In addition, plaintiffs argue that the forces under Karadzic’s command are bound by the remaining provisions of the Geneva Conventions, which govern international conflicts, *see* Geneva Convention I art. 2, because the self-proclaimed Bosnian-Serb republic is a nation that is at war with Bosnia and Herzegovina or, alternatively, the Bosnian Serbs are an insurgent group in a civil war who have attained the status of “belligerents,” and to whom the rules governing international wars therefore apply.

<sup>11</sup> Conceivably, a narrow immunity from service of process might exist under section 11 for invitees who are in *direct* transit between an airport (or other point of entry into the United States) and the Headquarters district. Even if such a narrow immunity did exist—which we do not decide—Karadzic would not benefit from it since he was not served while traveling to or from the Headquarters district.

<sup>12</sup> The Habib Letter on behalf of the State Department added: “We share your repulsion at the sexual assaults and other war crimes that have been reported as part of the policy of ethnic cleansing in Bosnia and Herzegovina. The United States has reported rape and other grave breaches of the Geneva Conventions to the United Nations. This information is being investigated by a United Nations Commission of Experts, which was established at United States initiative.”

**Part Four**

**BIBLIOGRAPHY**



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

- A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
  - 1. General
  - 2. Particular questions
  
- B. UNITED NATIONS
  - 1. General
  - 2. Particular organs
  - 3. Particular questions or activities
  
- C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. *General*

- Basic documents in international law*. 4<sup>th</sup> ed. (Oxford; New York; Clarendon Press, 1995). xi, 474 p.  
Includes index.
- Bennett, A. LeRoy (Alvin LeRoy). *International organizations: principles and issues*. 6<sup>th</sup> ed. (Englewood Cliffs, N.J., Prentice Hall, 1995). 515 p. Bibliography: p. 444–453.  
Includes index.
- Berman, Harold Joseph. World law. *Fordham international law journal* 18(5) May 1995: 1617–1622.  
Includes bibliographical references.
- Boutros-Ghali, Boutros. A Grotian moment. *Fordham international law journal*. 18(5) May 1995:1609–1616.  
Includes bibliographical references.
- Capotorti, Francesco. Cours général de droit international public. *Recueil des cours* (Hague Academy of International Law) 248(4) 1994:9-344. Bibliography: p. 19–23.
- Cases and materials on international law* 2<sup>nd</sup> ed. (London, Blackstone Press Ltd., 1995). 649 p.  
Includes index.
- Charney, Jonathan I. Consent and the creation of international law. In: *Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo., Westview Press, 1995). p. 23–60.  
Includes bibliographical references.
- Charpentier, Jean. *Institutions internationales*. 12e éd. (Paris, Dalloz, 1995). 135 p.  
Includes index.
- Chodosh, Hiram E. An interpretive theory of international law: the distinction between treaty and customary law. *Vanderbilt journal of transnational law*. 28(5) November 1995: 973–1068.  
Includes bibliographical references.
- Colliard, Claude-Albert. *Institutions Internationales*. 10e éd. (Paris, Dalloz, 1995). 532 p.  
Includes bibliographies and index.
- D’Amato, Anthony A. *International law: process and prospect*. 2<sup>nd</sup> rev. ed. (Irvington, N.Y., Transnational Publishers, 1995). 373 p.  
Includes bibliographical references and index.
- D’Amato, Anthony A. *International law and political reality* (The Hague; Boston, Mass. Kluwer Law International, 1995-). 391 p.  
Includes bibliographical references and index.
- Diversity in secondary rules and the unity of international law* (The Hague; Boston, Mass., M. Nijhoff Publishers, 1995). 365 p.  
Includes bibliographical references and index.
- Dupuy, Pierre-Marie. *Droit international public*. 3 éd. (Paris, Dalloz, 1995), 590 p. Bibliography: p. xi–xxiii.
- Essays: the role of international law in the twenty-first century. *Fordham international law journal* 18(5) May 1995:1609–1777. Special issue.  
Includes bibliographical references.

- Gutiérrez Espada, Casáreo. *Derecho internacional público* (Madrid, Editorial Trotta., 1995) 699 p.  
Includes bibliographical references and indexes.
- Henkin, Louis. *International law: politics and values*. (Dordrecht, Netherlands: Boston, Mass., M. Nijhoff Publishers, 1995). 376 p. Bibliography: p. 349–365.  
Includes index.
- Honnold, John O. International unification of private law. In: *United Nations legal order*. (Cambridge, England; New York; Grotius Publications Cambridge University Press., 1995) p. 1025–1056.  
Includes bibliographical references.
- Introduction to international organizations* (New York, Oceana Publications, Inc., 1995). 574 p. Bibliography: p. 520–524.
- Kirgis, Frederic L. Specialized law-making processes. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 109–168.  
Includes bibliographical references.
- Koskenniemi, Martti. International law in a post-realist era. *Australian year book of international law* Vol. 16(1995): 1–19.  
Includes bibliographical references.
- Mariño, Fernando M. *Derecho internacional publico parte general*. 2. ed., revisada. (Madrid, Editorial Trotta, 1995), 602 p.  
Includes bibliographical references (p. 575–577) and indexes.
- Martin, Pierre-Marie. *Droit international public*. (Paris, Masson, 1995) 350 p.  
Includes bibliographies and indexes.
- Mutharika, A. Peter. The role of international law in the twenty-first century: an African perspective. *Fordham international law journal* 18(5) May 1995:1706–1719.  
Includes bibliographical references.
- Perspectives on international law*. (London; Boston, Mass., Kluwer Law International, 1995). 556 p. Bibliography: p. 541–547.  
Includes index.
- Schermers, Henry G. *International institutional law: unity within diversity*. 3<sup>rd</sup> rev. ed. (The Hague; Boston, Mass., M. Nijhoff, 1995). Xii. 1305 p. Bibliography: p. 1199–1242.  
Includes index.
- Schreuer, Christoph. Regionalism v. universalism. *European journal of international law*. 6(3) 1995: 477–499.  
Includes bibliographical references.
- Slaughter, Anne-Marie. International law in a world of liberal States. *European journal of international law* 6(4) 1995 503–538.  
Includes bibliographical references.
- Slomanson, William R. *Fundamental perspectives on international law*. 2<sup>nd</sup> ed. (Minneapolis, Minn., West Publishing Co. 1995, 1996). 660 p. map.  
Includes bibliographies and index.
- Smouts, Marie-Claude. *Les organisations internationales* (Paris, Armand Colin, 1995). 191 p. Bibliography: p. 181–183.  
Includes index.

- Szasz, Paul C. General law-making processes. In: *United Nations legal order*. (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995). p. 35–108.  
Includes bibliographical references.
- Tomuschat, Christian. International law. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995). p. 281–308.  
Includes bibliographical references.
- Tomuschat, Christian. Die internationale Gemeinschaft. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 1–20.  
Includes bibliographical references.
- Trampetti, Mario. L'evoluzione del Patto andino. *Comunità internazionale* 49(4) 1994: 724–735.  
Includes bibliographical references.
- United Nations legal order*. (Cambridge, England; New York; Grotius Publications / Cambridge University Press, 1995) 2 vols.  
Includes bibliographies.
- Wellens, Karel. Diversity in secondary rules and the unity of international law: some reflections on current trends. *Netherlands yearbook of international law*, Vol. 25(1994): 3–37.  
Includes bibliographical references.
- The year in international law. *Proceedings* (American Society of International Law, Meeting.) 88<sup>th</sup>, 1994, p. 464–484.  
Includes bibliographical references.

## 2. Particular questions

- Amerasinghe, Chittharanjan Felix. Interpretation of texts in open international organizations. *British year book of international law*, Vol. 65 (1994) p. 175–209.  
Includes bibliographical references.
- Andrassy, Juraj. *Medunarodno pravo*. New ed. (Zagreb, Skolska knjiga, 1995)
- Artz, Donna E. Participants in international legal relations. In: *Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo. Westview Press, 1995). p. 61–92.  
Includes bibliographical references.
- Barberis, Julio A. Les résolutions des organisations internationales en tant que source du droit des gens. In: *Recht zwischen Umbruch und Bewahrung*. (Berlin; New York, Springer, 1995). p. 21–39.  
Includes bibliographical references.
- Bedjaoui, Mohammed. La vision de las culturas no occidentals sobre la legitimidad del derecho internacional contemporáneo. *Anuario de derecho internacional*. Vol. 11 (1995) p. 23–62.  
Includes bibliographical references.
- Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo, Westview Press, 1995). 345 p. A joint research project of the American Society of International Law and the Institute of State and Law (Moscow Russian Federation).  
Includes bibliographical references and index.
- Broadening access to international law resources through new technology. *Proceedings* (American Society of International Law. Meeting), 89<sup>th</sup>, 1995 p. 1–18.  
Includes bibliographical references.

- Byers, Michael. Custom, power, and the power of rules: customary international law from an interdisciplinary perspective. *Michigan journal of international law*. 17(1) fall 1995: 109–180.  
Includes bibliographical references.
- Chemillier-Gendreau, Monique. *Humanité et souverainetés: essai sur la fonction du droit international* (Paris, La Decouverte, 1995), 382 p. Bibliography: p. 376–377.
- Cheng, Bin. How should we study international law? *Chinese yearbook of international law and affairs*, vol. 13 (1994/1995): 214–228.
- Damrosch, Lori F. (Lori Fisler). The role of international law in the contemporary world. In: *Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo., Westview Press, 1995). p. 1–21.  
Includes bibliographical references.
- deLisle, Jacques. Disquiet on the eastern front: liberal agendas, domestic legal orders and the role of international law after cold war and amid resurgent cultural identities. *Fordham international law journal* 18(5) May 1995: 1725–1741.  
Includes bibliographical references.
- Democratization and international law: building the institutions of civil society. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 197–211.
- Diaz Barrado, Cástor Miguel. La sociedad internacional en busca de un orden constitucional. *Anuario argentino de derecho internacional*, vol. 6 (1994/1995): 13–39.  
Includes bibliographical references.
- Elias, Olufemi. The nature of the subjective element in customary international law. *International and comparative law quarterly* 44(3) July 1995: 501–520.  
Includes bibliographical references.
- Franck, Thomas M. *Fairness in international law and institutions* (Oxford, England; New York, Clarendon Press. 1995). 500 p.  
Includes bibliographical references and index.
- Ginther, Konrad. Reflections on international law in respect to African customary law. (Includes bibliographical references.) In: *Recht zwischen Umbruch und Beqahrung* (Berlin; New York, Springer, 1995) p. 71–88.
- González Félix, Miguel Angel. Fifth legal advisers' meeting at UN headquarters in New York. *American journal of international law*. 89(3) July 1995: 644–649.  
Includes bibliography references.
- Hirsch, Moshe. *The responsibility of international organizations toward third parties: some basic principles*. (Dorrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995). 220 p. Bibliography: p. 196–217.  
Includes index.
- International Congress of Comparative Law (14<sup>th</sup>, 1994, Athens). *Declining jurisdiction in private international law: reports to the XIV Congress of the International Academy of Comparative Law, Athens, August 1994*. (Oxford, England, New York, Clarendon Press. 1995). 447 p.  
Includes bibliographical references and index.
- International organizations and national law. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup> 1995, p. 253–274.
- Lee, Roy S. K. Legal developments in the United Nations: the emergence of inter-organizational institutions. *Asian yearbook of international law*. Vol. 4 (1994): 227–236.  
Includes bibliographical references.

- McCoubrey, H. *International organizations and civil wars*. (Albansham, England; Brookfield, Vt., Dartmouth, 1995). 294 p. Bibliography: p. 283–288.  
Includes index.
- Ponte Iglesias, Maria Teresa. La promoción del desarrollo progresivo, la enseñanza, el estudio, la difusión y una comprensión más amplia del derecho internacional en el marco de las Naciones Unidas. *Anuario argentino de derecho internacional*, vol. 6 (1994/1995): 41–63.  
Includes bibliographical references.
- Recht zwischen Umbruch und Bewahrung: Volkerrecht, Europarecht, Staatsrecht: Festschrift für Rudolf Bernhardt (Berlin; New York, Springer, 1995) 1397 p. Contributions in English, German and French.  
Includes bibliographical references.
- Riphagen, Willen. Techniques of international law. *Recueil des cours* (Hague Academy of International Law) 246(2) 1994: 235–386. Bibliography of principal publications of author: p. 241–243.
- Sánchez Lorenzo, Sixto. Postmodernismo y derecho internacional privado. *Revista española de derecho internacional* 46(2) Julio/diciembre 1994: 557–585. Summary in English.  
Includes bibliographical references.
- Singer, Michael. Jurisdictional immunity of international organization: human rights and functional necessity concerns. *Virginia journal of international law* 36(1) fall 1995: 35–165.  
Includes bibliographical references.
- Stone, Peter. *The conflict of laws* (London; New York, Longman, 1995), 418 p.  
Includes bibliographical references and index.
- Suy, Erik. The constitutional character of constituent treaties of international organizations and the hierarchy of norms. In: *Recht zwischen Umbruch und Bewahrung*. (Berlin; New York, Springer, 1995). p. 267–277.  
Includes bibliographical references.
- Vale, Peter. Engaging the world's marginalized and promoting global change: challenges for the United Nations at fifty. *Harvard international law journal* 36(2) spring 1995, 283–294.  
Includes bibliographical references.
- Weisburd, A. Mark. The emptiness of the concept of jus cogens, as illustrated by the war in Bosnia-Herzegovina. *Michigan journal of international law*. 17(1) fall 1995: 1–51.  
Includes bibliographical references.

## B. UNITED NATIONS

### 1. General

- Bennet, Douglas J. Reforming the United Nations: from management to governance. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 105–108.
- Bertrand, Maurice. The UN as an organization: a critique of its functioning. *European journal of international law* 6(3) 1995: 349–357.  
Includes bibliographical references.
- Bilgrami, S. J. R. United Nations: with and without cold war. *Indian journal of international law*, vol. 35 (1995): 143–156.  
Includes bibliographical references.

- Bolgov, O. Aspekty problemy reformuvannia OON. *Radians'ke proavo*, No. 5/6(1995): 56–58.  
Includes bibliographical references.
- Boutros-Ghali, Boutros. The United Nations and democratization. *African yearbook of international law*, vol. 3 (1995): 11–16.  
Includes bibliographical references.
- Caruso, Antonio. Le Nazioni Unite e l'azione per lo sviluppo all'alba del terzo millennio: l'agenda per lo sviluppo. *Comunità internazionale*. 49(4) 1994: 769–781.
- Falk, Richard. Appraising the U.N. at 50: the looming challenge. *Journal of international affairs* (Columbia University (New York), School of International and Public Affairs) 48(2) winter 1995: 625–646.  
Includes bibliographical references.
- Falk, Richard. Explaining the United Nations unhappy 50<sup>th</sup> anniversary: toward reclaiming the next half-century. *Indian journal of international law*, vol. 35 (1995): 169–179.  
Includes bibliographical references.
- Göthel, Dieter. Im Auftrag der Weltorganisation: das Personal der Vereinten Nationen im Wandel. *Vereinte Nationen*. 43(3) Juni 1995: 99–105.  
Includes bibliographical references.
- Hoffman, Stanley. Thoughts on the UN at fifty. *European journal of international law* 6(3) 1995: 317–324.  
Includes bibliographical references.
- Kasto, Jalil. *UN 50<sup>th</sup> anniversary: the United Nations: a global organization, its evolution, achievements, failure and reconstruction* (Kingston, England, Kall Kwik, 1995.) 96 p. Bibliography: p. 88.  
Includes index.
- Mani, V. S. The role of law and legal considerations in the functioning of the United Nations. *Indian journal of international law*, vol. 35 (1995): 91–118.  
Includes bibliographical references.
- Morozov, G. I. (Grigorii Iosifovich). The UN at the turn of the century. *Moscow journal of international law* 1(1) 1995: 31–43.  
Includes bibliographical references.
- Pellet, Alain. La formation du droit international dans le cadre des Nations unies. *European journal of international law* 6(3) 1995: 401–425.  
Includes bibliographical references.
- Preferred futures for the United Nations* (Irvington-on-Hudson, N.Y., Transnational Publishers, 1995). 515 p.  
Includes bibliographical references and index.
- Qaiyum, Nikhat Jamal. The United Nations and some global problematique. *Indian journal of international law*, vol. 35 (1995): 127–142.  
Includes bibliographical references.
- Reisman, W. Michael. Amending the UN Charter: the art of the feasible. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 108–116.
- Roberto Reina, Carlos. Bewahrung des Freidens und Herrschaft des Rechts: UN-Charta: Überprüfung, nicht "Anderung" erforderlich. *Vereinte Nation* 43(5/6) Oktober 1995: 187–188.  
Includes bibliographical references.

- Schachter, Oscar. The UN legal order, an overview. In: *United Nations legal order*. (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 1–31.
- Schilling, Theodor. Die “neue Weltordnung” und die Souveränität der Mitglieder der Vereinten Nationen. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 67–106.  
Includes bibliographical references.
- Seidel, Gerd. Ist die UN-Charta noch zeitgemäss? *Achiv des Völkerrechts* 33(1/2) Mai 1995: 21–66.  
Includes bibliographical references.
- Sohn, Louis B. Interpreting the law. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995). p. 169–229.  
Includes bibliographical references.
- Symposium: the United Nations: challenges of law and development. *Harvard international law journal* 36(2) spring 1995: 267–371. Series of articles.  
Includes bibliographical references.
- The UN Charter as history. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995, p. 45–61.
- United Nations: law, policies and practice*. New, rev. English ed. (Munich, Germany, C.H. Beck; Boston, Mass., M. Nijhoff, 1995) 2 vols. 1533 p.  
Includes bibliographies and index.
- The United Nations at age of fifty: a legal perspective*. (The Hague; Boston, Mass. Kluwer Law International, 1995). 327 p.  
Includes bibliographical references.
- The United Nations at fifty. *American journal of international law* 89(3) July 1995: 493–553. Series of articles.  
Includes bibliographical references.
- The United Nations at fifty: sovereignty, peacekeeping, and human rights* (Washington, D.C., Center for Strategic and International Studies; Chicago: The Robert R. McCormick Tribune Foundation, 1995). 73 p.  
Includes bibliographical references.
- The United Nations in the new world order: the world organization at fifty* (New York, St. Martin's Press, 1995) 219 p.  
Includes bibliographical references and index.
- Venkataraman, K. Strengthening the United Nations on the eve of the twenty-first century: the imperatives of the legal perspective. *Indian journal of international law* Vol. 35 (1995): 1–15.  
Includes bibliographical references.
- Weizsäcker, Richard von. Alles steht und fällt mit dem politischen Willen der Mitglieder: UN. Reform als Vorbereitung auf die nächsten 50 Jahre. *Vereinte Nationen* 43(5/6) Oktober, 1995: 179–193.  
Includes bibliographical references.
- Woroniecki, Jan. Restructuring the United Nations: a must to respond to the new tasks, or a substitute for action? *International Geneva yearbook*, vol. 9 (1995): 29–46.  
Includes bibliographical references.

## 2. Particular organs

### General Assembly

Morris, Virginia. The work of the Sixth Committee at the forty-ninth session of the UN General Assembly. *American journal of international law*. 89(3) July 1995: 607–620.

Includes bibliographical references.

### International Court of Justice

Alexandrov, Stanimir A. Non-appearance before the International Court of Justice. *Columbia journal of transnational law*. 33(1) 1995: 41–72.

Includes bibliographical references.

Alexandrov, Stanimir A. *Reservations in unilateral declarations accepting the compulsory jurisdiction of the International Court of Justice* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995). 176 p. Bibliography: p. 164–171.

Includes indexes.

Anand, R. P. (Ram Prakash). The International Court as a “legislator”. *Indian journal of international law*, vol. 35(1995): 119–126.

Includes bibliographical references.

Bodie, Thomas J. *Politics and the emergence of an activist International Court of Justice* (Westpoint, Conn.; Praeger, 1995). 112 p. Bibliography: p. 105–109.

Includes index.

Caffisch, Lucius. Is the International Court entitled to review Security Council Resolutions adopted under Chapter VII of the United Nations Charter? In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995). p. 633–662.

Includes bibliographical references.

Condorelli, Luigi. La Cour internationale de Justice: 50 ans et (pour l’heure) pas une ride. *European journal of international law* 6(3) 1995: 388–400.

Includes bibliographical references.

Edward, David. How the Court of Justice works. *European law review* 20(6) December 1995: 539–558.

Includes bibliographical references.

Evans, Malcolm D. Intervention, the International Court of Justice and the law of the sea. *Revue hellénique de droit international*, No 48 (1995): 73–94.

Includes bibliographical references.

Jennings, Robert Yewdall, Sir. The International Court of Justice after fifty years. *American journal of international law* 89(3) July 1995: 493–505.

Includes bibliographical references.

Kohen, Marcelo G. Le règlement des différends territoriaux à la lumière de l’arrêt de la C.I.J. dans l’affaire Libye/Tchad. *Revue générale de droit international public*, 99(2) 1995: 301–334. Summaries in English and Spanish.

Includes bibliographical references.

- Koskenniemi, Martti. Advisory opinions of the International Court of Justice as an instrument of preventive diplomacy. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 599–619.  
Includes bibliographical references.
- Lailach, M. The General Assembly's request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons. *Leiden journal of international law* 8(2) 1995: 401–439.  
Includes bibliographical references.
- Marion, Loic C. La saisine de la C.I.J. par voie de compromis. *Revue générale de droit international public* 99(2) 1995: 257–300. Summaries in English and Spanish.  
Includes bibliographical references.
- McWhinney, Edward. *Judge Manfred Lachs and judicial law-making: opinions on the International Court of Justice. 1967–1993* (The Hague; Boston, Mass., M. Nijhoff Publishers, 1995). Bibliography of publications of Manfred Lachs: p. 90–101.  
Includes index.
- McWhinney, Edward. Judicial wisdom, and the world court as special constitutional court. In: *Recht zwischen Umbruch und Bewahrung*. (Berlin; New York, Springer, 1995) p. 705–712.  
Includes bibliographical references.
- McWhinney, Edward. Manfred Lachs and the International Court of Justice as emerging constitutional court of the United Nations. *Leiden journal of international law* 8(1) 1995: 41–52.  
Includes bibliographical references.
- Mubiala, Mutoy. La contribution des Etats africains à la renaissance de la Cour internationale de justice. *African yearbook of international law*, vol. 2 (1994): 173–180.  
Includes bibliographical references.
- Oda, Shigeru. The International Court of Justice viewed from the Bench (1976–1993). *Recueil des cours* (Hague Academy of International Law), vol. 244(7) 1993: 9–190. Bibliography: p. 183–190.
- Oraison, André. Reflexions sur “l'organe judiciaire principal des Nations Unies”: stratégies globales et stratégies sectorielles de la Cour internationale de Justice. *Revue belge de droit international*. 28(2) 1995: 397–467.  
Includes bibliographical references.
- Répertoire de la jurisprudence de la Cour internationale de justice, 1947–1992. Repertory of decisions of the International Court of Justice, 1947–1992*. (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995). 2 vols. In English and French.  
Includes indexes.
- Rosenne, Shabtai. The contribution of the International Court of Justice to the United Nations. *Indian journal of international law*, vol. 25(1995): 67–76.  
Includes bibliographical references.
- Rosenne, Shabtai. *The World Court: what it is and how it works*. 5<sup>th</sup> rev. ed. (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 353 p.  
Includes bibliographical references and indexes.
- Tanzi, Attila. Problems of enforcement of decisions of the International Court of Justice and the law of the United Nations. *European journal of international law* 6(4) 1995: 539–572.  
Includes bibliographical references.

### Secretariat

Fleischhauer, Carl-August. The United Nations Decade of International Law, the role and work of the Secretariat of the United Nations and of its system of organizations. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995). P. 25–38.  
Includes bibliographical references.

Frančj, Thomas M. The Secretary-General's role in conflict resolution: past, present and pure conjecture. *European journal of international law* 6(3) 1995: 360–387.  
Includes bibliographical references.

Murthy, C. S. R. The role of the UN Secretary-General since the end of the cold war. *Indian journal of international law*, vol. 35 (1995): 181–196.  
Includes bibliographical references.

### Security Council

Burci, Gian Luca. The indirect effects of United Nations sanctions on third States: the role of Article 50 of the UN Charter. *African yearbook of international law*, vol. 2 (1994): 157–171.  
Includes bibliographical references.

Cardona Lloréns, Jorge. La aplicación de medidas que implican el uso de la fuerza armada por el Consejo de Seguridad para hacer efectivas sus decisiones. *Revista española de derecho internacional* 47(1) enero/junio 1995: 9–32. Summary in English.  
Includes bibliographical references.

Conlon, Paul. Lessons from Iraq: the functions of the Iraq sanctions committee as a source of sanctions implementation authority and practice. *Virginia journal of international law* 35(3) spring 1995: 633–668.

Conlon, Paul. The UN's questionable sanctions practices. *Aussenpolitik: German foreign affairs review* 46(4) 1995: 327–338.

Darrow, Mac. Directions in Security Council reform. *Australian year book of international law*, vol. 16 (1995): 285–310.  
Includes bibliographical references.

Del Vecchio, Angela. Consiglio di Sicurezza ed organizzazioni internazionali regionali nei mantenimento della pace. *Comunità internazionale*. 50(2) 1995: 229–244.  
Includes bibliographical references.

Dupuy, Pierre-Marie. Sécurité collective et construction de la paix dans la pratique contemporaine du Conseil de sécurité. In: *Recht zwischen Umbruch und Bewahrung*. (Berlin; New York, Springer, 1995) p. 41–56.  
Includes bibliographical references.

Fleischhauer, Carl-August. Inducing compliance. In: *United Nations legal order*. (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995), p. 231–243.  
Includes bibliographical references.

Franck, Thomas M. The political and the judicial empires: must there be conflict over conflict-resolution? In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995), p. 621–632.  
Includes bibliographical references.

- Goldstone, Richard J. The International Tribunal for the Former Yugoslavia: a case study in Security Council action. *Duke journal of comparative and international law*. 6(1) fall 1995: 5–10.  
Includes bibliographical references.
- Graefrath, Bernhard. Iraqi reparations and the Security Council. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 55(1) 1995: 1–68.  
Includes bibliographical references.
- Gray, Christine D. After the ceasefire: Iraq, the Security Council and the use of force. *British year book of international law*, vol. 65 (1994): 135–174.  
Includes bibliographical references.
- Joyner, Christopher C. Collective sanctions as peaceful coercion: lessons from the United Nations experience. *Australian year book of international law*, vol. 16 (1995): 241–270.  
Includes bibliographical references.
- Kerbrat, Yann. La référence au chapitre VII de la Charte des Nations Unies dans les résolutions à caractère humitaire du Conseil de sécurité (Paris, L.G.D.J., 1995). Bibliography: p. 105–113.
- Kirgis, Frederic L. Security Council's first fifty years. *American journal of international law* 89(3) July 1995: 506–539.  
Includes bibliographical references.
- Koskeniemi, Martti. The police in the temple order, justice and the UN: a dialectical view. *European journal of international law* 6(3) 1995: 325–348.  
Includes bibliographical references.
- Kostoval, Daniel. Sankce rady bezpecnosti OSN a donuceni v mezinárodním právu. *Mezinárodní vztahy*, No. 1 (1995): 88–94. Bibliography: p. 94
- Kourula, Erkki. Reforming the Security Council: the international negotiation process within the context of calls to amend the UN Charter to the new realities of the post-cold war era. *Leiden journal of international law*. 8(2) 1995: 337–346.  
Includes bibliographical references.
- Ortega Carcelén, Martin C. *Hacia un gobierno mundial: las nuevas funciones del Consejo de Seguridad de Naciones Unidas* (Salamanca, Spain, Editorial Hespérides, 1995). 285 p. Summary in English. Bibliography: p. 271–276.
- Queuneudec, Jean-Pierre. A propos de la composition du Conseil de sécurité. *Revue générale de droit international public* 99(4) 1995: 955–960.  
Includes bibliographical references.
- Sanctions: causes, legitimacy, legality and effects, proceedings of the Round Table held on 14 and 15 June 1994* presented to the 6<sup>th</sup> Meeting of the Department of Social Sciences held on 20 September 1994. (Belgrade, Akademija, 1995) 155 p.  
Includes bibliographies.
- Schoenberg, Harris O. *War no more!: a concrete action plan to revitalize the United Nations Security Council* (New York, Center for Public Policy, 1995) 63 p. Bibliography: p. 63–64.
- Seara Vázquez, Modesto. El Consejo de Seguridad en 1995: crisis de crecimiento o enfermedad terminal. In: *Un homenaje a don César Sepulveda: escritos jurídicos* (Mexico, Universidad Nacional Autónoma de Mexico, 1995), p. 339–358.  
Includes bibliographical references.

- Seara Vázquez, Modesto. The UN Security Council at fifty: midlife crisis or terminal illness? *Global governance*. 1(3) September/December 1995: 285–296.
- Société française pour le droit international. *Colloque* (28<sup>th</sup>, 1994, Rennes, France). *Le chapitre VII de la Charte des Nations Unies* (Paris, Editions A. Pedone, 1995) 324 p.  
Includes bibliographical references.
- Sokol Colloquium (13<sup>th</sup>, 1995, Charlottesville, Va.). *The United Nations Compensation Commission: Thirteenth Sokol Colloquium* (Irvington, N.Y., Transnational Publishers, 1995) 486 p.  
Includes bibliographical references and index.
- Torres Bernárdez, Santiago. Some considerations on the respective roles of the Security Council and The International Court of Justice with respect to “the prevention of aggravation of disputes” in the domain of the pacific settlement of international disputes or situations. In: *International legal issues arising under the United Nations Decade of International Law*. (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 663–708.  
Includes bibliographical references.
- White, Nigel D. The Security Council and the rule of law. *International law and armed conflict commentary* 1(2) 1995: 25–41.  
Includes bibliographical references.
- White, Nigel D. The Security Council and the settlement of conflicts. *International law and armed conflict commentary*. 2(2) 1995: 3–18.  
Includes bibliographical references.

#### **United Nations Forces**

- Bloom, Evan T. Protecting peacekeepers: the Convention on the Safety of United Nations and Associated Personnel. *American journal of international law*. 89(3) July 1995: 621–631.  
Includes bibliographical references.
- Bourloyannis-Vrailas, M.–Christiane. The Convention on the Safety of United Nations and Associated Personnel. *International and comparative law quarterly*, 44(3) July 1995: 560–590.  
Includes bibliographical references.
- Bourloyannis-Vrailas, M.–Christiane. Safety and security of United Nations personnel in areas of internal armed conflict. *Revue hellénique de droit international*, No. 48(1995): 95–108.  
Includes bibliographical references.
- Bouvier, Antoine. Convention on the safety of United Nations and associated personnel: presentation and analysis. *International review of the Red Cross* 35(309) November/December 1995: 638–666.  
Includes bibliographical references.
- Emanuelli, Claude C. La Convention sur la sécurité du personnel des Nations Unies et du personnel associé: des rayons et des ombres. *Revue générale de droit international public* 99(4) 1995: 849–880. Summaries in English and Spanish.  
Includes bibliographical references.
- From keeping the peace to making it: the changing role of UN security forces. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 328–353.  
Includes bibliographical references.

- Ghebali, Victor-Yves. UNPROFOR in the former Yugoslavia: the misuse of peacekeeping and associated conflict management techniques. In: *New dimensions of peacekeeping*. (Dordrecht, Netherlands; Boston, Mass.; London, Martinus Nijhoff, 1995) p. 13–40.  
Includes bibliographical references.
- Glick, Richard D. Lip service to the laws of war: humanitarian law and United Nations armed forces. *Michigan journal of international law*. 17(1) fall 1995: 53–107.  
Includes bibliographical references.
- Keith, Kenneth. Protection of United Nations and associated personnel. In: *Shelters from the storm: developments in international humanitarian law*. (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995), p. 87–91.
- Kühne, Winrich. The United Nations, fragmenting States, and the need for enlarged peacekeeping. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995), p. 91–112.  
Includes bibliographical references.
- Lalande, Serge. Somalia: major issues for future UN peacekeeping. In: *New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass.; London, Martinus Nijhoff, 1995) p. 69–99.
- Matthies, Volker. Zwischen Erfolg und Fehlschlag: die Friedensmissionen der Vereinten Nationen in Afrika. *Vereinte Nationen*. 43(3) Juni 1995: 105–112.  
Includes bibliographical references.
- McDonald, Jennifer. The Convention on the Safety of United Nations and Associated Personnel. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, the University of New South Wales, 1995) p. 93–107.
- Ortega Terol, Juan Miguel. Una operación para el mantenimiento de la paz: la MINURSO. *Anuario de derecho internacional*, vol. 11 (1995): 317–326.  
Includes bibliographical references.
- Ratner, Steven. The United Nations in Cambodia and the new peacekeeping. In: *New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass.; London, Martinus Nijhoff, 1995) p. 41–67.
- Tharoor, Shashi. United Nations peacekeeping in Europe. *Survival* 37(2) summer 1995: 121–134. Concerns the former Yugoslavia.  
Includes bibliographical references.

### 3. Particular questions or activities

#### Collective security

- Franck, Thomas M. The United Nations as guarantor of international peace and security: past, present and future. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995), p. 25–38.  
Includes bibliographical references.
- Frowein, Jochen Abraham. Reactions by not directly affected States to breaches of public international law. *Recueil des cours* (Hague Academy of International Law) 248(4) 1994: 345–438. Bibliography: p. 351–352.
- Higgins, Rosalyn. Peace and security achievements and failures. *European journal of international law* 6(3) 1995: 445–460.  
Includes bibliographical references.

- Nesi, Giuseppe. Dalla CSCE all'OSCE: la conferenza di riesame di Budapest. *Comunità internazionale* 49(4) 1994: 736–759.  
Includes bibliographical references.
- Ratner, Steven R. Image and reality in the UN's peaceful settlement of disputes. *European journal of international law* 6(3) 1995: 426–444.  
Includes bibliographical references.
- Stocchetti, Matteo Maria. NATO e i problemi della sicurezza in epoca post-bipolare. *Comunità internazionale* 49(4) 1994: 702–723.  
Includes bibliographical references.
- Tournaye, Cécile. *Kelsen et la sécurité collective* (Paris, L.G.D.J. 1995) 121 p.  
Includes bibliographical references (p. 113–117).

#### **Commercial arbitration**

- Burdeau, Genviève. Nouvelles perspectives pour l'arbitrage dans le contentieux économique intéressant les Etats. *Revue de l'arbitrage* No. 1 (janvier/mars 1995): 3–37.  
Includes bibliographical references.
- Caron, David D. Post award proceedings under the UNCITRAL arbitration rules. *Arbitration internationale* 11(4) 1995: 429–454.  
Includes bibliographical references.
- Dispute settlement in international trade and foreign direct investment. *Law and policy in international business* 26(3) spring 1995: 613–896. Special issue.  
Includes bibliographical references.
- Guillaume, Gilbert. The future of international judicial institutions. *International and comparative law quarterly* 44(4) October 1995: 848–862.  
Includes bibliographical references.
- Houtte, Hans van. The UNIDROIT principles of international commercial contracts. *Arbitration internationale* 11(4) 1995: 373–390.  
Includes bibliographical references.
- Huth, William E. Iraq claims tribunal: a new approach to settlement of international commercial disputes. *International business lawyer*. 23(9) October 1995: 430–435.
- The internationalization of international arbitration: the LCIA Centenary Conference* (London, Boston, Mass., Graham & Trotman/M. Nijhoff, 1995) 193 p.  
Includes bibliographical references and index.
- Kossedjian, Catherine. Principe de la contradiction et arbitrage. *Revue de l'arbitrage*, No 3(juillet/septembre 1995): 381–410.  
Includes bibliographical references.
- Mantilla-Serrano, Fernando. International arbitration and insolvency proceedings. *Arbitration internationale* 11(1) 1995: 51–74.  
Includes bibliographical references.
- Peter, Wolfgang. *Arbitration and renegotiation of international investment agreements*. 2<sup>nd</sup> rev. and enlarged ed. (Dordrecht, Netherlands: Boston, Mass., Kluwer Law International, 1995) 458 p. Bibliography: p. 409–422.  
Includes index.
- Sanders, Pieter. Unity and diversity in the adoption of the model law. *Arbitration internationale* 11(1) 1995: 1–37.  
Includes bibliographical references.

- Symposium on international commercial arbitration. *Texas international law journal* 30(1) winter 1995: 221 p. Special issue.  
Includes bibliographical references.
- Symposium on International Legal Practice (13<sup>th</sup>, 1995, San Francisco) Thirteenth annual symposium on international legal practice: the current slate of international alternative dispute resolution. *Hastings international and comparative law review* 18(4) summer 1995: 635–744. Series of articles.  
Includes bibliographical references.
- Wilkinson, Vanessa L.D. The Lex Mercatoria: reality or academic fantasy? *Journal of international arbitration* 12(2) June 1995: 103–117.  
Includes bibliographical references.
- Zhilsov, A. N. Mandatory and public policy rules in international commercial arbitration. *Netherlands international law review* 42(1) 1995: 81–119.  
Includes bibliographical references.

#### **Definition of aggression**

- Carpenter, Allegra Carroll. The International Criminal Court and the crime of aggression. *Nordic journal of international law* 64(2) 1995: 223–242.  
Includes bibliographical references.

#### **Diplomatic relations**

- Barnhoorn, L. A. N. M. Diplomatic law and unilateral remedies. *Netherlands yearbook of international law*, vol. 25(1994): 39–81.  
Includes bibliographical references.
- Demine, Iu. G. *Status diplomaticheskikh predstavitelei i ikh personala* (Moskva, Mezhdunarodnye otnosheniia, 1995). 204 p.  
Includes bibliographical references (p. 199–203).
- Muller, A. S. *International organizations and their host States: aspects of their legal relationship* (The Hague; Boston, Mass., Kluwer Law International, 1995) 317 p. Bibliography: p. 289–302.  
Includes index.

#### **Disarmament**

- Andem, Maurice N. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT): some reflections in the light of North Korea's refusal to allow international inspection of its nuclear facilities. *Nordic journal of international law* 64(4) 1995: 575–590.  
Includes bibliographical references.
- Elaraby, Nabil A. Some reflections on disarmament. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 9–24.  
Includes bibliographical references.
- The future of the Non-Proliferation Treaty* (New York, St. Martin's press, in association with the Mountbatten Centre for International Studies, University of Southampton, 1995). Bibliography: p. 207–211.  
Includes index.
- Implementing the Chemical Weapons Convention: progress and challenges. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 221–238.  
Includes bibliographical references.

- Kolasa, Jan. *Disarmament and arms control agreements: a study on procedural and institutional law* (Bochum, Germany, UVB-Universitätsverlag N. Brockmeyer, 1995). 252 p.  
Includes bibliographical references.
- Koplow, David A. How do we get rid of these things?: dismantling excess weapons while protecting the environment. *Northwestern University law review* 89(2) winter 1995: 445–564.
- Krause, Joachim. Nichtverbreitung: Ringen um die Vertragsverlängerung. *Vereinte Nationen* 43(1) February 1995: 1–7.  
Includes bibliographical references.
- Lang, Winfried. Compliance with disarmament obligations. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55(1) 1995: 69–88.  
Includes bibliographical references.
- NATO Advanced Workshop on Strategic Stability in the Post-Cold War World and the Future of Nuclear Disarmament (1995, Washington, D.C.). *Strategic stability in the post-cold war world and the future of nuclear disarmament* (Dordrecht, Netherlands; Boston, Mass., Kluwer Academic Publishers, 1995) 330 p. 111.  
Includes bibliographies.
- A nuclear future?: global nonproliferation efforts. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup> 1994, p. 552–572.  
Includes bibliographical references.
- Ronzitti, Natalino. La Convention sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction. *Revue générale de droit international public* 99(4) 1995: 881–928. Summaries in English and Spanish.  
Includes bibliographical references.
- Workshop: *La Convention sur l'interdiction et l'élimination des armes chimiques: une percée dans l'entreprise multilatérale du désarmement, colloque. La Haye, 24–26 novembre 1994 The Convention on the Prohibition and Elimination of Chemical Weapons: a breakthrough in multilateral disarmament: Workshop. The Hague, 24–26 November 1994, (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 635 p.* Text in English and/or French.  
Includes bibliographical references.

#### **Domestic jurisdiction**

- Buergenthal, Thomas. International tribunals and national courts: the internationalization of domestic adjudication. In: *Recht zwischen Umbruch und Bewahrung*. (Berlin; New York; Springer, 1995) p. 687–703.  
Includes bibliographical references.
- Gillis Wetter, J. The internationalization of international arbitration: looking ahead to the next ten years. *Arbitration international*. 11(2) 1995: 117–135.  
Includes bibliographical references.
- International litigation and the quest for reasonableness: general course on private international law. *Recueil des cours* (Hague Academy of International Law), 245(1) 1994: 9–320. Bibliography: p. 314–319.
- Kosyris, Phaedon John. Multinational litigation and the notion of forum *non conveniens* as a remedy against jurisdictional abuse. *Revue hellénique de droit international*, No. 45 (1992): 7–22.  
Includes bibliographical references.

Lazareff, Serge. Mandatory extraterritorial application of national law. *Arbitration international*. 11(2) 1995: 137–150.

Includes bibliographical references.

Maison, Rafaëlle. Les premiers cas d'application des dispositions pénales des Conventions de Genève par les juridictions internes. *European journal of international law* 6(2) 1995: 260–273.

Includes bibliographical references.

Strauss, Andrew L. Beyond national law: the neglected role of the international law of personal jurisdiction in domestic courts. *Harvard international law journal* 36(2) spring 1995: 373–424.

Includes bibliographical references.

### Environmental questions

Adede, Andronico Oduogo. International protection of the environment. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995), p. 197–213.

Includes bibliographical references.

Anderson, Steven M. Reforming international institutions to improve global environmental relations agreement, and treaty enforcement. *Hastings international and comparative law review*. 18(4) summer 1995: 771–821.

Includes bibliographical references.

Barboza, Julio. International liability for the injurious consequences of acts not prohibited by international law and protection of the environment. *Recueil des cours* (Hague Academy of International Law), vol. 247(3) 1994: 291–405. Bibliography: p. 402–405.

*Basic documents on international law and the environment* (Oxford, The Clarendon Press; New York, Oxford University Press, 1995). 688 p. Bibliography: p. 680.

Includes index.

Bernabe-Riefkohl, Alberto. “To dream the impossible dream”: Globalization and harmonization of environmental laws. *North Carolina journal of international law and commercial regulation* 20(2) winter 1995: p. 205–229.

Includes bibliographical references.

Boisson de Chazournes, Laurence. La mise en oeuvre du droit international dans le domaine de la protection de l'environnement: enjeux et défis. *Revue générale de droit international public*. 99(1) 1995: 37–76. Summaries in English and Spanish.

Includes bibliographical references.

Brunnée, Jutta. Environmental security in the twenty-first century: new momentum for the development of international environmental law? *Fordham international law journal*, 18(5) May 1995: 1742–1747.

Includes bibliographical references.

Cullet, Philippe. Definition of an environmental right in a human rights context. *Netherlands quarterly of human rights*–13(1) 1995: 25–40.

Includes bibliographical references.

Ellis, E. Jane. International law and oily waters: a critical analysis. *Colorado journal of international environmental law and policy*, 6(1) winter 1995: 31–60.

Includes bibliographical references.

- Epiney, Astrid. Das "Verbot erheblicher grenzüberschreitender Umweltbeeinträchtigungen" Relikt oder konkretisierungsfähige Grundnorm? *Archiv des Völkerrechts* 33(3) Juli 1995: 309–360.  
Includes bibliographical references.
- Ferrari Bravo, Luigi. Considérations sur la méthode de recherche des principes généraux du droit international de l'environnement. *Hague yearbook of international law*, vol. 7(1994): 3–10.  
Includes bibliographical references.
- Fitzmaurice-Lachs, Malgosia. International environmental law as a special field. *Netherlands yearbook of international law*, vol. 25 (1994): 181–226.  
Includes bibliographical references.
- French, Hilary F. *Partnership for the planet: an environmental agenda for the United Nations* (Washington, D.C., Worldwatch Institute, 1995), 71 p.  
Includes bibliographical references.
- International environmental law: from NAFTA to a general agreement on the environment? *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup> 1994, p. 485–508.  
Includes bibliographical references.
- International environmental law symposium. *ILSA journal of international and comparative law*. 2(1) fall 1995: 1–187. Series of articles.  
Includes bibliographical references.
- Internationales Unwelthaftungsrecht: Tagung des Instituts für Internationales Privatrecht und Rechtsvergleichung des Fachbereich: Rechtswissenschaften der Universität Osnabrück am 8. und 9. April 1994 in Osnabrück.* (Köln, C. Heymanns Verlag; 1995) 2 vols. Text in German, French and English.  
Includes the World Charter for Nature. Includes bibliographical references.
- Johnson, Stanley. Evolving perceptions: legal aspects of the protection of the environment in areas not subject to national jurisdiction (global commons). In: *International legal issues arising under the United Nations Decade of International Law*, (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 171–201.  
Includes bibliographical references.
- Kasto, Jalil. *Modern international law of the environment* (Kingston, England, Kall Kwik, 1995). 137 p.  
Includes bibliographical references and index.
- Khol, Radek. Vyizvy environmentální bezpečnosti na konci 20. století. *Mezinárodní vztahy*, No. 4(1995): 39–45.  
Includes bibliographical references.
- Kitt, Jennifer R. Waste exports to the developing world: a global response. *Georgetown international environmental law review* 7(2) spring 1995: 485–514.  
Includes bibliographical references.
- Lang, Winfried. Is protection of the environment a challenge to the international trading system? *Georgetown international environmental law review* 7(2) spring 1995: 463–483.  
Includes bibliographical references.
- Lang, Winfried. Les mesures commerciales au service de la protection de l'environnement. *Revue générale de droit international public* 99(3) 1995: 545–566. Summaries in English and Spanish.  
Includes bibliographical references.

- Lang, Winfried. The United Nations and international environmental law. *International Geneva yearbook*, vol. 9 (1995): 47–59. Bibliography: p. 58–59.
- Lazarus, Richard J. Meeting the demands of integration in the evolution of environmental law: reforming environmental criminal law. *Georgetown law journal* 83(7) September 1995: 2407–2529.  
Includes bibliographical references.
- Low, Luan. Compensation for wartime environmental damage: challenges to international law after the Gulf war. *Virginia journal of international law* 35(2) winter 1995: 405–483.  
Includes bibliographical references.
- Lührs, Georg. Leben und Überleben in Trockengebieten: das Übereinkommen der Vereinten Nationen zur Bekämpfung der Wüstenbildung. *Vereinte Nationen* 43(2) April 1995: 61–65.  
Includes bibliographical references.
- Magraw, Daniel Barstow. Environmental law. In: *Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo., Westview Press, 1995). p. 193–224.  
Includes bibliographical references.
- Marbury, Hugh J. Hazardous waste exportation: the global manifestation of environmental racism. *Vanderbilt journal of transnational law* 28(2) March 1995: 251–294.  
Includes bibliographical references.
- Martin Arribas, Juan José. La degradación de la capa del ozono: un enorme desafío para la comunidad internacional. *Revista española de derecho internacional* 46(2) Julio/diciembre 1994: 533–556. Summary in English.  
Includes bibliographical references.
- Nanda, Ved P. Environment. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications, Cambridge University Press, 1995) p. 631–669.  
Includes bibliographical references.
- Nanda, Ved P. *International environmental law and policy* (Irvington-on-Hudson, N.Y., Transnational Publishers, 1995) 458 p. Bibliography: p. 437–444.  
Includes index.
- Pallemaerts, Marc. La Conférence de Rio: grandeur ou décadence du droit international de l'environnement? *Revue belge de droit international* 28(1) 1995: 175–223.  
Includes bibliographical references.
- Porras, Ileana M. Trading places: greening world trade or trading in the environment? *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 540–546.  
Includes bibliographical references.
- Principles of international environmental law* (Manchester, England; New York, Manchester University Press, 1995)  
Includes bibliographies and index.
- Robinson, Nicholas A. Environmental law: a mission for the 21<sup>st</sup> century. *Law/technology* 28(3) 1995: 1–34. Appendix (contains the IUCN Draft International Covenant on Environment and Development)  
Includes bibliographical references.
- Roht-Arriaza, Naomi. Shifting the point of regulation: the international organization for standardization and global lawmaking on trade and the environment. *Ecology law quarterly* 22(3) 1995: 479–539.  
Includes bibliographical references.

- Rothwell, Donald R. International law and the protection of the Arctic environment. *International and comparative law quarterly*, 44(2) April 1995: 280–312.  
Includes bibliographical references.
- Sands, Philippe. International law in the field of sustainable development. *British year book of international law*, vol. 65 (1994): 304–381.  
Includes bibliographical references.
- Schiavone, Giuseppe. General principles of environmental law relating to transboundary movements of hazardous wastes. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass.: M. Nijhoff, 1995). P. 273–289.
- Sustainable development and international law* (London; Boston, Mass., Graham & Trotman/M. Nijhoff, 1995) 319 p.  
Includes bibliographical references and index.
- Williams, Paul R. Can international legal principles play a positive role in resolving central and east European transboundary environmental disputes? *Georgetown International environmental law review* 7(2) spring 1995: 421–462.  
Includes bibliographical references.

#### **Financing**

- Alvarez, José E. Financial responsibility. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995), p. 1091–1119.  
Includes bibliographical references.
- Dubey, Muchkund. Financing the United Nations. *Indian journal of international law* vol. 35(1995): 157–167.  
Includes bibliographical references.
- Wiehen, Michael. Ein 20- Milliarden-Dollar-Geschäft: das Beschaffungswesen im Verband der Vereinten Nationen. *Vereinte Nationen* 43(4) August 1995: 143–148.  
Includes bibliographical references.

#### **Human rights**

- Adede, Andronico Oduogo. International human rights law: lessons for treaty-making and implementation. *African yearbook of international law* vol. 3 (1995): 99–118.  
Includes bibliographical references.
- Afran, Neil H. International human rights law in the twenty-first century: effective municipal implementation or paean to platitudes. *Fordham international law journal* 18(5) May 1995: 1756–1761.  
Includes bibliographical references.
- Arteaga Acosta, Horacio. Los derechos humanos hoy: concepciones en conflicto. *Boletín* (Comision Andina de Juristas), No. 45 (junio 1995): 9–15.  
Includes bibliographical references.
- Boven, Theodoor Corneelis van. Human rights and rights of peoples. *European journal of international law* 6(3) 1995: 461–476.  
Includes bibliographical references.
- Brice, Susan E. Convention on the Rights of the Child: using a human rights instrument to protect against environmental threats. *Georgetown international environmental law review* 7(2) spring 1995: 587–611.  
Includes bibliographical references.

- Brölmann, Catherine. Some remarks on the Draft Declaration on the Rights of Indigenous Peoples. *Leiden journal of international law* 8(1) 1995: 103–113.  
Includes bibliographical references.
- Castermans-Holleman, Monique C. The protection of economic, social and cultural rights within the UN framework. *Netherlands international law review* 42(3) 1995: 353–373.  
Includes bibliographical references.
- Charvin, Robert. Notes sur les d’erives de l’humanitaire dans l’ordre international. *Revue belge de droit international*, 28(2) 199: 468–485.  
Includes bibliographical references.
- Ciurlizza, Javier. La búsqueda permanente de consenso internacional: derechos humanos democracia y “governabilidad”. *Boletín* (Comisión Andina de Juristas), No. 45 (junio 1995): 50–59. Bibliography: 58–59.
- Combatting traffic in persons: proceedings of the Conference on Traffic in Persons held from 15–19 November 1994 in Utrecht and Maastricht. *SIM special*, No. 17 (November 1994): 1–173.
- Cook, Rebecca J. Women. In: *United Nations legal order* (Cambridge, England: New York, Grotius Publications Cambridge University Press, 1995) p. 433–471.  
Includes bibliographical references.
- Coulter, Robert T. The draft UN Declaration on the Rights of Indigenous Peoples: what is it? what does it mean? *Netherlands quarterly of human rights* 13(2) 1995: 123–138.  
Includes bibliographical references.
- Daes, Erica-Irene A. The United Nations Declaration on minority rights: necessary, urgent, and overdue. *International Geneva yearbook*, vol. 9 (1995): 85–95.  
Includes bibliographical references.
- Davidse, Koen. The Vienna World Conference on Human Rights: bridge to nowhere or bridge over troubled waters? *Touro international law review*, vol. 6 (spring 1995): 239–259.  
Includes bibliographical references.
- Defeis, Elizabeth F. Women’s human rights: the twenty-first century. *Fordham international law journal* 18(5) May 1995: 1748–1755.  
Includes bibliographical references.
- Dijk, P. van (Pieter). A common standard of achievement: about universal validity and uniform interpretation of international human rights norms. *Netherlands quarterly of human rights* 13(2) 1995: 105–121.  
Includes bibliographical references.
- Dinstein, Yoram. The implementation of international human rights. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 331–353.  
Includes bibliographical references.
- Le droit et les minorités: analyses et texts* (Bruxelles, Bruylant, 1995) 462 p.  
Includes bibliographical references.
- Forsythe, David P. The UN and human rights at fifty: an incremental but incomplete revolution. *Global governance* 1(3) September/December 1995: 297–318.  
Includes bibliographical references.
- Hannum, Hurst. Human rights. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 319–348.  
Includes bibliographical references.

- Human rights: implementation through the UN system. *Proceedings* (American Society of International Law, Meeting) 89<sup>th</sup>, 1995, p. 225–251.  
Includes bibliographical references.
- Human rights, multinational business and international financial institutions. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 271–289.  
Includes bibliographical references.
- Impunity and human rights in international law and practice* (New York, Oxford University Press, 1995) 398 p.  
Includes bibliographical references and index.
- International human rights. *Buffalo journal of international law* 2(1) spring 1994: 1–129.  
Series of articles.  
Includes bibliographical references.
- An international human rights agenda for the end of the century: new human rights. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 419–438.  
Includes bibliographical references.
- The international law of youth rights: source documents and commentary* (Bordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 1143 p. Bibliography: p. 1063–1075.  
Includes indexes.
- Kartashkin, V.A. (Vladimir Alekseevich). International human rights. In: *Beyond confrontation: international law for the post-cold war era* (Boulder, Colorado, Westview Press, 1995) p. 275–307.  
Includes bibliographical references.
- Kedzia, Zdzislaw. The United Nations High Commissioner for Human Rights. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 435–452.  
Includes bibliographical references.
- Lamarque, Lucie. *Perspectives occidentales du droit international des droits économiques de la personne*. (Bruxelles, Bruylant Editions de l'universite de Bruxelles, 1995), Bibliography: p. 455–495.  
Includes index.
- LeBlanc, Lawrence J. *The Convention on the Rights of the Child: United Nations law-making on human rights* (Lincoln, Neb, University of Nebraska Press, 1995) 337 p. Bibliography: p. 317–332  
Includes index.
- Lillich, Richard B. Towards the harmonization of international human rights law. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 453–476.  
Includes bibliographical references.
- Lord, Janet E. The United Nations High Commissioner for Human Rights: challenges and opportunities. *Loyola of Los Angeles international and comparative law journal* 17(2) February 1995: 329–363.  
Includes bibliographical references.
- Loucaides, Loukis G. *Essays on the developing law of human rights* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 236 p.  
Includes bibliographical references and index.
- Mutua, Makau wa. The Banjul Charter and the African cultural fingerprint: an evaluation of the language of duties. *Virginia journal of international law* 35(2) winter 1995: 339–380.  
Includes bibliographical references.

- Newman, Frank C. A "Nutshell" approach to the U.N. human rights law protecting minorities. *Fletcher forum of world affairs* 19(1) winter/spring 1995: 5–10.  
Includes bibliographical references.
- Nowak, Manfred. The need for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. *Review* (International Commission of Jurists), No. 55 (December 1995): 153–165.  
Includes bibliographical references.
- Pasqualucci, Jo M. The inter-American human rights system: establishing precedents and procedure in human rights law. *University of Miami inter-American law review* 26(2) winter 1994/95: 297–361.  
Includes bibliographical references.
- Provost, René. Reciprocity in human rights and humanitarian law. *British year book of international law* vol. 65 (1994): 383–454.  
Includes bibliographical references.
- Ramcharan, Bertrand G. The principle of legality in international human rights institutions. *Nordic journal of international law* 64(1) 1995: 1–21.  
Includes bibliographical references.
- Reisman, W. Michael. Protecting indigenous rights in international adjudication. *American journal of international law* 89(2) April 1995: 350–362.  
Includes bibliographical references.
- Ribbing, Mark. International arbitration: the human rights perspective. *American review of international arbitration* 4(4) 1993: 537–551.  
Includes bibliographical references.
- The rights of the child: international instruments* (Irvington-on-Hudson, N.Y., Transnational Publishers, 1995). 779 p.  
Includes bibliographical references.
- Schmidt, Markus G. What happened to the 'spirit of Vienna?': the follow-up to the Vienna Declaration and Programme of Action and the mandate of the U.N. High Commissioner for Human Rights. *Nordic journal of international law* 64(4) 1995: 591–617.  
Includes bibliographical references.
- Schreuder, Jean-Paul. Minority protection within the concept of self-determination. *Leiden journal of international law* 8(1) 1995: 53–80.  
Includes bibliographical references.
- Schreuer, Christoph. Capital punishment and human rights. In: *Recht zwischen Umbruch und Beqahrung* (Berlin; New York, Springer, 1995) p. 563–577.  
Includes bibliographical references.
- Simma, Bruno. Human rights. In: *The United Nations at age of fifty: a legal perspective*. (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 263–280.  
Includes bibliographical references.
- Sohn, Louis B. How American international lawyers prepared for the San Francisco bill of rights. *American journal of international law* 89(3) July 1995: 540–553.  
Includes bibliographical references.
- Szasz, Paul C. Protecting human and minority rights in Bosnia: a documentary survey of international proposals. *California Western International law journal* 25(2) spring 1995: 237–310. Contains text of documents concerning human rights.  
Includes bibliographical references.

- Valticos, Nicolas. Des parallèles qui devraient se rejoindre: les methods de controle international concernant les conventions sur les droits de l'homme. In: *Recht zwischen Umbruch un Bewahrung* (Berlin; New York, Springer, 1995) p. 647–661.  
Includes bibliographical references.
- Van Bueren, Geraldine. *The international law on the rights of the child* (Dordrecht, Netherlands; Boston, Mass, M. Nijhoff, 1995) 435 p.  
Includes bibliographical references and index.
- Vierdag, E.W. Some remarks about special features of human rights treaties. *Netherlands yearbook of international law*, vol. 25 (1994): 119–142.  
Includes bibliographical references.
- Vijapur, Abdulrahim P. No distant millennium: the UN human rights instruments and the problem of domestic jurisdiction. *Indian journal of international law*, vol. 35 (1995): 51–65.  
Includes bibliographical references.
- Villán Durán, Carlos. Contribucion de las Naciones Unidas a la proteccion y promocion de los derechos humanos en Colombia. *Boletin* (Comision Andina de Juristas), No. 45 (junio 1995): 16–26.  
Includes bibliographical references.
- Villán Durán, Carlos. Significado y alcance de la universalidad de los derechos humanos en la Declaración de Viena. *Revista española de derecho internacional* 46(2) Julio/diciembre 1994: 505–532. Summary in English.  
Includes bibliographical references.
- Weeramantry, C.G. Access to information: a new human right, the right to know. *Asian yearbook of international law*. Vol. 4 (1994): 99–125.  
Includes bibliographical references.
- Wichterich, Christa. Frauen-die vierte. *Vereinte Nationen* 43(3) Juni 1995: 95–99. Concerns the 4<sup>th</sup> World Conference on women (Beijing, 1995)  
Includes bibliographical references.
- The 46<sup>th</sup> session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. *Review* (International commission of jurists), No. 53 (December 1994): 63–77.  
Includes bibliographical references.

#### **International administrative law**

- Jordan, Robert S. Law of the international civil service. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 1059–1090.  
Includes bibliographical references.
- Lemoine, Jacques. *The international civil servant: an endangered species* (The Hague; Boston, Mass, Kluwer Law International, 1995) 363 p.  
Includes bibliographical references and index.

#### **International criminal law**

- Acosta Estévez, José B. Normas de tus cogens, efecto erga omnes, crimen internacional y la teoria de los circulos concentricos. *Anuario de derecho iternacional* vol. 11 (1995): 3–22.  
Includes bibliographical references.

- Al-Baharna, Husain M. Some reflections on the drafting of a statute for an International Criminal Court. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 725–738.  
Includes bibliographical references.
- Albright, Madeleine K. International law approaches the twenty-first century: a U.S. perspective on enforcement. *Fordham international law journal* 18(5) May 1995: 1595–1606.  
Includes bibliographical references.
- Bassiouni, M. Cherif. *Aut dedere aut judicare: the duty to extradite or prosecute in international law* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 340 p. Bibliography: p. 303–318.  
Includes index.
- Bottiglieri, Ilaria. Il rapporto della Commissione di esperti sul Ruanda e l'istituzione di un tribunale internazionale penale. *Comunità internazionale*. 49(4) 1994: 760–768.  
Includes bibliographical references.
- Chaney, Kevin R. Pitfalls and imperatives: applying the lessons of Nuremberg to the Yugoslav war crimes trials. *Dickinson journal of international law* 14(1) fall 1995: 57–94.
- Clark, Roger Stenson. Symposium: International criminal law. *Transnational law & contemporary problems*. 5(2) fall 1995: 237–318.  
Includes bibliographical references.
- Crawford, James. The ILC adopts statute for an international criminal court. *American journal of international law* 89(2) April 1995: 404–416.  
Includes bibliographical references.
- A critical study of the International Tribunal for the Former Yugoslavia. *Criminal law forum*: 5(2/3) 1994: 223–714. Series of articles.  
Includes bibliographical references.
- Dixon, Rodney. The International Criminal Tribunal for the former Yugoslavia: working for peace and justice in the Balkans. *South African yearbook of international law*, vol. 20(1995): 25–40.  
Includes bibliographical references.
- Dixon, Rodney. New developments in the International Criminal Tribunal for the former Yugoslavia: prominent leaders indicted and jurisdiction established. *Leiden journal of international law* 8(2) 1995: 449–461.  
Includes bibliographical references.
- Falvey, Joseph L. United Nations justice or military justice: which is the oxymoron?: an analysis of the rules of procedure and evidence of the International Tribunal for the Former Yugoslavia. *Fordham international law journal* 19(2) 1995: 475–528.  
Includes bibliographical references.
- Fendrick, W. J. Some international law problems related to prosecutions before the international Criminal Tribunal for the Former Yugoslavia. *Duke journal of comparative & international law* 6(1) fall 1995: 103–125.  
Includes bibliographical references.
- Gordon, Melissa A. Justice on trial: the efficacy of the International Criminal Tribunal for Rwanda. *ILSA journal of international & comparative law* 1(1) spring 1995: 217–242.  
Includes bibliographical references.

- Gutiérrez Baylón, Juan de Dios. El proyecto de Estatuto de un Tribunal Penal Internacional en el contexto de las tendencias recientes en materia de arreglo pacífico de las controversias internacionales. In: *Un homenaje a don Cesar Sepulveda: escritos jurídicos* (Mexico, universidad Nacional Autónoma de Mexico, 1995) p. 227–244. Includes bibliographical references.
- Healey, Sharon A. Prosecuting rape under the Statute of the War Crimes Tribunal for the Former Yugoslavia. *Brooklyn journal of international law* 21(2) 1995: 327–383. Includes bibliographical references.
- Hochkammer, Karl Arthur. The Yugoslav war crimes tribunal: the compatibility of peace, politics, and international law. *Vanderbilt journal of transnational law* 28(1) January 1995: 119–172. Includes bibliographical references.
- Honnold, John O. International crimes. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 993–1023. Includes bibliographical references.
- International Criminal Law Seminar (2<sup>nd</sup>, 1993, Madrid). *The alleged transnational criminal: Second Biennial International Criminal Law Seminar*, (The Hague, M. Nijhoff, 1995).
- The International Law Commission's draft statute for an international criminal court. *Netherlands international law review* 42(2) 1995: 207–224. Includes bibliographical references.
- The internationalization of criminal law. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995, p. 397–315.
- Joyner, Christopher C. Strengthening enforcement of humanitarian law: reflections on the International Criminal Tribunal for the Former Yugoslavia. *Duke journal of comparative & international law* 6(1) fall 1995: 79–101. Includes bibliographical references.
- Karhilo, Jaana. The establishment of the International Tribunal for Rwanda. *Nordic journal of international law* 64(4) 1995: 683–713. Includes bibliographical references.
- Krieger, David. A Permanent International Criminal Court and the United Nations system. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995), p. 761–792. Includes bibliographical references.
- Levie, Howard S. The statute of the International Tribunal for the Former Yugoslavia: a comparison with the past and a look at the future. *Syracuse journal of international law and commerce*, vol. 21 (spring 1995): 1–28. Includes bibliographical references.
- Mansfield, Leslie. Crimes against humanity: reflections on the fiftieth anniversary of Nuremberg and a forgotten legacy. *Nordic journal of international law* 64(2) 1995: 293–341. Includes bibliographical references.
- Marquardt, Paul D. Law without borders: the constitutionality of an international criminal court. *Columbia journal of transnational law* 33(1) 1995: 73–148. Includes bibliographical references.
- McCormack, Timothy L.H. A new international criminal law regime? *Netherlands international law review* 42(2) 1995: 177–206. Includes the text of the International Law Commission's Draft Statute for an International Criminal Court. Includes bibliographical references.

- Meindersma, Christa. Violations of common article 3 of the Geneva Conventions as violations of the laws or customs of war under article 3 of the Statute of the International Criminal Tribunal for the former Yugoslavia. *Netherlands international law review* 42(3) 1995: 375–397.  
Includes bibliographical references.
- Meron, Theodor. International criminalization of international atrocities. *American journal of international law* 89(3) July 1995: 554–577.  
Includes bibliographical references.
- Morosin, Michele N. Double jeopardy and international law: obstacles to formulating a general principle. *Nordic journal of international law* 64(2) 1995: 261–274.  
Includes bibliographical references.
- Morris, Virginia. *An insider's guide to the International Criminal Tribunal for the Former Yugoslavia: a documentary history and analysis*. (Irvington-on-Hudson, N.Y., Transnational Publishers, 1995), 2 vols. Maps. Bibliography: p. 463–487.  
Includes index.
- Mubiala, Mutoy. Le Tribunal international pour le Rwanda: vraie ou fausse copie du tribunal penal international pour l'ex-Yougoslavie? *Revue generale de droit international public* 99(4) 1995: 929–954.  
Includes bibliographical references.
- Mubiala, Mutoy. Le Tribunal international pour le Rwanda. *Afrique 2000: revue africaine de politique internationale*, No 20 (janvier/fevrier/mars 1995): 5–13.  
Includes bibliographical references.
- Nagan, Winston P. Strengthening humanitarian law: sovereignty, international criminal law and the Ad Hoc Tribunal for the Former Yugoslavia. *Duke journal of comparative & international law* 6(1) fall 1995: 127–165.  
Includes bibliographical references.
- Owsley, Brian. Ethnic Vietnamese in Cambodia: a case study of the tension between foreign policy and human rights. *Touro international law review* vol. 6 (spring 1995): 377–416.  
Includes bibliographical references.
- Paul Touvier and the crime against humanity. *Texas international law journal*, 30(2) spring 1995: 285–310.  
Includes bibliographical references.
- Pejic, Jelena. The International Criminal Court: issues of law and political will. *Fordham international law journal* 18(5) May 1995: 1762–1768.  
Includes bibliographical references.
- Prosecuting and defending violations of genocide and humanitarian law: the International Tribunal for the Former Yugoslavia. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994 p. 239–258.  
Includes bibliographical references.
- Recommendations by the Netherlands Advisory Committee on Public International Law concerning the International Law Commission's report on a Draft Statute for a Permanent International Criminal Court. *Netherlands international law review* 42(2) 1995: 225–247.  
Includes bibliographical references.

- Report on the proposed rules of procedure and evidence of the International Tribunal to adjudicate war crimes committed in the Former Yugoslavia* (Chicago, Ill., American Bar Association/Washington, D.C., Section of International Law and Practice, 1995) 186 p.
- Rowe, P.J. (Peter J.). Liability for “war crimes” during a non-international armed conflict. *Revue de droit militaire et de droit de la guerre* 34(1/4) 1995: 149–168. Summaries in Dutch, French, German, Italian and Spanish.  
Includes bibliographical references.
- Scharf, Michael P. The politics of establishing an international criminal court. *Duke journal of comparative & international law* 6(1) fall 1995: 167–173.  
Includes bibliographical references.
- Schmandt, Lisa L. Peace with justice: is it possible for the former Yugoslavia? *Texas international law journal* 30(2) spring 1995: 335–368.  
Includes bibliographical references.
- Schrag, Minna. The Yugoslav Crimes Tribunal: a prosecutor’s views. *Duke journal of comparative & international law* 6(1) fall 1995: 187–195.  
Includes bibliographical references.
- Shearer, Ivan. Recent developments in international criminal law affecting enforcement of international humanitarian law. In: *Shelters from the storm: developments in international humanitarian law*. (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995, p. 285–297.
- Sreenivasa Rao, P. Trends in international criminal jurisdiction. *Indian journal of international law*. Vol. 35 (1995): 17–31.  
Includes bibliographical references.
- Stern, Brigitte. La Cour criminelle internationale dans le projet de la Commission du droit international. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 739–760.  
Includes bibliographical references.
- Suikkari, Satu. Debate in the United Nations on the International Law Commission’s draft Statute for an international criminal court. *Nordic journal of international law* 64(2) 1995: 205–221.  
Includes bibliographical references.
- Vierucci, Luisa. The first steps of the International Criminal Tribunal for the Former Yugoslavia. *European journal of international law* 6(1) 1995: 134–143.  
Includes bibliographical references.
- Wang, Mariann Meier. The International Tribunal for Rwanda: opportunities for clarification, opportunities for impact. *Columbia human rights law review* 27(1) fall 1995: 177–226.  
Includes bibliographical references.
- Yanping, Gao. Criminal responsibility for breaches of international humanitarian law. In: *Shelters from the storm: developments in international humanitarian law*. (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 299–306.
- Zacklin, Ralph. Trials and tribulations: some legal and constitutional problems in the making of an international war crimes tribunal. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 711–723.

### **International economic law**

- Interdisciplinary approaches to international economic law. *The American university journal of international law and policy* 10(2) winter 1995: 595–887. Series of articles.  
Includes bibliographical references.
- Seidl-Hohenveldern, Ignaz. The international economic order. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 215–233.  
Includes bibliographical references.
- Theodoropoulos, Christos. The development of international economic law in relations among States with different economic and social systems. *Revue hellénique de droit international*, No. 45 (1992): 111–142.  
Includes bibliographical references.

### **International terrorism**

- Beres, Louis René. The legal meaning of terrorism for the military commander. *Connecticut journal of international law*. 11(1) fall 1995: 1–27.  
Includes bibliographical references.
- Beres, Louis René. The meaning of terrorism: jurisprudential and definitional clarifications. *Vanderbilt journal of transnational law* 28(2) March 1995: 239–249.  
Includes bibliographical references.
- Gomez-Robledo Verduzco, Alonso. Es el terrorismo un delito político? In: *Un homenaje a don Cesar Sepulveda: escritos juridicos* (Mexico, universidad Nacional Autonoma de Mexico, 1995) p. 161–178.  
Includes bibliographical references.
- International law documents relating to terrorism* (London, Cavendish, 1995) 798 p.  
Includes index.
- Kolosov, Iurii Mikhailovich. International cooperation against terrorism. In: *Beyond confrontation: international law for the post-cold war era* (Boulder, Colo., Westview Press) p. 141–163.  
Includes bibliographical references.

### **International trade law**

- Carr, Indira. *Statutes & conventions on international trade law*. 2<sup>nd</sup> ed. (London, Cavendish, 1995), 544 p.
- Cruz Miramontes, Rodolfo. La Clausula de nación más favorecida y su adecuación al TLC en el marco de ALADI. In: *Un homenaje a don Cesar Sepulveda: escritos juridicos* (Mexico, universidad Nacional Autonoma de Mexico, 1995) p. 103–115.  
Includes bibliographical references.
- Ferrari, Franco. Le champ d'application des "principes pour les contrats commerciaux internationaux"-elabores par Unidroit. *Revue internationale de droit compare*—No 4 (octobre/décembre 1995): 985–993.  
Includes bibliographical references.
- Ferrari, Franco. *The sphere of application of the Vienna sales convention* (Boston, Mass., Kluwer Law International, 1995) 110 p.  
Includes bibliographical references and index.
- Ferrari, Franco. Uniform application and interest rates under the 1980 Vienna Sales Convention. *Georgia journal of international and comparative law* 24(3) 1995: 467–478.  
Includes bibliographical references.

- Gaillard, Emmanuel. Trente ans de Lex mercatoria. Pour une application selective de la methode des principes généraux du droit. *Journal du droit international* 122(1) (janvier/février/mars 1995): 5–30.  
Includes bibliographical references.
- Garcimartin Alférez, Fco. J. (Francisco J.). El regimen normative de las transacciones privadas internacionales: *una aproximación economica*. *Revista española de derecho internacional* 47(2) julio/diciembre, 1995: 11–39. Summary in English.  
Includes bibliographical references.
- Giardina, Andrea. Les principes UNIDROIT sur les contrats internationaux. *Journal du droit international* 122(3) juillet/août/septembre 1995: 547–584, Contains text of the principles.  
Includes bibliographical references.
- Inama, Stefano. A comparative analysis of the generalized system of preferences and non-preferential rules of origin in the light of the Uruguay Round agreement: Is it a possible avenue for harmonization of further differentiation? *Journal of world trade* 29(1) February 1995: 77–111.  
Includes bibliographical references.
- Kaczorowska, A. L'internationalité d'un contrat. *Revue de droit international et de droit compare* 72(3) 1995: 204–236.  
Includes bibliographical references.
- Magnus, Ulrich. Die allgemeinen Grundsätze im UN-Kaufrecht. *Rechts Zeitschrift für ausländisches und internationales Privatrecht* 60(1) 1995: 469–494.  
Includes bibliographical references.
- Palmeter, David. International trade law in the twenty-first century. *Fordham international law journal* 18(5) May 1995: 1653–1657.  
Includes bibliographical references.
- Storme, Marcel. Applications possibles at caractères généraux des principes de droit uniforme des contrats. *Revue de droit international et de droit compare* 72(1) 1995: 309–325.  
Includes bibliographical references.
- International waterways**
- Bernhardt, J. Peter A. The right of archipelagic sea lanes passage: a primer. *Virginia journal of international law*. 35(4) summer 1995: 719–775.
- Fitzmaurice-Lachs, Malgosia. The law of non-navigational uses of international watercourses - the International Law Commission completes its draft. *Leiden journal of international law*. 8(2) 1995: 361–375.  
Includes bibliographical references.
- Flint, Courtney G. Recent developments of the International Law Commission regarding international watercourses and their implications of the Nile River. *Water international* 20(4) December 1995: 197-204.  
Includes bibliographical references.
- Idris, Kamil. The law of the non-navigational uses of international watercourses. *African yearbook of international law*, vol. 3 (1995): 183–203.  
Includes bibliographical references.
- McCaffrey, Stephen C. The International Law Commission adopts draft articles on international watercourses. *American journal of international law* 89(2) April 1995: 395–404.  
Includes bibliographical references.

- Mubiala, Mutoy. *L'évolution du droit des cours d'eau internationaux à la lumière de l'expérience africaine, notamment dans le bassin du Congo/Zaire* (Paris, Presses Universitaires de France, 1995) 175 p. Thesis, doctoral, Université de Genève, 1994. Bibliography: p. 167–174.
- Rahman, Reaz. The law of the non-navigational uses of international watercourses: dilemma for lower riparians. *Fordham international law journal*.—19(1) Oct. 1995: 9–24.
- Telerant, Niva. Riparian rights under international law: a study of the Israeli-Jordanian Peace Treaty. *Loyola of Los Angeles international and comparative law journal* 18(1) December 1995: 175–205.  
Includes bibliographical references.
- Wenig, Jonathan M. Water and peace: the past, the present, and the future of the Jordan River watercourse: an international law analysis. *New York University journal of international law and politics* 27(2) winter 1995: 331–366.  
Includes bibliographical references.

### Intervention

- Abeyratne, R. I. R. (Ruwantissa Indranath Ramya). Relief flights and humanitarian intervention: perspectives in international law. *Zeitschrift für Luft- und Weltraumrecht* 44(1) März 1995: 3–20.  
Includes bibliographical references.
- Ansari, M. H. Some reflections on the concepts of intervention, domestic jurisdiction and international obligation. *Indian journal of international law*, vol. 35 (1995): 197–202.  
Includes bibliographical references.
- Augelli, Enrico. Lessons of Somalia for future multilateral humanitarian assistance operations. *Global governance* 1(3) September/December 1995: 229–265.  
Includes bibliographical references.
- Bettati, Mario. Ingérence, internevtion ou assistance humanitaire? In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 935–962.  
Includes bibliographical references.
- Condorelli, Luigi. Intervention humanitaire et ou assistance humanitaire? Quelques certitudes et beaucoup d'interrogations. In: *International legal issues arising under the United Nations Decade of International Law*. (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 999–1012.
- Czempiel, Ernst Otto. Intervention: political necessity and strategic possibilities. *Law and state* vol. 51(1995): 7–30. Bibliography: p. 29–30.
- Evans, Cedric E. The concept of “threat to Peace” and humanitarian concerns: probing the limits of Chapter VII of the U.N. Charter. *Transnational law & contemporary problems*, 5(1) spring 1995: 213–236.  
Includes bibliographical references.
- Falk, Richard. The Haiti intervention: a dangerous world order precedent for the United Nations. *Harvard international law journal*. 36(2) spring 1995: 341–358.  
Includes bibliographical references.
- Fielding, Lois E. Taking the next step in the development of new human rights: the emerging right of humanitarian assistance to restore democracy. *Duke journal of comparative & international law* 5(2) spring 1995: 329–377.  
Includes bibliographical references.

- Kimminich, Otto. Der Mythos der humanitären Intervention. *Archiv des Völkerrechts* 33(4) November 1995: 430–458.  
Includes bibliographical references.
- Krylov, Nikolai. Humanitarian intervention: pros and cons. *Loyola of Los Angeles international and comparative law journal* 17(2) February 1995: 365–407.  
Includes bibliographical references.
- Kwakwa, Edward K. Internal conflicts in Africa: is there a right of humanitarian action? *African yearbook of international law* vol. 2 (1994) 9–45.  
Includes bibliographical references.
- Linarelli, John. An examination of the proposed crime of intervention in the draft code of crimes against the peace and security of mankind. *Suffolk transnational law review*, 18(1) winter 1995: 1–51.
- Military intervention: from gunboat diplomacy to humanitarian intervention* (Aldershot, England; Brookfield, Vt., Dartmouth, 1995) 209 p. Bibliography p. 203–209.
- Parsons, Anthony. *From cold war to hot war: UN interventions, 1947–1995* (London, Penguin Books, 1995) 282 p., maps.  
Includes bibliographical references.
- Patnogie, Jovica. *Humanitarian assistance–humanitarian intervention* In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 1013–1040.  
Includes bibliographical references.
- Reisman, William Michael. Humanitarian intervention and fledgling democracies. *Fordham international law journal* 18(3) March 1995: 794–805.  
Includes bibliographical references.
- Tsagourias, N. The lost innocence of humanity: the tragedy of Rwanda and the doctrine of humanitarian intervention. *International law and armed conflict commentary* 2(2) 1995: 19–32.  
Includes bibliographical references.
- Tyagi, Yogesh K. The concept of humanitarian intervention revisited. *Michigan journal of international law* 16(3) spring 1995: 883–910.  
Includes bibliographical references.
- Wippman, David. Treaty-based intervention: who can say no? *University of Chicago law review* 62 spring 1995: 607–687.

#### **Law of the sea**

- Anderson, D. H. Legal implications of the entry into force of the UN Convention on the Law of the Sea. *International and comparative law quarterly* 44(2) April 1995: 313–326.  
Includes bibliographical references.
- Ballah, Lennox F. The universality of the 1982 UN Convention on the Law of the Sea: common heritage or common burden? In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 339–365.  
Includes bibliographical references.
- Brown, Edward Duncan. The 1994 Agreement on the implementation of part XI of the UN Convention on the Law of the Sea: breakthrough to universality? *Marine policy* 19(1) January 1995: 5–20.  
Includes bibliographical references.

- Charney, Jonathan I. Entry into force of the 1982 Convention on the Law of the Sea. *Virginia journal of international law* 35(2) winter 1995: 381–404.  
Includes bibliographical references.
- Colloque sur la Belgique et la nouvelle Convention des Nations Unies sur le droit de la mer (1994, Brussels). *Revue belge de droit international* 28(1) 1995: 5–174.  
Includes bibliographical references.
- Eitel, Tono. A convention for the peaceful use of the seas: the United Nations' Convention on the Law of the Sea. *Law and state* vol. 51 (1995): 75–85.  
Includes bibliographical references.
- Entry into force of the Law of the Sea Convention* (The Hague; Boston, Mass., M. Nijhoff Publishers, 1995) 398 p.  
Includes bibliographical references and index.
- Graeve, Bruno de. Droit des conflits armés en mer: la nouvelle donne. *Droit maritime français* 47(553) octobre 1995: 696–712.  
Includes bibliographical references.
- Implementing the United Nations Convention on the Law of the Sea: an international symposium, January 27, 1995, Georgetown University Law Center. *Georgetown international environmental law review* 7(3) summer 1995: 631–825. "Symposium issue"  
Includes bibliographical references.
- Jaenicke, Günther. The United Nations Convention on the Law of the Sea and the agreement relating to the implementation of part XI of the Convention. Treaty law problems in the process of revising the deep seabed mining regime of the Convention. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 121–134.  
Includes bibliographical references.
- The law of the sea: priorities and responsibilities in implementing the convention* (Gland, Switzerland, IUCN–The World Conservation Union, 1995) 155 p. Bibliography: p. 117–119.
- Law of the sea: the Convention enters into force. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995: p. 451–470.
- Migliorino, Luigi. In situ protection of the underwater cultural heritage under international treaties and national legislation. *International journal of marine and coastal law* 10(4) November. 1995: 483–495.  
Includes bibliographical references.
- Munavvar, Mohamed. *Ocean States: archipelagic regimes in the law of the sea* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 225 p. maps. Bibliography: p. 214–225.
- New directions in the law of the sea: regional & national developments* (New York, Oceana Publications Inc., 1995-), Kept up to date by loose-leaf suppl.  
Includes bibliographies.
- Oda, Shigeru. Dispute settlement prospects in the law of the sea. *International and comparative law quarterly*, 44(4) October 1995: 863–872.
- Oxman, Bernard H. International maritime boundaries: political, strategic and historical considerations. *University of Miami inter-American law review* 26(2) winter 1994/95: 243–295.  
Includes bibliographical references.

- Oxman, Bernard H. Law of the sea. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 671–713.  
Includes bibliographical references.
- Oxman, Bernard H. Stability in the law of the sea. In: *Beyond confrontation: international law for the post-cold war era*. (Boulder, Colo. Westview Press, 1995): p. 165–191.  
Includes bibliographical references.
- Pulvenis, Jean-Francois. New problems arising from the entry into force of the 1982 Law of the Sea Convention? In: *International legal issues arising under the United Nations Decade of International Law* (The Hague: Boston, Mass., M. Nijhoff, 1995) p. 415–441.  
Includes bibliographical references.
- Rosenne, Shabtai. Establishing the International Tribunal for the Law of the Sea. *American journal of international law* 89(4) October 1995: 806–814.  
Includes bibliographical references.
- Salgado Salgado, José Eusebio. Importancia de los convenios internacionales relativos a la prevención de la contaminación del mar por hidrocarburos. In: *Un homenaje a don César Sepúlveda: escritos jurídicos*, (Mexico, Universidad Nacional Autónoma de Mexico, 1995): p. 311–377.  
Includes bibliographical references.
- Strati, Anastasia. *The protection of the underwater cultural heritage: an emerging objective of the contemporary law of the sea*. (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 479 p. Bibliography: p. 375–435.  
Includes index.
- Treves, Tullio. Entry into force of the United Nations Law of the Sea Convention: the road towards universality. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995): p. 443–480.  
Includes bibliographical references.
- Vrancken, P.H.G. Southern limit of the international seabed area. *South African yearbook of international law*, vol. 20 (1995): 144–181.  
Includes bibliographical references.
- Wolfrum, Rüdiger. Law of the sea: an example of the progressive development of international law. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995): p. 309–327.  
Includes bibliographical references.
- Wolfrum, Rüdiger. The protection of the marine environment after the Rio Conference: progress or stalemate? In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 1003–1017.  
Includes bibliographical references.
- Yturriaga, José Antonio de. Fishing in the high seas: from the 1982 UNCLOS to the 1995 Agreement on Straddling Stocks. *African yearbook of international law* vol. 3(1995) 151–182.  
Includes bibliographical references.
- The 1994 United Nations Convention on the Law of the Sea: basic documents with an introduction* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 214 p.

### Law of treaties

- Bowman, M. J. The multilateral treaty amendment process: a case study. *International and comparative law quarterly* 44(3) July 1995: 540–559.  
Includes bibliographical references.
- Chayes, Abram. *The new sovereignty: compliance with international regulatory agreements* (Cambridge, Mass., Harvard University Press, 1995) 417 p.  
Includes bibliographical references and index
- Craig, D. W. Reservations: equity as a balancing factor? *Australian year book of international law*, vol. 16 (1995): 21–172.  
Includes bibliographical references.
- Meron, Theodor. The authority to make treaties in the late middle ages. *American journal of international law* 89(1) January 1995: 1–20.  
Includes bibliographical references.
- Reuter, Paul. *Introduction to the law of treaties*. 2<sup>nd</sup> ed. (London; New York, Kegan Paul International, 1995) 296 p.  
Includes index.
- Schabas, William A. Reservations to human rights treaties: time for innovation and reform. *Canadian yearbook of international law* vol. 32 (1994): 39–81. Summary in French.  
Includes bibliographical references.
- Trigueros Gaisman, Laura. La constitucionalidad de los tratados: un problema actual. In: *Un homenaje a don César Sepúlveda: escritos jurídicos* (Mexico, Universidad Nacional Autónoma de México, 1995). p. 467–486.  
Includes bibliographical references.
- Vázquez, Carlos Manuel. The four doctrines of self-executing treaties. *American journal of international law*. 89(4) October 1995: 695–723. Concerns the United States.  
Includes bibliographical references.

### Law of war

- Abplanalp, Thilippe. The international conference of the Red Cross as a factor for the development of international humanitarian law and the cohesion of the International Red Cross and Red Crescent Movement. *International review of the Red Cross* 35(308) September/October 1995: 520–549.  
Includes bibliographical references.
- Ajibola, Bola, Prince. Protection of the environment in times of armed conflict. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague: Boston, Mass., M. Nijhoff, 1995) p. 75–93.  
Includes bibliographical references.
- Balkin, Rosalie. The protection of cultural property in times of armed conflict. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995), p. 237–256.  
Includes bibliographical references.
- Cartledge, G. J. “Peacekeeping, peace-enforcement, and international humanitarian law.” In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, University of New South Wales, 1995): pp. 75–82.

- Chopard, Jean-Luc. Dissemination of the humanitarian rules and cooperation with National Red Cross and Red Crescent Societies for the purpose of prevention. *International review of the Red Cross* 35(306) May/June 1995: 244–262.  
Includes bibliographical references.
- Donelan, Michael D. Minimum force in war. *International relations* (David Davies Memorial Institute of International Studies (London)) 12(5) August 1995: 37–45.  
Includes bibliographical references.
- Doswald-Beck, Louise. Vessels, aircraft and persons entitled to protection during armed conflicts at sea. *British year book of international law* vol. 65(1994): 211–301.  
Includes bibliographical references.
- Emanuelli, Claude. *Les actions militaires de l'ONU et le droit international humanitaire* (Ottawa, Wilson & Lafleur Ltee, 1995) 112 p. Bibliography: p. 93–95–  
Includes index.
- Gardam, Judith Gail. Women and international humanitarian law. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 205–217.  
Includes bibliographical references.
- Gasser, Hans-Peter. For better protection of the natural environment in armed conflict: a proposal for action. *American journal of international law* 89(3) July 1995:637–644.
- Green, L. C. Command responsibility in international humanitarian law. *Transnational law & contemporary problems* 5(2) fall 1995:319–371.  
Includes bibliographical references.
- Gross, Oren. The grave breaches system and the armed conflict in the former Yugoslavia. *Michigan journal of international law* 16(3) spring 1995: 783–829.  
Includes bibliographical references.
- The handbook of humanitarian law in armed conflicts* (Oxford; New York, Oxford University Press, 1995) 589 p. Bibliography: p. 565–584.  
Includes index.
- Heintschel von Heinegg, Wolff. New developments in the protection of the natural environment in naval armed conflicts. *German yearbook of international law* vol. 37(1994): 281–314.  
Includes bibliographical references.
- Khalil, Nurhalidi Binti Mohamed. Has international humanitarian law failed women? In: *Shelters from the storm: development in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 229–235.  
Includes bibliographical references.
- Law in humanitarian crises/Le droit face aux crises humanitaires* (Luxembourg, Office for Official Publications of the European Communities, 1995), 2 vols. Text in English or French.  
Includes bibliographical references.
- Levie, Howard S. The law of war since 1949. *Revue de droit militaire et de droit de la guerre* 34(1/4) 1995: 73–100. Summary in Dutch, French, German, Italian and Spanish.  
Includes bibliographical references.

- Lord, Janet E. Legal restraints in the use of landmines: humanitarian and environmental crisis. *California western international law journal* 25(2) spring 1995: 311–355.  
Includes bibliographical references.
- Meindersma, Christa. Applicability of humanitarian law in international and internal armed conflict. *Hague yearbook of international law* vol. 7(1994): 113–139.  
Includes bibliographical references.
- Monod, Jean-Michel. Implementation of international humanitarian law. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 35–41.  
Includes bibliographical references.
- Peck, Julianne. The U.N. and the laws of war: how can the world's peacekeepers be held accountable? *Syracuse journal of international law and commerce*, vol. 21 (spring 1995): 283–310.  
Includes bibliographical references.
- Penna, Lakshmikanth Rao. Protection of cultural property during armed conflicts. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995), p. 257–269.
- Popovic, Neil A. F. Humanitarian law, protection of the environment, and human rights. *Georgetown international environment law review* 8(1) fall 1995: 67–89.  
Includes bibliographical references.
- Post, H. H. G. Some curiosities in the sources of the law of armed conflict conceived in a general international legal perspective. *Netherlands yearbook of international law*, vol. 25(1994): 83–117.  
Includes bibliographical references.
- Roberts, Adam. The laws of war: problems of implementation in contemporary conflicts. *Duke journal of comparative & international law* 6(1) fall 1995: 11–78.  
Includes bibliographical references.
- Rostow, Nicholas. The World Health Organization, the International Court of Justice, and nuclear weapons. *Yale journal of international law* 20(1) winter 1995: 151–185.  
Includes bibliographical references.
- San Remo manual on international law applicable to armed conflicts at sea* (Cambridge, England; New York, Cambridge University Press, 1995). 257 p.  
Includes bibliographical references and index.
- Sandoz, Yves. Humanitarian law: priorities for the 1990s and beyond. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 11–19.  
Includes bibliographical references.
- Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) 360 p.  
Includes bibliographical references.
- Smith, Norman B. A plea for the total ban of land mines by international treaty. *Loyola of Los Angeles international and comparative law journal* 17(3) April 1995: 507–534.  
Includes bibliographical references.

- Torrelli, Maurice. Les zones de sécurité. *Revue générale de droit international public* 99(4) 1995: 787–848. Summaries in English and Spanish.  
Includes bibliographical references.
- Udagama, Deepika. Women victimized by war: a call for stronger protection. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 219–227.  
Includes bibliographical references.
- Verwey, Wil D. Observations on the legal protection of the environment in times of international armed conflict. *Hague yearbook of international law*, vol 7. (1994): 35–52.  
Includes bibliographical references.
- Verwey, Wil D. Protection of the environment in times of armed conflict: in search of a new legal perspective. *Leiden journal of international law* 8(1) 1995: 7–40.  
Includes bibliographical references.
- Zemmali, Ameer. La protection de l'environnement en période de conflit armé dans les normes humanitaires et l'action du Comité international de la Croix Rouge. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass, M. Nijhoff, 1995) p. 105–131.  
Includes bibliographical references.
- Zemmali, Ameer. The protection of water in times of armed conflict. *International review of the Red Cross* 35(308) September/October 1995: 550–564.  
Includes bibliographical references.

#### **Maintenance of peace**

- Bertrand, Maurice. The confusion between peacemaking and peacekeeping. In: *New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass., London, Martinus Nijhoff, 1995) p. 163–171.
- He, Qizhi. The crucial role of the United Nations in maintaining international peace and security. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 77–90.  
Includes bibliographical references.
- Lehmann, Ingrid A. Public perceptions of U.N. peacekeeping. *Fletcher forum of world affairs* 19(1) winter/spring 1995: 109–119.  
Includes bibliographical references.
- New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 210 p.  
Includes bibliographical references.
- Ogata, Sadako N. The interface between peacekeeping and humanitarian action. In: *New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass: London, 1995) p. 119–127.
- Owen, David. The limits of enforcement. *Netherlands international law review* 42(2) 1995: 249–258.  
Includes bibliographical references.
- Ratner, Steven R. *The new UN peacekeeping: building peace in lands of conflict after the cold war*, (New York, St. Martin's Press/Council on Foreign Relations, 1995) 322 p. Bibliography: p. 291–298.  
Includes index.

- Singh, Jasjit. United Nations peace-keeping operations: the challenge of change. *Indian journal of international law*. Vol. 35 (1995): 77–89.  
Includes bibliographical references.
- Sinjela, A, Mpazi. United Nations peacekeeping rule: the Angolan experience. *African yearbook of international law* vol. 2(1994): 47–70.  
Includes bibliographical references.
- Sutterlin, James S. *The United Nations and the maintenance of international security: a challenge to be met* (Westport, Conn., Praeger, 1995) 146 p. Bibliography: p. 141.  
Includes index.
- Symposium: Peacekeeping, peacemaking, and peacebuilding: the role of the United Nations in global conflict. *Cornell international law journal* 28(3) Symposium 1995: 617–718. Special issue.  
Includes bibliographical references.
- Tharoor, Sashi. The changing face of peace-keeping and peace-enforcement. *Fordham International law journal* 19(2) 1995: 408–426.  
Includes bibliographical references.
- Uerpmann, Robert. Grenzen zentraler Rechtsdurchsetzung im Rahmen der Vereinten Nationen. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 107–130.  
Includes bibliographical references.
- UN peacekeeping: an early reckoning of the second generation. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995: p. 275–291.
- United Nations peace operations: a collection of primary documents and readings governing the conduct of multilateral peace operations* (New York, American Heritage, Custom Publishing Group, 1995) 485 p.  
Includes bibliographical references.

#### **Namibia**

- Nujoma, Sam. Wirklich ein Erfolg?: Namibia und die Vereinten Nationen. *Vereinte Nationen* 43(5/6) Oktober, 1995: 183–186.  
Includes bibliographical references.

#### **Narcotic drugs**

- L'ONU et la drogue* (Paris, Pedone, 1995) 140 p. Bibliography: p. 131–140.
- Sturma, Pavel. Mezinárodní právo a kontrola drog: primary. *Právník* 134(7) 1995: 677–687. Summary in English.  
Includes bibliographical references.

#### **Natural resources**

- Bowman, M. J. The Ramsar Convention comes of age. *Netherlands international law review* 42(1) 1995: 1–52.  
Includes bibliographical references.
- Brunée, Jutta. Environmental security and freshwater resources: a case for international ecosystem law. *Yearbook of international environmental law* vol. 5 (1994): 41–76.  
Includes bibliographical references.
- Gautier, Philip. Le Protocole de Madrid et la protection de l'environnement de l'Antarctique: a propos de l'Antarctique "reserve naturelle, consacrée à la paix et à la science". *Hague yearbook of international law*, vol. 7(1994): 11–24.  
Includes bibliographical references.

Gros Espiell, Héctor. Biodiversidad, ética y derecho. In: *Un homenaje a don César Sepúlveda: escritos jurídicos* (México, Universidad Nacional Autónoma de México, 1995) p. 197–226.

Includes bibliographical references.

Hey, Ellen. Increasing accountability for the conservation and sustainable use of biodiversity: an issue of transnational global character. *Colorado journal of international environmental law and policy* 6(1) winter 1995: 1–29.

Includes bibliographical references.

Law of the Sea Institute (Honolulu, Hawaii) *The role of the oceans in the 21<sup>st</sup> century: proceedings of the Law of the Sea Institute Twenty-seventh Annual Conference, Seoul, Republic of Korea, July 13–16, 1993*. (Honolulu, Hawaii, Law of the Sea Institute, William S. Richardson School of Law, University of Hawaii, 1995) 777 p. maps.

Includes bibliographical references and index.

Maffei, Maria Clara. The relationship between the Convention on biological diversity and other international treaties on the protection of wildlife. *Anuario de derecho internacional* vol. 11(1995): 129–167.

Includes bibliographical references.

Marroquin-Merino, Victor M. Wildlife utilization: a new international mechanism for the protection of biological diversity. *Law and policy in international business* 26(2) winter 1995: 303–370.

Includes bibliographical references.

Yusuf, Abdulkawi Ahmed. International law and sustainable development: the Convention on Biological Diversity. *African yearbook of international law* vol. 2(1994): 109–137.

Includes bibliographical references.

#### **Non-governmental organizations**

Charnovitz, Steve. Non-governmental organizations and the original international trade regime. *Journal of world trade* 29(5) October 1995: 111–122.

Includes bibliographical references.

Clark, Ann Marie. Non-governmental organizations and their influence on international society. *Journal of international affairs* (Columbia University (New York), School of International and Public Affairs 48(2) winter 1995: 507–525.

Includes bibliographical references.

The growing role of nongovernmental organizations. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995, p. 413–432.

Macaliter-Smith, Peter. Non-governmental organizations, humanitarian action and human rights. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 477–501.

Includes bibliographical references.

Marcelli, Fabio. Organizzazioni non governative ambientali nel dopo Rio. *Comunità internazionale* 49(3) 1994: 562–582.

Includes bibliographical references.

Waak, Patricia. Shaping a sustainable planet: the role of nongovernmental organizations. *Colorado journal of international environmental law and policy* 6(2) summer 1995: 345–362.

Includes bibliographical references.

### **Outer space**

Bhatt, S. The role of the United Nations in the regulation of uses of air space and outer space. *Indian journal of international law*, vol. 35(1995): 203–214.  
Includes bibliographical references.

Gorove, Katherine M. Tensions in the development of the law of outer space. In: *Beyond confrontation: international law for the post-cold war era* (Boulder, Colo., Westview Press, 1995), p. 225–274.  
Includes bibliographical references.

Jasentuliyana, Nandasiri. New horizons in space law. *Law/technology* 28(2) 1995: 11–33.  
Includes bibliographical references.

Malanczuk, Peter. Space law as a branch of international law. *Netherlands yearbook of international law* vol 25(1994): 143–180.  
Includes bibliographical references.

*Research and invention in outer space: liability and intellectual property rights* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff Publishers and International Bar Association, 1995) 360 p. Text in English or French.  
Includes bibliographical references.

Round Table: “Space Law: the Role of the United Nations” (1995, New York). United Nations Congress on Public International Law on the occasion of the 50<sup>th</sup> anniversary of the United Nations, 13–17 March 1995, United Nations Headquarters, New York. *Proceedings of the 38<sup>th</sup> Colloquium on the Law of Outer Space*, 1996: 315–339. Bibliography: p. 339.

Roy Chowdhury, Subrata. Outer space without arms: substratum of a peaceful regime for common benefit. *Asian yearbook of international law*, vol. 4(1994): 3–24.  
Includes bibliographical references.

Steinhardt, Ralph G. Outer space. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications/Cambridge University Press, 1995) 753–787.  
Includes bibliographical references.

Vexing issues of supreme authority and sovereign rights arising from space activities. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 269–270.  
Includes bibliographical references.

### **Peaceful settlement of disputes**

Brus, Marcel. *Third party dispute settlement in an interdependent world: developing a theoretical framework* (Dordrecht, Netherlands; Boston, Mass., M. Nijhoff, 1995) 262 p. Bibliography: p. 234–255.  
Includes index.

Djiena-Wembou, Michel-Cyr. Le mecanisme de l’OUA pour la prevention, la gestion et le règlement des conflits. *African yearbook of international law*, vol. 2 (1994): 71–91.  
Includes bibliographical references.

Gaer, Felice D. Ethnic conflict and preventive diplomacy: new challenges for international organizations, nation-States and nongovernmental organizations. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994: p. 146–154.  
Includes bibliographical references.

- Mubiala, Mutoy. L'operation des Nations Unies pour les droits de l'homme au Rwanda. *African yearbook of international law*, vol. 3 (1995): 277–283.  
Includes bibliographical references.
- Ndulo, Muna. The United Nations observer mission in South Africa: preventive diplomacy and peacekeeping. *African yearbook of international law*, vol. 3(1995): 205–238.  
Includes bibliographical references.
- Orn, Torsten. Peacekeeping: the new challenges. *International relations* (David Davies Memorial Institute of International Studies (London)), 12(5) August 1995: 1–8.  
Includes bibliographical references.
- Peck, Connie. Summary of Colloquium on new dimensions of peacekeeping. In: *New dimensions of peacekeeping* (Dordrecht, Netherlands; Boston, Mass.; London, Martinus Nijhoff, 1995) p. 181–204.  
Includes bibliographical references.
- Petrovskii, Vladimir Fedorovich. Preventive & peace-making diplomacy & the role of international law in conflict resolution. In: *International legal issues arising under the United Nations oDecade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 15–24.  
Includes bibliographical references.
- Riquelme Cortado, Rosa Maria. El arreglo de controversias en las organizaciones de fines generales. *Anuario de derecho internacional*, vol. 11(1995): 275–314.  
Includes bibliographical references.
- Sinjela, A, Mpazi. The UN and internal conflicts in Africa: a documentary survey. *African yearbook of international law*, vol. 3(1995): 285–375.  
Includes text of resolutions. Annex, statute of the International Tribunal for Rwanda. Includes bibliographical references.
- Subedi, Surya P. The doctrine of objective regimes in international law and the competence of the United Nations to impose territorial or peace settlements on States. *German yearbook of international law* vol. 37(1994): 162–205.  
Includes bibliographical references.

#### **Political and security questions**

- Fox, Gregory H. Multinational election monitoring: advancing international law on the high wire. *Fordham international law journal* 18(5) May 1995: 1558–1667.  
Includes bibliographical references.
- Globální bezpečnost a její vliv na koncipování bezpečnostní politiky. *Mezinárodní vztahy*, No. 4(1995): 31–38.  
Includes bibliographical references.
- Meyns, Peter. Grenzen der internationalen Wahlbeobachtung-Anmerkungen eines Wahlbeobachters in Mosambik. *Afrika Spectrum* 30(1) 1995: 35–47. Summaries in English and French. Bibliography: p. 46.
- Randall, Stephen J. Peacekeeping in the post-cold war era: the United Nations and the Cambodian elections of 1993. *Contemporary security policy* 16(2) August 1995: 174–191.  
Includes bibliographical references.

- Ratner, Steven R. Controlling the breakup of States: toward a United Nations role. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994: p. 42–50.
- Raulin, Arnaud de. L'action des observateurs internationaux dans le cadre de l'ONU et de la société internationale. *Revue générale de droit international public* 99(3) 1995: 567–604. Summaries in English and Spanish.  
Includes bibliographical references.
- Wiebe, Virgil. The prevention of civil war through the use of the human rights system. *New York University journal of international law and politics* 27(2) winter 1995: 409–468.  
Includes bibliographical references.

#### **Progressive development and codification of international law (in general)**

- Diaz Barrado, Cástor Miguel. La necesidad de la codificación en el derecho internacional publico. *Revista española de derecho internacional* 47(1) enero/junio 1995:33–59. Summary in English.  
Includes bibliographical references.
- Djiena-Wembou, Michel-Cyr. Réflexions sur le role des resolutions dans l'elaboration du droit international par les organes politiques de l'ONU. *Revue hellénique de droit international* No. 45(1992): 95–109.  
Includes bibliographical references.
- Eiriksson, Gudmundur. The work of the International Law Commission at its 46<sup>th</sup> session. *Nordic journal of international law* 64(1) 1995:59–127. Annex 1. Draft Statute for an International Criminal Court. Annex 2. Draft Code of Crimes against the Peace and Security of Mankind. Annex 3. The Law of the Non-Navigational Uses of International Watercourses.  
Includes bibliographical references.
- Pons Rafols, Francesc-Xavier. *Codificación y desarrollo progresivo del derecho relativo a las organizaciones internacionales* (Barcelona, Spain, J.M. Bosch Editor, 1995) 151 p.  
Includes bibliographical references.
- Qatar International Law Conference (1994, Doha). *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) 1338 p.  
Includes bibliographical references.
- Rosenstock, Robert. The Forty-sixth session of the International Law Commission. *American journal of international law* 89(2) April 1995: 390–395.  
Includes bibliographical references.
- The UN Decade on International Law: progress and promises. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995, p. 172–189.

#### **Refugees**

- Awuku, Emmanuel Opoku. Refugee movements in Africa and the OAU Convention on Refugees. *Journal of African law* 39(1) 1995: 79–86.  
Includes bibliographical references.
- Batchelor, Carol A. Stateless persons: some gaps in international protection. *International journal of refugee law* 7(2) 1995: 232–259.  
Includes bibliographical references.

- Bodart, Serge. Les réfugiés apolitiques: guerre civile et persecution de groupe au regard de las Convention de Genève. *International journal of refugee law* 7(1) 1995:39–59. Summary in English and Spanish.  
Includes bibliographical references.
- Deng, Francis Mading. Dealing with the displaced: a challenge to the international community. *Global governance* 1(1) winter 1995: 45–57.  
Includes bibliographical references.
- Franco, Leonardo. An examination of safety zones for internally displaced persons as a contribution toward prevention and solution of refugee problems. In: *International legal issues arising under the United Nations Decade of International Law* (The Hague; Boston, Mass., M. Nijhoff, 1995) p. 871–897.
- Goodwin-Gill, Guy S. Asylum: the law and politics of change. *International journal of refugee law* 7(1) 1995: 1–18.  
Includes bibliographical references.
- Helton, Arthur C. Forced international migration: a need for new approaches by the international community. *Fordham international law journal* 18(5) May 1995: 1623–1636.  
Includes bibliographical references.
- Henckaerts, Jean-Marie. *Mass expulsion in modern international law and practice* (The Hague; Boston, Mass; M. Nijhoff, 1995) 257 p. Bibliography: p. 240–247.  
Includes index.
- Martin, David A. Refugees and migration. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications/Cambridge University Press, 1995) p. 391–432.  
Includes bibliographical references.
- The Refugee Convention, 1951: the travaux préparatoires analysed, with a commentary by the late Paul Weis.* (Cambridge, England; New York, Cambridge University Press, 1995)  
Includes bibliographical references.
- Roy Chowdhury, Subrata. A response to the refugee problems in the post cold war era: some existing and emerging norms of international law. *International journal of refugee law* 7(1) 1995: 100–118. Summary in French and Spanish.  
Includes bibliographical references.
- Trindade, Antonio Augusto Cancado. Derecho internacional de los refugiados y derecho internacional de los derechos humanos: aproximaciones y convergencias. In: *Un homenaje a don César Sepúlveda: escritos jurídicos* (Mexico, Universidad Nacional Autonoma de Mexico, 1995), p. 25–45.  
Includes bibliographical references.
- Right of asylum**
- Crépeau, Francois. *Droit d'asile: de l'hospitalité aux controles migratoires* (Bruxelles, Bruylant Editions de l'Université de Bruxelles, 1995) 424 p. Bibliography: p. 355–398.  
Includes index.
- Einarsen, Terje. Mass flight: the case for international asylum. *International journal of refugee law* 7(4) October 1995: 551–578.  
Includes bibliographical references.

Serrano Migallon, Fernando. El derecho de asilo. In: *Un homenaje a don César Sepúlveda: escritos jurídicos* (Mexico, Universidad Nacional Autónoma de México, 1995) p. 359–370. Bibliography: p. 370

#### **Rule of law**

Barret-Kriegel, Blandine. *The state and the rule of law* (Princeton, N.J., Princeton University Press, 1995) 173 p. Translated from French.  
Includes bibliographical references and index.

Caron, David D. Peaceful settlement of disputes through the rule of law. In: *Beyond confrontation: international law for the post-cold war era*, (Boulder, Colo., Westview Press, 1995) p. 309–334.  
Includes bibliographical references.

Falterbaum, Johannes. Auf dem Weg zu einer effektiveren internationalen Rechtsordnung. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 245–265.  
Includes bibliographical references.

Report on improving the effectiveness of the United Nations in advancing the rule of law in the world: Working Group on Improving the Effectiveness of the United Nations. *International lawyer* 29(2) summer 1995: 293–334.  
Includes bibliographical references.

#### **Self-defence**

Donner, Michael. Die Begrenzung bewaffneter Konflikte durch das moderne jus ad bellum. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 168–218.  
Includes bibliographical references.

Moor, Gideon A. The Republic of Bosnia-Herzegovina and article 51: inherent rights and unmet responsibilities. *Fordham international law journal* 18(3) March 1995: 870–919.  
Includes bibliographical references.

Motala, Ziyad. Self-defense in international law, the United Nations, and the Bosnian conflict. *University of Pittsburgh law review* 57(1) fall 1995: 1–33.

#### **Self-determination**

Brietzke, Paul H. Self-determination or jurisprudential confusion: exacerbating political conflict. *Wisconsin international law journal* 14(1) fall 1995: 69–131.  
Includes bibliographical references.

Cassese, Antonio. *Self-determination of peoples: a legal reappraisal* (Cambridge, England; New York, Cambridge University Press, 1995) 375 p.  
Includes bibliographical references and index.

Craven, Matthew C. R. What's in the name?: the former Yugoslav Republic of Macedonia and issues of statehood. *Australian year book of international law* vol. 16 (1995): 199–239.  
Includes bibliographical references.

Goble, Paul. Back to Biafra?: defending borders and defending human rights in the post cold-war environment. *Fordham international law journal* 18(5) May 1995: 1679–1684.  
Includes bibliographical references.

Hanauer, Laurence S. The irrelevance of self-determination law to ethno-national conflicts: a new look at the Western Sahara case. *Emory international law review* 9(1) spring 1995: 133–177.  
Includes bibliographical references.

- Hill, Mitchell A. What the principle of self-determination means today. *ILSA journal of international & comparative law* 1(1) spring 1995: 119–134.  
Includes bibliographical references.
- International law and the changed Yugoslavia* (Belgrade, Institute of International Politics and Economics, 1995) 175 p. Text in English or French.  
Includes bibliographical references.
- Klima, Jan. Bremeno nezávislosti dvacetole od pádu posledního koloniálního imperia. *Mezinárodní vztahy*, No. 4(1995):58–64.  
Includes bibliographical references.
- Ofuatey-Kodjoe, W. B. Self-determination. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 349–389.  
Includes bibliographical references.
- Schacter, Oscar. Micronationalism and secession. In: *Recht zwischen Umbruch und Bewahrung* (Berlin; New York, Springer, 1995) p. 179–186.
- Tappe, Trent N. Chechnya and the state of self-determination in a breakaway region of the former Soviet Union: evaluating the legitimacy of secessionist claims. *Columbia journal of transnational law* 34(1) 1995: 255–295.  
Includes bibliographical references.

#### **State responsibility**

- Annacker, Claudia. Part two of the International Law Commission's draft articles on State responsibility. *German yearbook of international law* vol. 37 (1994): 206–253.
- Finkelstein, Claire. Changing notions of State agency in international law: the case of Paul Touvier. *Texas international law journal* 30(2) spring 1995: 261–284.  
Includes bibliographical references.

#### **State sovereignty**

- Barnett, Michael. The new United Nations politics of peace: from juridical sovereignty to empirical sovereignty. *Global governance* 1(1) winter 1995: 79–97.  
Includes bibliographical references.
- Beyond Westphalia?: state sovereignty and international intervention* (Baltimore, Md., Johns Hopkins University Press, 1995) 324 p.  
Includes bibliographical references and index.
- Brand, Ronald A. External sovereignty and international law. *Fordham international law journal* 18(5) May 1995: 1685–1697.  
Includes bibliographical references.
- Byers, Michael. State immunity: Article 18 of the International Law Commission's draft. *International and comparative law quarterly* 44(4) October 1995: 882–893.  
Includes bibliographical references.
- Colloque: "Les Nations Unies et la restauration de l'Etat" (1994, Aix-en-Provence) *Les Nations Unies et la restauration de l'Etat: colloque des 16 et 17 décembre 1994* (Paris, A. Pedone, 1995) 190 p.  
Includes bibliographical references.
- Deng, Francis Mading. Frontiers of sovereignty: a framework of protection, assistance, and development for the internally displaced. *Leiden journal of international law* 8(2) 1995: 249–286.  
Includes bibliographical references.

Distefano, Giovanni. La notion de titre juridique et les différends territoriaux dans l'ordre international. *Revue generale de droit international public* 99(2) 1995: 335–366. Summaries in English and Spanish. Includes bibliographical references.

The end of sovereignty?: round table. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994) p. 71–87.

Koskenniemi, Martti. The wonderful artificiality of States. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup> 1994, p. 22–29. Includes bibliographical references.

Multiple tiers of sovereignty: the future of international governance. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup> 1994, p. 51–69.

Orlow, Daniel. Of nations small: the small State in international law. *Temple international and comparative law journal* 9(1) spring 1995: 115–140. Includes bibliographical references.

Souveraineté étatique et protection internationale des minorités. *Recueil des cours* (Hague Academy of International Law) 245(1) 1994: 321–464. Includes bibliographical references.

Treviño Rios, Oscar. Estado y soberania como hechos ante el derecho internacional. In: *Un homenaje a don César Sepúlveda: escritos jurídicos* (Mexico, Universidad Nacional Autonoma de Mexico, 1995) p. 389–466. Includes bibliographical references.

Weber, Cythia. *Simulating sovereignty: intervention, the state and symbolic exchange* (Cambridge, England; New York, Cambridge University Press, 1995) 147 p. Bibliography: p. 138–144. Includes index.

Zimmermann, Andreas. Sovereign immunity and violations of international *jus cogens*: some critical remarks. *Michigan journal of international law* 16(2) winter 1995: 433–440. Includes bibliographical references.

#### **State succession**

Ginsburgs, George. Citizenship and State succession in Russia's treaty and domestic repertory. *Review of Central and East European law* 21(5) 1995: 433–482. Includes bibliographical references.

Szasz, Paul C. The fragmentation of Yugoslavia. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 33–39.

#### **Trade and development**

Chishti, Sumitra. UN: an agenda for development: a critique. *Indian journal of international law*, vol. 25(1995): 45–50. Includes bibliographical references.

Diaz Müller, Luis T. *Derecho de la ciencia y la tecnologia* (Mexico, Porrúa, 1995), 210 p. Includes bibliographical references (p. 199–208).

Paul, James C. N. The United Nations and the creation of an international law of development. *Harvard international law journal* 36(2) spring 1995: 307–328. Includes bibliographical references.

Saksena, K. P. United Nations and cooperation in development. *Indian journal of international law* vol. 35(1995): 33–44.

Includes bibliographical references.

Vadcar, Corinne. Relations Nord-Sud: vers un droit international du partenariat? *Journal du droit international* 122(3) juillet/août/septembre 1995: 599–605.

Includes bibliographical references.

Zamora, Stephen. Economic relations and development. In: *United Nations legal order* (Cambridge, England: New York, Grotius Publications Cambridge University Press, 1995) p. 503–576

Includes bibliographical references.

### **Trusteeship**

Gordon, Ruth E. Some legal problems with trusteeship. *Cornell international law journal* 28(2) spring 1995: 301–347.

Includes bibliographical references.

### **Use of force**

Akashi, Yasushi. The use of force in a United Nations peace-keeping operation: lessons learnt from the safe areas mandate. *Fordham international law journal* 19(2) 1995: 312–323.

Includes bibliographical references.

Engel, von Christoph. Internationale öffentliche Unternehmen. *Rebels Zeitschrift für ausländisches und internationales Privatrecht* 60(1) 1995: 495–544.

Includes bibliographical references.

Fink, Jon E. From peacekeeping to peace enforcement: the blurring of the mandate for the use of force in maintaining international peace and security. *Maryland journal of international law and trade* 19(1) spring 1995: 1–46.

Includes bibliographical references.

Gaja, Giorgio. Use of force made or authorized by the United Nations. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 39–58.

Includes bibliographical references.

Mullerson, R. A. Legal regulation of the use of force. In: *Beyond confrontation: international law for the post-cold war era*, (Boulder, Colo. Westview Press, 1995) p. 93–139.

Includes bibliographical references.

Murphy, John Francis. Force and arms. In: *United Nations legal order* (Cambridge, England: New York, Grotius Publications Cambridge University Press, 1995) p. 247–317.

Includes bibliographical references.

Surchin, Alan D. Terror and the law: the unilateral use of force and the June 1993 bombing of Baghdad. *Duke journal of comparative & international law* 5(2) spring 1995: 457–497.

Includes bibliographical references.

Tettamanti, Pablo Anselmo. *Uso de la fuerza en los conflictos internacionales: un análisis al final del bipolarismo* (Buenos Aires, Editorial Universidad, 1995), 206 p. Bibliography: p. 203–206.

*Uso de la fuerza y derecho internacional humanitario* (Santiago, Universidad de Chile, 1995) 80 p.

Includes bibliographical references.

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

**Food and Agriculture Organization of the United Nations**

Dobbert, Jean Pierre. Food and agriculture. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 907–992.

Includes bibliographical references.

**General Agreement on Tariffs and Trade**

Caldwell, Douglas Jake. International environmental agreements and the GATT: an analysis of the potential conflict and the role of a GATT “waiver” resolution. *Maryland journal of international law and trade* 18(2) fall 1994: 173–198.

Includes bibliographical references.

Freeman, Harriet R. Reshaping trademark protection in today’s global village: looking beyond GATT’s Uruguay Round toward global trademark harmonization and centralization. *ILSA journal of international & comparative law* 1(1) spring 1995: 67–101.

Includes bibliographical references.

Gramlich, Ludwig. GATT und Umweltschutz, Konflikt oder Dialog?: ein Thema Für die neunziger Jahre. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 131–167.

Includes bibliographical references.

Hilpold, Peter. Die Neuregelung der Schutzmassnahmen im GATT/WTO-Recht und ihr Einfluss auf “Grauzonenmassnahmen”. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55(1) 1995: 89–127. Summary in English.

Includes bibliographical references.

Kuyper, Pieter Jan. The law of GATT as a special field of international law. *Netherlands yearbook of international law* vol. 25(1994):227–257.

Includes bibliographical references.

Symposium: Uruguay Round-GATT/WTO. *International lawyer* 29(2) summer 1995: 335–511. Series of articles.

Includes bibliographical references.

Tedeschi, Fabio. La riforma della clausola di salvaguardia del GATT. *Comunità internazionale* 50(1) 1995: 57–106.

Includes bibliographical references.

**International Atomic Energy Agency**

Barkenbus, Jack N. Internationalizing nuclear safety: the pursuit of collective responsibility. *Annual review of energy and the environment* vol. 20 (1995): 179–212.

Includes text of the Convention. Includes bibliographical references.

El Baradei, Mohamed. Verifying non-proliferation pledges: the evolution and future direction of the IAEA safeguards system. *Leiden journal of international law* 8(2) 1995: 347–359.

Includes bibliographical references.

Kamminga, Menno T. The IAEA Convention on Nuclear Safety. *International and comparative law quarterly* 44(4) October 1995: 872–882.

Includes bibliographical references.

Reyners, P. La Convention de 1994 sur la sûreté nucléaire. *Revue générale de droit international public* 99(3) 1995: 605–621.

Sloss, David. It's not broken, so don't fix it: the International Atomic Energy Agency safeguards system and the Nuclear Nonproliferation Treaty. *Virginia journal of international law* 35(4) summer 1995: 841–893.

#### **International Civil Aviation Organization**

Canetti, Craig. Fifty years after the Chicago Conference: a proposal for dispute settlement under the auspices of the International Civil Aviation Organization. *Law and policy in international business* 26(2) winter 1995: 497–522.

Includes bibliographical references.

Ducrest, Jacques. Legislative and quasi-legislative functions of ICAO: towards improved efficiency. *Annals of air and space law* 20(1) 1995: 343–365.

Includes bibliographical references.

Kirgis, Frederic L. Aviation. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 825–857.

Includes bibliographical references.

Kotaite, Assad. Legal aspects of the international regulation of civil aviation. *Annals of air and space law* 20(1) 1995: 9–27.

Includes bibliographical references.

Maniatis, Dmitri. Conflict in the skies: the settlement of international aviation disputes: from the law of the jungle to the rule of law. *Annals of air and space law* 20(2) 1995: 167–233.

Includes bibliographical references.

#### **International Labour Organization**

Leary, Virginia A. Labor. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 473–502.

Includes bibliographical references.

Nielsen, Henrik Karl. The supervisory machinery of the International Labour Organisation. *Nordic journal of international law* 64(1) 1995: 129–149.

Includes bibliographical references.

Valticos, Nicolas. *International labour law* 2<sup>nd</sup> rev. ed. (Deventer; Boston, Mass., Kluwer Law and Taxation Publishers 1995) 322 p.

Includes bibliographical references and index.

#### **International Maritime Organization**

Kirgis, Frederic L. Shipping. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 715–751.

Includes bibliographical references.

Kite-Powell, Hauke L. Provisions and evaluation of the IMO performance standard for electronic chart display and information systems. *Journal of maritime law and commerce* 26(2) April 1995: 197–214.

Includes bibliographical references.

Okamura, Bin. Proposed IMO regulations for the prevention of air pollution from ships. *Journal of maritime law and commerce* 26(2) April 1995: 183–195.

Includes bibliographical references.

Oxman, Bernard H. Environmental protection in archipelagic waters and international straits: the role of the International Maritime Organisation. *International journal of marine and coastal law*, 10(4) November 1995: 467–481.

#### **International Monetary Fund**

Belot, Irene A. The role of the IMF and the World Bank in rebuilding the CIS. *Temple international and comparative law journal* 9(1) spring 1995: 83–113.

Includes bibliographical references.

#### **International Telecommunication Union**

Codding, George Arthur. The International Telecommunications Union: 130 years of telecommunications regulation. *Denver journal of international law and policy* 23(3) summer 1995: 501–511.

Includes bibliographical references.

Lyll, Francis. Posts and telecommunications. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 789–823.

Includes bibliographical references.

Tchikaya, Blaise. La première Conférence mondiale pour le développement des télécommunications: la transcription juridique du développement au sein de l'U.I.T. *Revue générale de droit international public* 99(1) 1995: 77–93.

Includes bibliographical references.

#### **United Nations Educational, Scientific and Cultural Organization**

Clément, Etienne. Protection of cultural property. In: *Shelters from the storm: developments in international humanitarian law* (Canberra, Australian Defence Studies Centre, Australian Defence Force Academy, University of New South Wales, 1995) p. 271–279.

Includes bibliographical references.

Marks, Stephen P. Education, science, culture and information. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press, 1995) p. 577–630.

Includes bibliographical references.

#### **World Bank**

Binswanger, Hans P. *The World Bank's strategy for reducing poverty and hunger: a report to the development community* (Washington, D.C., World Bank, 1995) 56 p. Bibliography: p. 55–56.

Nathan, Kathigamar V.S.K. The World Bank Inspection Panel: court or quango? *Journal of international arbitration* 12(2) June 1995: 135–148.

Includes bibliographical references.

Shihata, Ibrahim F.I. Development policies and strategies—with emphasis on the World Bank Group. In: *The United Nations at age of fifty: a legal perspective* (The Hague; Boston, Mass., Kluwer Law International, 1995) p. 235–262.

Includes bibliographical references.

### **International Centre for Settlement of Investment Disputes**

Nathan, Kathigamar V.S.K. Submissions to the International Centre for Settlement of Investment Disputes in breach of the convention. *Journal of international arbitration* 12(1) March 1995: 27–52.

Includes bibliographical references.

Shihata, Ibrahim F. I. Applicable substantive law in disputes between states and private foreign parties: the case of arbitration under the ICSID convention. *ICSID review; foreign investment law journal* 9(2) fall 1994: 183–213.

Includes bibliographical references.

### **World Health Organization**

Beigbeder, Yves. *L'Organisation mondiale de la Santé* (Paris, Presses universitaires de France, 1995) 206 p. Bibliography p. 189–191.

Tietje, Christian. Die Völkerrechtswidrigkeit des Einsatzes von Atomwaffen im bewaffneten Konflikt unter Umwelt- und Gesundheitsschutzaspekten: Zur Gutachtenanfrage der WHO an den IGH. *Archiv des Völkerrechts* 33(1/2) Mai 1995: 266–302.

Includes bibliographical references.

Tomasevski, K. (Katarina). Health. In: *United Nations legal order* (Cambridge, England; New York, Grotius Publications Cambridge University Press 1995) p. 859–906.

### **World Intellectual Property Organization**

Geller, Paul Edward. Intellectual property in the global marketplace: impact of TRIPS dispute settlements? *International lawyer* 29(1) spring 1995: 99–115.

Includes bibliographical references.

Gurry, Francis. The WIPO Arbitration Center and its services. *American review of international arbitration* 5(1/4) 1994: 197–201.

Includes bibliographical references.

O'Regan, Matthew. The protection of intellectual property, international trade and European Community: the impact of the TRIPS agreement of the Uruguay Round of multilateral trade negotiations. *Legal issues fo European integration* 1 1995: 1–50.

Includes bibliographical references.

Preusse, Heinz Gert. The international division of labour and the protection of intellectual property rights. *Law and state* vol. 51 (1995): 86–100. Bibliography: p. 99–100.

*Report of activities in 1994* (Geneva, WIPO, 1995) 280 p.

*The services of the WIPO Arbitration Centre: international center for the resolution of intellectual property disputes* (Geneva, WIPO, 1995), 51 p.

Sidorsky, Emily. Cultural property disputes and the draft UNIDROIT convention: possible applications of international arbitration. *American review of international arbitration* 4(4) 1993: 475–518.

Includes bibliographical references.

*WIPO: World Intellectual Property Organization: general information* (Geneva, WIPO 1995) 79 p.

WIPO Arbitration Rules (effective from October 1, 1994) *American review of international arbitration* 5(1/4) 1994: 202–227. Contains the text of the document.

### World Trade Organization

- Benedek, Wolfgang. Die neue Welthandelsorganisation (WTO) und ihre internationale Stellung. *Vereinte Nationen* 43(1) February 1995: 3–19.  
Includes bibliographical references.
- Brewer, Thomas L. The multilateral agenda for foreign direct investment: problems, principles and priorities for negotiations at the OECD and WTO. *World competition: law and economics review* 18(4) June 1995: 67–83. Bibliography: p. 82–83.
- Cheyne, Ilona. Environmental unilateralism and the WTO/GATT system. *Georgia journal of international and comparative law* 24(3) winter 1995: 433–465.  
Includes bibliographical references.
- Demaret, Paul. The metamorphoses of the GATT: from the Havana Charter to the World Trade Organization. *Columbia journal of transnational law* 34(1) 1995: 123–171.  
Includes bibliographical references.
- Dillon, Thomas J. The World Trade Organization: a new legal order for world trade? *Michigan journal of international law* 16(2) winter 1995: 349–402.  
Includes bibliographical references.
- Flory, Thiébaud. Remarques à propos du nouveau système commercial mondial issu des accords du cycle d'Uruguay. *Journal du droit international* 122(4) octobre/novembre/décembre 1995: 877–891.  
Includes bibliographical references.
- Hopkinson, Nicholas. *The future World Trade Organisation agenda* (London, HMSO, 1995) 43 p.  
Includes bibliographical references.
- Horlick, Gary N. The World Trade Organization Antidumping Agreement. *Journal of world trade* 29(1) February 1995: 5–31.  
Includes bibliographical references.
- Kingsbury, Benedict. The Tuna-Dolphin controversy, the World Trade Organization, and the liberal project to reconceptualize international law. *Yearbook of international environmental law* vol. 5 (1994): 1–40.  
Includes bibliographical references.
- Komuro, Norio. The WTO dispute settlement mechanism: coverage and procedures of the WTO understanding. *Journal of international arbitration* 12(3) September 1995: 81–171.  
Includes bibliographical references.
- Kuijper, Pieter Jan. The new WTO dispute settlement system: the impact on the European Community. *Journal of world trade* 29(6) December 1995: 49–71.  
Includes bibliographical references.
- Litvak, Uri. Regional integration and the dispute resolution system of the World Trade Organization after the Uruguay Round: a proposal for the future. *University of Miami inter-American law review* 26(3) spring/summer 1995: 561–610.  
Includes bibliographical references.
- Marceau, Gabrielle. Transition from GATT to WTO: a most pragmatic operation. *Journal of world trade* 29(4) August 1995: 147–163.  
Includes bibliographical references.
- Porges, Amelia. The new dispute settlement: from the GATT to the WTO. *Leiden journal of international law* 8(1) 1995: 115–133.  
Includes bibliographical references.

- Porges, Amelia. The WTO and the new dispute settlement. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994 p. 131–136.  
Includes bibliographical references.
- Quick, Reinhard. I risultati dell'Uruguay Round del GATT e l'istituzione dell'Organizzazione mondiale del commercio. *Comunità internazionale* 49(4) 1994: 675–701.  
Includes bibliographical references.
- Raworth, Philip Marc. *The law of the WTO: final text of the GATT Uruguay Round Agreements, Summary & a fully searchable diskette* (Dobbs Ferry, N.Y., Oceana Publications, 1995), 932 p. + 1 computer disk (3 \_ in.)  
Includes bibliographical references.
- Schultz, Jennifer. The GATT/WTO Committee on Trade and the Environment: toward environmental reform. *American journal of international law* 89(2) April 1995: 423–439.  
Includes bibliographical references.
- Schwarz, David M. WTO dispute resolution panels: failing to protect against conflicts of interests. *American university journal of international law and policy* 10(2) winter 1995: 955–991.  
Includes bibliographical references.
- Steger, Debra P. The significance of the World Trade Organization for the future of the trading system. *Proceedings* (American Society of International Law, Meeting), 88<sup>th</sup>, 1994, p. 125–131.
- Symposium: the World Trade Organization and the European Union. *European journal of international law* 6(2) 1995: 161–221. Series of articles.  
Includes bibliographical references.
- Tita, Alberto. A challenge for the World Trade Organization: towards a true transnational law. *Journal of world trade* 29(3) June 1995: 83–90.
- Trading into the future: WTO, the World Trade Organization* (Geneva, World Trade Organization, Information and Media Relations Division, 1995), 36 p.
- Vermulst, Edwin A. An overview of the WTO dispute settlement system and its relationship with the Uruguay Round agreements—nice on paper but too much stress for the system? *Journal of world trade* 29(2) April 1995: 131–161.  
Includes bibliographical references.
- Vernon, Raymond. The World Trade Organization: a new stage in international trade and development. *Harvard international law journal* 36(2) spring 1995: 329–340.  
Includes bibliographical references.
- The World Trade Organization. *Proceedings* (American Society of International Law, Meeting), 89<sup>th</sup>, 1995, p. 316–336.  
Includes bibliographical references.

