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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. The present volume, which is the forty-third of the series, has been prepared by the Codification Division of the Office of Legal Affairs.

Chapters I and II contain treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. Treaty provisions which are included in these two chapters entered into force in 2005.

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

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

Chapter V contains selected decisions of administrative tribunals of the United Nations and related intergovernmental organizations.

Chapter VI reproduces selected legal opinions of the United Nations and related intergovernmental organizations.

Chapter VII includes a list of judgments and of selected decisions and advisory opinions rendered by international tribunals in 2005.

In chapter VIII are found decisions given in 2005 by national tribunals relating to the legal status of the various organizations.

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 relating to the work of the United Nations and related intergovernmental organizations published in 2005.

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**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ABCC</td>
<td>Advisory Board on Compensation Claims</td>
</tr>
<tr>
<td>ACABQ</td>
<td>Advisory Committee on Administrative and Budget Questions (United Nations)</td>
</tr>
<tr>
<td>APB</td>
<td>Appointments and Promotions Board (IFAD)</td>
</tr>
<tr>
<td>APFIC</td>
<td>Asia-Pacific Fishery Commission</td>
</tr>
<tr>
<td>BONUCA</td>
<td>United Nations Peacebuilding Office in the Central African Republic</td>
</tr>
<tr>
<td>CAEP</td>
<td>Committee on Aviation Environmental Protection (ICAO)</td>
</tr>
<tr>
<td>CFC</td>
<td>Common Fund for Commodities</td>
</tr>
<tr>
<td>CGIAR</td>
<td>Consultative Group on International Agricultural Research</td>
</tr>
<tr>
<td>CICAD/OAS</td>
<td>Inter-American Drug Abuse Control Commission of the Organization of American States</td>
</tr>
<tr>
<td>CIGEPS</td>
<td>Intergovernmental Committee for Physical Education and Sport (UNESCO)</td>
</tr>
<tr>
<td>CLCS</td>
<td>Commission on the Limits of the Continental Shelf</td>
</tr>
<tr>
<td>CMI</td>
<td>Comité Maritime International</td>
</tr>
<tr>
<td>CNS/ATM</td>
<td>Communications, Navigation, Surveillance/Air Traffic Management</td>
</tr>
<tr>
<td>COFI</td>
<td>Committee on Fisheries (FAO)</td>
</tr>
<tr>
<td>CSG-LAEC</td>
<td>Council Special Group on Legal Aspects of Emissions Charges (ICAO)</td>
</tr>
<tr>
<td>CTC</td>
<td>Counter-Terrorism Committee of the United Nations Security Council</td>
</tr>
<tr>
<td>CW-RAPN</td>
<td>National Council for the Prohibition of Chemical Weapons, the Chemical Weapons Regional Assistance and Protection Network (Peru)</td>
</tr>
<tr>
<td>DOD</td>
<td>Department of Defense (USA)</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>ESCWA</td>
<td>Economic and Social Commission for Western Asia</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUFOR</td>
<td>European Union Force</td>
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<tr>
<td>EURATOM</td>
<td>European Atomic Energy Community</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<tr>
<td>FICSA</td>
<td>Federation of International Civil Servants’ Associations</td>
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<tr>
<td>GNSS</td>
<td>Global Navigation Satellite Systems</td>
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<tr>
<td>HCOC</td>
<td>Hague Code of Conduct against Ballistic Missile Proliferation</td>
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<tr>
<td>HRD</td>
<td>Human Resources Development Department (ILO)</td>
</tr>
<tr>
<td>IAEA</td>
<td>International Atomic Energy Agency</td>
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<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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</tbody>
</table>
ICC  International Criminal Court
ICJ  International Court of Justice
ICOC  Istanbul Chamber of Commerce
ICR  Intergovernmental Committee of the Rome Convention (UNESCO)
ICSC  International Civil Service Commission
ICTR  International Criminal Tribunal for Rwanda
ICTY  International Criminal Tribunal for the former Yugoslavia
IDA  International Development Association
IDB  Industrial Development Board (UNIDO)
IFAD  International Fund for Agricultural Development
IFC  International Finance Corporation
IGC  Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO)
ILO  International Labour Organization
ILOAT  Administrative Tribunal of the International Labour Organization
IMF  International Monetary Fund
IMO  International Maritime Organization
INT  Department of Institutional Integrity (IBRD)
Interpol  International Criminal Police Organization
IRS  Internal Revenue Service (United States)
ISA  International Seabed Authority
ISAF  International Security Assistance Force
ISF  International Shipping Federation
ISIPO  Iran Small Industries and Industrial Parks Organization
ITSAM  Integrated Transport System in the Arab Mashreq
IUCN  International Union for Conservation of Nature
JAB  Joint Appeals Board (United Nations)
JAC  Joint Appeals Committee (UPU)
JDC  Joint Disciplinary Committee (United Nations)
JRB  Joint Review Board (United Nations)
LDCs  Least Developed Countries
MNF-I  Multinational Force in Iraq
MINURSO  United Nations Mission for the Referendum in Western Sahara
MINUSTAH  United Nations Stabilisation Mission in Haiti
MONUC  United Nations Organization Mission in the Democratic Republic of the Congo
NATO  North Atlantic Treaty Organisation
NGO  Non-Governmental Organization
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
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<tr>
<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs (United Nations)</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OEDI</td>
<td>Office of the Inspector and Investigations (WFP)</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>OHRM</td>
<td>Office of Human Resources Management (United Nations)</td>
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<tr>
<td>OIOOS</td>
<td>Office of Internal Oversight Services (United Nations)</td>
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<tr>
<td>OLA</td>
<td>Office of Legal Affairs (United Nations)</td>
</tr>
<tr>
<td>ONUB</td>
<td>United Nations Operation in Burundi</td>
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<tr>
<td>OPCW</td>
<td>Organization for the Prohibition of Chemical Weapons</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>PBAC</td>
<td>Pension Benefit Administration Committee (IBRD)</td>
</tr>
<tr>
<td>RAMLEDA</td>
<td>Iberoamerican Network for the teaching of Copyright and Neighbouring rights</td>
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<tr>
<td>SALW</td>
<td>Small arms and light weapons</td>
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<tr>
<td>SCCR</td>
<td>Standing Committee on Copyright and Related Rights (WIPO)</td>
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<tr>
<td>SCIT</td>
<td>Standing Committee on Information Technologies (WIPO)</td>
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<td>SCP</td>
<td>Standing Committee on the Law of Patents (WIPO)</td>
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<tr>
<td>SCT</td>
<td>Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (WIPO)</td>
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<tr>
<td>SEAFDEC</td>
<td>Southeast Asian Fisheries Development Center</td>
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<tr>
<td>SFOR</td>
<td>Stabilization Force (Bosnia and Herzegovina)</td>
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<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
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<td>SMEs</td>
<td>Small and Medium-Sized Enterprises</td>
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<td>SOFA</td>
<td>Status-of-forces agreement</td>
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<td>SOMA</td>
<td>Status-of-mission agreement</td>
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<tr>
<td>SRSOG</td>
<td>Special Representative of the Secretary-General (United Nations)</td>
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<td>SSS</td>
<td>Security and Safety Services (United Nations)</td>
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<tr>
<td>TIC</td>
<td>Inter-American Investment Corporation</td>
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<tr>
<td>TSB</td>
<td>Tanzania Sisal Board</td>
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<tr>
<td>UNAMA</td>
<td>United Nations Assistance Mission in Afghanistan</td>
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<td>UNAMI</td>
<td>United Nations Assistance Mission for Iraq</td>
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<td>UNAMIS</td>
<td>United Nations Advance Mission in the Sudan</td>
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<tr>
<td>UNAMSIL</td>
<td>United Nations Mission in Sierra Leone</td>
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<tr>
<td>UNAT</td>
<td>United Nations Administrative Tribunal</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<tr>
<td>UNDOF</td>
<td>United Nations Disengagement Observer Force</td>
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<tr>
<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td>UNFICYP</td>
<td>United Nations Peacekeeping Force in Cyprus</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<tr>
<td>UNHCHR</td>
<td>United Nations High Commissioner for Human Rights</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNI</td>
<td>Union Network International</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNIDO</td>
<td>United Nations Industrial Development Organization</td>
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<tr>
<td>UNIFIL</td>
<td>United Nations Interim Force in Lebanon</td>
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<tr>
<td>UNIOSIL</td>
<td>United Nations Integrated Office in Sierra Leone</td>
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<tr>
<td>UNITAR</td>
<td>United Nations Institute for Training and Research</td>
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<tr>
<td>UNITWIN</td>
<td>University Twinning and Networking</td>
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<tr>
<td>UNJSPB</td>
<td>United Nations Joint Staff Pension Board</td>
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<tr>
<td>UNJSPF</td>
<td>United Nations Joint Staff Pension Fund</td>
</tr>
<tr>
<td>UN-LiREC</td>
<td>United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean</td>
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<tr>
<td>UNMEE</td>
<td>United Nations Mission in Ethiopia and Eritrea</td>
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<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
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<tr>
<td>UNMIL</td>
<td>United Nations Mission in Liberia</td>
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<tr>
<td>UNMIS</td>
<td>United Nations Mission in the Sudan</td>
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<tr>
<td>UNMISET</td>
<td>United Nations Mission of Support in East Timor</td>
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<tr>
<td>UNMOGIP</td>
<td>United Nations Military Observer Group in India and Pakistan</td>
</tr>
<tr>
<td>UNMOVIC</td>
<td>United Nations Monitoring, Verification and Inspection Commission</td>
</tr>
<tr>
<td>UNOCI</td>
<td>United Nations Operation in Côte d’Ivoire</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
</tr>
<tr>
<td>UNOG</td>
<td>United Nations Office at Geneva</td>
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<tr>
<td>UNOGBIS</td>
<td>United Nations Peacebuilding Support Office in Guinea-Bissau</td>
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<tr>
<td>UNOMB</td>
<td>United Nations Observer Mission in Bougainville</td>
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<tr>
<td>UNOMIG</td>
<td>United Nations Observer Mission in Georgia</td>
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<tr>
<td>UNOPS</td>
<td>United Nations Office for Project Services</td>
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<tr>
<td>UNOTIL</td>
<td>United Nations Office in Timor-Leste</td>
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<tr>
<td>UNOWA</td>
<td>United Nations Office for West Africa</td>
</tr>
<tr>
<td>UNPOS</td>
<td>United Nations Political Office for Somalia</td>
</tr>
<tr>
<td>UNSCO</td>
<td>United Nations Special Coordinator for the Middle East</td>
</tr>
<tr>
<td>UNTAET</td>
<td>United Nations Transitional Administration in East Timor</td>
</tr>
<tr>
<td>UNTOP</td>
<td>United Nations Tajikistan Office of Peacebuilding</td>
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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. Czech Republic

Texts of relevant provisions of the laws enacted in the Czech Republic in 2005 and relating to the legal status or privileges and immunities of the United Nations, the specialized agencies or the International Atomic Energy Agency


Section 15. Tax refunds available to persons enjoying privileges and immunities

(1) For the purposes of this Act, a person enjoying privileges and immunities under a treaty which is part of the Czech legislation (hereinafter referred to as a “person enjoying privileges and immunities”) means:

... 

(c) A representation of an international organization,

... 

(f) An officer of a representation of an international organization who is not permanently resident in the tax territory of the Czech Republic and is not a national of the Czech Republic, provided that he/she has been permanently assigned to perform his/her official functions in the tax territory of the Czech Republic, and a foreign national who is a member of a special mission accredited to the Czech Republic and is not permanently resident in the tax territory of the Czech Republic,

(g) A family member of any of the persons referred to in (e) or (f), provided that he/she forms part of their household in the tax territory of the Czech Republic, has reached the age of 15 years, is not a national of the Czech Republic and has been registered by the Ministry of Foreign Affairs.

(2) The paid tax shall be refunded

* Unofficial translation provided by the Czech Republic.
(e) To the person referred to in paragraph 1 (b)-(d) in the maximum amount of CZK 500,000 per calendar year, unless otherwise provided by an international treaty published in the Collection of International Treaties,

(g) To the person referred to in paragraph 1 (f), including his/her family members as defined in paragraph 1 (g), in the maximum amount of CZK 100,000 per calendar year, unless otherwise provided by an international treaty published in the Collection of International Treaties.

(3) The limit for tax refunds as defined in paragraph 2 includes the tax paid on selected tax-free products in terms of section 11, paragraph 1 (a) or (e), brought from another Member State [of the European Union] or imported for the use of persons enjoying privileges and immunities who claim tax refunds in the fiscal period to which such claim relates.

(6) Other persons enjoying privileges and immunities in terms of paragraph 1 shall qualify for refunds of taxes paid on selected products, if the price of such selected products paid to one seller in one calendar day and indicated in one document proving the sale in accordance with paragraph 8 is higher than CZK 4,000 including tax. This limitation shall not apply to the purchase of mineral motor or heating fuel oils.

(8) In cases where the quantity of purchased products is higher than the quantity defined in section 4, paragraph 3, the document proving the sale, which is to be issued by the seller on request not later than on the working day following the date of such request, shall include the following data: . . .

(9) A person enjoying privileges and immunities may claim tax refunds in a tax return filed on a printed form prescribed by the Ministry of Finance.

Section 11. Tax exemptions

(1) The tax exemption shall apply to selected products

(a) Imported, insofar as they are exempt from customs duty, with the exception of selected products that are returned to the tax territory of the Czech Republic after being exported, and are released for free circulation,

(e) Brought from the territory of another Member State [of the European Union] for the use of the persons referred to in section 15, paragraph 1; the products may be brought from another Member State [of the European Union] only if accompanied by the documents referred to in section 26, which are to be issued by the consignor, and by an excise tax exemption certificate drawn up in accordance with the specimen and in the format introduced by the applicable regulation of the European Community.1

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(b) **Act No. 348/2005 to regulate radio and television licence fees and to amend certain acts**

Note: The following are the relevant parts of the Act (see especially section 4), including the footnotes attached to its published text.

“...”

**Section 2. Devices subject to the fee**

(1) The radio licence fee shall be paid on any device technically capable of reproducing individually selectable radio broadcasting, regardless of the receiving mode (hereinafter referred to as the “radio set”). Such device shall be regarded as a radio set even if modified by the payer for any other purpose.

(2) The television licence fee shall be paid on any device technically capable of reproducing individually selectable television broadcasting, regardless of the receiving mode (hereinafter referred to as the “television set”). Such device shall be regarded as a television set even if modified by the payer for any other purpose.

**Section 3. Payers**

(1) The payer of the radio licence fee is a natural person or legal entity who owns a radio set. In cases where a radio set is held by a natural person or legal entity who is not its owner, or where it is used by such person or entity on any other legal grounds for at least one month, the payer is such person or entity.

(2) The payer of the television licence fee is a natural person or legal entity who owns a television set. In cases where a television set is held by a natural person or legal entity who is not its owner, or where it is used by such person or entity on any other legal grounds for at least one month, the payer is such person or entity.

**Section 4. Exemption from radio and television licence fees**

(1) The exemption from radio and television licence fees shall apply to

(a) Foreign persons and entities enjoying privileges and immunities under international treaties binding on the Czech Republic;¹

...”

2. France

Instruction of the General Tax Directorate

Mechanisms for implementing the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations

Introduction

1. The United Nations system consists of the United Nations, its components (for example, the Office of the United Nations High Commissioner for Refugees and the United Nations Children’s Fund) and independent bodies referred to as specialized agencies.

2. The legal status of the United Nations in France is governed by the Convention of 13 February 1946, which was ratified by Parliament on 18 August 1947. Specific agreements provide for the legal status of specialized agencies whose headquarters or offices are on French territory.

3. The need to clarify the tax regime applicable to officials working at the Geneva-based organizations while resident in France provided the grounds for accession to the Convention of 21 November 1947.

Section 1. Scope of the Convention of 21 November 1947

4. The scope of the Convention is defined in the annexed table.

5. France has concluded agreements with some of the specialized agencies of the United Nations regarding their status in France and has acceded to treaties on privileges and immunities with other institutions. Such arrangements apply to the International Civil Aviation Organization (ICAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA) and the International Monetary Fund (IMF).

6. In such cases, the provisions of these specific treaties prevail over the provisions of the Convention of 21 November 1947.

7. That being so, tax differences with the Convention of 21 November 1947 relate only to the regime applicable to officials. The particulars contained in section 2 of the present instruction shall therefore also apply to ICAO, UNESCO, IBRD, IFC, IDA and IMF in their capacity as organizations.

8. Furthermore, although the World Trade Organization (WTO) is not a specialized agency of the United Nations, it shall benefit from the privileges and immunities of the Convention of 21 November 1947 pursuant to article 8 of the Marrakech Agreement establishing the WTO, signed on 15 April 1994.

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9. Finally, the United Nations Industrial Development Organization (UNIDO) concluded an agreement with the French authorities on 31 January 1983 granting the privileges and immunities of the United Nations to the UNIDO Office in Paris with a view to strengthening industrial cooperation between France and developing countries. This regime remains in force.

Section 2. Tax provisions of the Convention of 21 November 1947 with regard to the specialized agencies of the United Nations

I. Direct taxes

11. Article 3, section 9, of the Convention of 21 November 1947 stipulates that “the specialized agencies, their assets, income and other property shall be exempt from all direct taxes”. The Convention specifies that “the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services”.

12. Exemptions shall apply, inter alia, to taxes on income and on capital.

13. However, this provision shall only apply when an agency acts within the framework of activities defined by its governing statutes and conducts operations which are necessary for the performance of its functions or which come under the normal management of its assets (for example, income from cash flow management or capital gain resulting from the disposal of real estate, as part of the transfer or alteration of headquarters or other official premises shall be exempt).

14. In accordance with the first reservation made by France at the time of its accession to the Convention of 21 November 1947, no exemptions shall be granted in respect of assets and funds:

— Administered by the agencies but which do not belong to them;

— Intended to improve the individual situation of current or former members of specialized agency staff (such as pension funds).

15. The agencies shall be exempt from direct local taxes for the buildings that they occupy in the conduct of their missions, namely, those housing their administrative and technical services. When the agencies are lessees, the lessor shall remain liable for property tax.

16. The agencies shall also be exempt from tax on offices and tax on commercial and storage space.

17. However, the agencies shall be liable for domestic waste removal fees, which represent payment for a service.


** Secretariat note: the paragraph numbering has been reproduced in accordance with the original document submitted in which paragraph 10 has been omitted.

*** For the text of the reservation, see Multilateral Treaties Deposited with the Secretary-General (United Nations publication, Sales No. E.06.V.2, ST/LEG/SER.E/24), vol. I, chap. III.
II. Value-added tax

18. Article 3, section 10, of the Convention of 21 November 1947 provides for the specialized agencies to be exempt from value-added tax on purchases of moveable and immoveable property made for their official use.

19. France shall grant this benefit by means of a refund. Invoices addressed to the specialized agencies must therefore systematically include all taxes.

20. In order to benefit from a refund, the relevant agency shall transmit its refund requests, including the invoices for the expenditures entitling it to the refund, to the Directorate for Residents Abroad and General Services (VAT Refund Service) through the Ministry of Foreign Affairs (Protocol Service of the Subdirectorate for Diplomatic Privileges and Immunities).

III. Registration fees

21. Under certain conditions, the agencies may be exempt from registration fees and from the land registration tax normally required on the occasion of an acquisition or a lease (a lease of more than 12 years or an emphyteutic lease). The tax legislation directorate (office E2) is responsible to note that a transaction is entitled to such exemption.

22. However, the agencies shall be subject to stamp duty.

23. Finally, the salaries of mortgage registrars shall be levied in all cases.

Section 3. Tax regime applied to officials of specialized agencies of the United Nations

I. Persons concerned

a. Principle

24. Article 6, section 18, stipulates that “each specialized agency will specify the categories of officials to which the provisions” relating to the privileges and immunities of its agents apply.

25. The categories of agents potentially eligible for tax exemptions shall therefore vary in the context of each agency.

26. It is therefore incumbent upon taxpayers who are eligible for such exemptions to provide credentials supporting their status.

27. In any case, income tax exemption shall not be granted to persons charging fees for conferences or other short-term services (consultants, experts, etc.).

b. Practical measures

28. Status as an international civil servant shall be substantiated by the submission of a contract of employment signed by the employee and by a representative of the organization. This document is generally referred to as a letter of appointment or notification. It shall specify the recruited person’s duration of appointment and category or level and step.

29. The specialized agencies shall refer to the classification of grades in force within the United Nations. Officials shall belong to the following categories or classes: P-1, P-2, P-3, P-4, P-5, P-6, D-1 and D-2, each of which contains 6 to 15 steps.

30. These persons shall, however, be subject to an internal assessment, which shall be deducted from their remunerations by the organization and allocated to its budget. Fur-
thermore, they shall participate in the United Nations Joint Staff Pension Fund (UNJSPF) when their employer is affiliated to it. (All the specialized agencies are affiliated to UNJSPF except for the Universal Postal Union (UPU), IMF, IDA and IFC.)

II. Exemptions

31. Article 6, section 19, of the Convention of 21 November 1947 states that “Officials of the specialized agencies shall enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations”.

a. Income tax, generalized social contribution and social debt payment contribution

32. Officials of specialized agencies of the United Nations who reside in France, irrespective of their nationality, shall be exempt from income tax, from the generalized social contribution and from the social debt payment contribution in respect of the salaries and emoluments paid to them by the agency that employs them.

— This provision shall apply only to the remunerations paid by the agency itself and shall exclude any supplementary payment or bonus from another body.

— This provision shall benefit only agents currently in employment. Pensions paid to retirees upon cessation of activity shall be subject to tax under ordinary law.

— Income from other sources (such as income from land or a spouse’s income) shall be subject to tax under ordinary law. The effective rate rule shall not apply (i.e. exempt amounts shall not be taken into account for the implementation of the tax scale).

b. Accommodation tax

33. Article 6, section 21, of the Convention of 21 November 1947 states that the executive head of each specialized agency shall enjoy the privileges and immunities accorded to diplomatic agents.

34. Diplomatic agents serving in France who are neither French nationals nor permanent residents shall be exempt from the accommodation tax for their official or principal residence and its immediate dependencies (garage, service room).

35. If eligible, the executive head of each agency shall be entitled to exemption from accommodation tax for his or her principal residence in France.

c. Reporting requirements

36. Officials of the agencies shall file tax returns (form No. 2042), even when they receive only the salaries and emoluments paid to them by these organizations.

37. Officials are under no obligation to declare the latter remunerations but they must tick the “FV” box on the tax return. This instruction enables a message to be added to the tax notice requesting the taxpayer to enter the total amount of his or her tax-exempt income at the bottom of this document prior to transmission to bodies or administrations that provide certain means-tested benefits.

1 Permanent residents are considered to be adult persons of foreign nationality who, at the time of notification of their recruitment by an international organization, had been living in France for more than one year, irrespective of whether or not they performed a private remunerated activity.
Section 4. Tax regime applied to officials of UNESCO, ICAO, IBRD, IFC, IDA and the IMF

38. For each of the six agencies concerned, this section notes the differences that exist in comparison with the provisions of the Convention of 21 November 1947.

I. United Nations Educational, Scientific and Cultural Organization (UNESCO)

39. Article 19 of the agreement relating to the headquarters of UNESCO and its privileges and immunities on French territory, dated 2 July 1954,* provides for the status of diplomatic agent to be granted to the Director-General, the Deputy Director-General, Departmental Directors, Chiefs of Service, Heads of Offices and officials at or above the P-5 level.

40. If these persons do not have French nationality and are not permanent residents, they shall be exempt from accommodation tax for their principal residence in France.

II. International Civil Aviation Organization (ICAO)

41. Article 15 of the agreement concluded between France and ICAO relating to the status of ICAO in France** restricts direct tax exemption to only the “permanent members” of its Office staff.

42. The exchange of letters dated 3 June 1983 and 9 February 1984, and annexed to the agreement, stipulates that the term “permanent members” applies only to persons employed by the organization on contracts of at least one year in full-time administrative and technical posts, including in the linguistic services at Office headquarters.

43. Furthermore, article 17 of the agreement grants the Director and Deputy Representative of the ICAO Office in France, and also the President of the Council and the Secretary General of ICAO, the status of diplomatic agents.

44. These persons shall therefore be exempt from accommodation tax in respect of their principal residence in France, provided they are not French nationals or permanent residents.

III. International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC) and International Development Association (IDA)

45. The regulations governing the status of these agencies in France provide for direct tax exemption in respect of the salaries and emoluments paid by these agencies to their executive heads, alternates, officials and employees, provided that such persons are not nationals of the countries where they exercise their functions.

46. Therefore, persons of French nationality employed in France by one of these four agencies shall not be entitled to any exemption in respect of these salaries and emoluments.

Marie-Christine Lepetit
Director

## ANNEX 1. LIST OF SPECIALIZED AGENCIES OF THE UNITED NATIONS

<table>
<thead>
<tr>
<th>Institution</th>
<th>Headquarters</th>
<th>Key locations in France</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food and Agriculture Organization of the United Nations (FAO)</td>
<td>Rome</td>
<td>Regional Office for Europe, 3 bis, Villa Emile Bergerat, 92522, Neuilly-sur-Seine.</td>
<td>COPISA, 21 November 1947</td>
</tr>
<tr>
<td>Universal Postal Union (UPU)</td>
<td>Berne</td>
<td></td>
<td>COPISA, 21 November 1947</td>
</tr>
<tr>
<td>International Telecommunication Union (ITU)</td>
<td>Geneva</td>
<td></td>
<td>COPISA, 21 November 1947</td>
</tr>
<tr>
<td>World Meteorological Organization (WMO)</td>
<td>Geneva</td>
<td></td>
<td>COPISA, 21 November 1947</td>
</tr>
<tr>
<td>International Maritime Organization (IMO)</td>
<td>London</td>
<td></td>
<td>COPISA, 21 November 1947</td>
</tr>
<tr>
<td>World Intellectual Property Organization (WIPO)</td>
<td>Geneva</td>
<td></td>
<td>COPISA, 21 November 1947</td>
</tr>
</tbody>
</table>
Annex 2. Financial institutions

<table>
<thead>
<tr>
<th>Institution</th>
<th>Headquarters</th>
<th>Key locations in France</th>
<th>Regulation</th>
</tr>
</thead>
</table>
3. Singapore

S 121

International Organizations (Immunities and Privileges) Act
(Chapter 145)

(a) International Organizations (Immunities and Privileges)
(World Intellectual Property Organization) Order 2005

In exercise of the powers conferred by section 2 (2) of the International Organisations
(Immunities and Privileges) Act, the President hereby makes the following Order:

CITATION AND COMMENCEMENT

1. This Order may be cited as the International Organisations (Immunities and
Privileges) (World Intellectual Property Organization) Order 2005 and shall be deemed
to have come into operation on 1st February 2005.

DEFINITIONS

2. In this Order, unless the context otherwise requires—
“senior official”, in relation to the WIPO Office—
(a) Means the Director of the WIPO Office; and
(b) Includes any other official of WIPO of an equivalent or higher grade designated
by WIPO with the consent of the Government and assigned to the WIPO Office;

“WIPO” means the World Intellectual Property Organization; “WIPO Office” means
the WIPO office in Singapore.

STATUS OF WIPO

3. WIPO is an organisation of which the Government and the governments of for-
eign sovereign Powers are members.

PRIVILEGES OF WIPO OFFICE

4. (1) The WIPO Office shall have the like inviolability of official archives and
premises occupied as offices as is accorded in respect of the official archives and premises
of an envoy of a foreign sovereign Power accredited to the Republic of Singapore.

(2) The WIPO Office shall have the like exemption or relief from the following taxes
and rates as may be accorded to a foreign sovereign Power:
(a) Radio and television licence fees;
(b) Goods and services tax in respect of goods and services consumed in Singapore
by the WIPO Office;
(c) Tax incurred by the WIPO Office on utilities bills and telephone charges; and
(d) Property tax, and stamp duty in respect of any tenancy agreement entered into,
(i) The premises occupied by the WIPO Office; and
(ii) If payable by the WIPO Office, the premises used as the residence of the Director of the WIPO Office.

(3) The WIPO Office shall be exempted from customs duties on all dutiable goods directly imported by it for its official use in Singapore, such exemption to be subject to compliance with such conditions as the Director-General of Customs may prescribe for the protection of revenue.

Privileges of officials of WIPO Office

5. (1) Subject to subparagraph 2, where an official of the WIPO Office is not a citizen or permanent resident of Singapore, he shall enjoy in respect of any salary, emolument or allowance paid by WIPO the like exemption or relief from income tax as is accorded to an envoy of a foreign sovereign Power accredited to the Republic of Singapore.

(2) For the avoidance of doubt, subparagraph 1 shall not apply to any income tax payable in respect of any pension or annuity paid in Singapore to—
   (a) Any former official of WIPO or the WIPO Office; or
   (b) Any beneficiary of any such former official.

(3) Subject to subparagraph 4, where a senior official of the WIPO Office is not a citizen or permanent resident of Singapore, he shall enjoy the like exemption or relief from the following taxes as is accorded to an envoy of a foreign sovereign Power accredited to the Republic of Singapore:
   (a) All vehicle taxes and fees (including any goods and services tax, fee for certificate of entitlement, registration fee and additional registration fee) in respect of one motor vehicle intended for his personal use;
   (b) Radio and television licence fees;
   (c) Customs duties on all dutiable goods; and
   (d) Goods and services tax in respect of all goods imported by him for his personal use.

(4) Where any senior official of the WIPO Office has enjoyed the exemption or relief referred to in subparagraph 3 (a) in respect of any motor vehicle, that subparagraph shall not apply in respect of any other motor vehicle acquired by that official within 4 years from the date on which that official acquired the first-mentioned motor vehicle.

(5) Where the Director of the WIPO Office is not a citizen or permanent resident of Singapore, he shall enjoy the like exemption or relief from the following taxes as is accorded to an envoy of a foreign sovereign Power accredited to the Republic of Singapore:
   (a) If payable by him, property tax, and stamp duty in respect of any tenancy agreement entered into, for the premises used as his residence; and
   (b) Foreign domestic worker levy in respect of one foreign domestic worker employed by him.

Made this 7th day of March 2005.

By command,

Lau Wah Ming
Secretary to the Cabinet
In exercise of the powers conferred by section 2 (2) of the International Organisations (Immunities and Privileges) Act, the President hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the International Organisations (Immunities and Privileges) (International Monetary Fund) Order 2005 and shall come into operation on 28th October 2005.

Definitions

2. In this Order, unless the context otherwise requires—

“IMF” means the International Monetary Fund;

“IMF coordinator” means any officer or employee of the IMF assigned by the IMF to Singapore to coordinate the Annual Meetings of the Board of Governors of the IMF and the World Bank Group to be held in Singapore in 2006 and mutually recognised by the Government and the IMF as an IMF coordinator.

Immunities and privileges in addition to those previously conferred

3. This Order is without prejudice to the Bretton Woods Agreements Order (Cap. 27, O 1) which sets out the status, immunities and privileges of the IMF and its officers and employees for the purpose of giving effect to the Articles of Agreement of the IMF.’

Status of IMF

4. IMF is an organisation of which the Government and the governments of foreign sovereign Powers are members.

Exemption or relief from tax

5. (1) Subject to subparagraph 4, every IMF coordinator, during the period of his assignment to Singapore, shall enjoy the like exemption or relief from the following taxes as is accorded to an envoy of a foreign sovereign Power accredited to the Republic of Singapore:

(a) All vehicle taxes (including any fee for certificate of entitlement and additional registration fee for a vehicle);

(b) Subject to subparagraphs 2 and 3, customs duties on articles imported by him for his personal use or the personal use of his family members forming part of his household; and

(c) Goods and services tax in respect of all goods imported by him for official use.

(2) Any IMF coordinator who imports for his personal use or the personal use of his family members forming part of his household, furniture and effects more than 6 months

after he takes up his assignment in Singapore shall not enjoy the exemption or relief from
the tax referred to in subparagraph (1) (b) in respect of such furniture and effects.

(3) Where any IMF coordinator has enjoyed the exemption or relief from the tax
referred to in subparagraph 1 (b) in respect of any motor vehicle, he shall not enjoy any
such exemption or relief in respect of any other motor vehicle imported by him within 4
years from the date on which he imported the first-mentioned motor vehicle.

(4) The exemption or relief from the taxes referred to in subparagraph 1 shall not
apply to any person who is a citizen or permanent resident of Singapore.

Made this 25th day of October 2005.

By Command,

Lau Wah Ming
Secretary to the Cabinet
Singapore
Chapter II

TREATIES CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. TREATIES CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS


During 2005, the following States acceded to the Convention:

<table>
<thead>
<tr>
<th>State</th>
<th>Date of receipt of instrument of accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belize</td>
<td>14 September 2005</td>
</tr>
<tr>
<td>Monaco</td>
<td>8 March 2005</td>
</tr>
</tbody>
</table>

As at 31 December 2005, there were 151 States parties to the Convention.

2. Agreements relating to missions, offices and meetings

(a) Supplementary arrangement for the exemption of the United Nations Observer Mission in Georgia from payment of air navigation charges and other related charges. Tbilisi, 27 March 2003 and 4 November 2003

Excellency,

I would like to refer to the activities of the United Nations Observer Mission in Georgia (UNOMIG) as set out in _inter alia_, Security Council resolution 937 (1994) of 27 July 1994 as well as subsequent resolutions.

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2 For the list of the States parties, see _Multilateral Treaties Deposited with the Secretary-General_ (United Nations publication, Sales No. E.06.V.2, ST/LEG/SER.E/24), vol. I, chap. III.

3 Entered into force on 26 July 2005, in accordance with the provisions of the letters.
In order to ensure the effective discharge of its mandated activities, UNOMIG needs the continued cooperation of the Government of Georgia (“the Government”) which includes facilitating the frequency of movement of UNOMIG and its members, logistical supplies and equipment in and out of Georgia. To that end, I would request that UNOMIG be made exempt from all air navigation charges and other related charges such as landing and packing fees as well as pilotage and overflight charges that relate to UNOMIG’s aircraft operations in Georgia.

I would point out that the attached Status of Mission Agreement (SOMA) concluded with the Government provides inter alia, that UNOMIG, its members, property, funds and assets will enjoy the status, privileges and immunities provided for under the Convention of the Privileges and Immunities of the United Nations (“the Convention”), section 7 (a) of the Convention provides as follows:

“The 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 services.”

Furthermore, the SOMA also provides that “The privileges and immunities necessary for the fulfillment of the functions of UNOMIG also included the exemption from all direct taxes, import and export duties, registration fees and charges.”

As such I trust that UNOMIG will be able to use roads, bridges, canals and other waters, port facilities and airfields without payment of taxes, dues, tolls, or charges. However, UNOMIG will not claim exemption from any other charges, which are in fact charges for specific services rendered, from which UNOMIG is not exempt under the convention and the SOMA.

If you agree, I would propose that this letter and your written reply thereto constitute an agreement between the United Nations and the Government with immediate effect, which shall remain in force until otherwise decided by the Parties. This Agreement will constitute a supplemental arrangement in further implementation of the provisions of the attached SOMA concluded with your Government.

Finally, I would like to take this opportunity of thanking the Government of Georgia for the support provided to UNOMIG in facilitating its tasks.

Please accept, Excellency, the assurances of my highest consideration.

[Signed] HEIDI TAGLIAVINI
Special Representative of the Secretary-General
United Nations Observer Mission in Georgia

H.E. Mr. Irakli Menagarishvili
Minister of Foreign Affairs of Georgia
Tbilisi

Excellency,

In reply to your letter dated March 27, 2003, taking into account the important role of the UNOMIG in process of peaceful settlement of conflict in Abkhazia and in order to facilitate effective functioning of the UNOMIG, I have the honor to inform you that the Georgian side agrees in addition to the Agreement concerning the United Nations Observer Mission Status in Georgia, signed on October 15, 1994, to conclude an agreement on the conditions of UNOMIG functioning in accordance with the conditions envisaged in your letter.

According to that, your letter and present response to it will be considered as an agreement between the Government of Georgia and the United Nations Organization, which enters into force on the date when Georgian side notifies about the fulfillment of its internal procedures and effects until the parties will not agree on other terms.

Sincerely,

[Signed] Irakli Menagarishvili

Heidi Tagliavini
Special Representative of the Secretary-General
United Nations Observer Mission in Georgia


New York, 10 and 11 January 2005*

I

10 January 2005

Excellency,

1. I have the honour to refer to your letter of 14 October 2004 confirming the acceptance of the Government of Uzbekistan (hereinafter referred to as “the Government”) to host the United Nations Expert Group Meeting on the draft Central Asian Nuclear-Weapon-Free Zone Treaty (hereinafter referred to as “the Meeting”) to be held in Tashkent, the Republic of Uzbekistan from 7 to 9 February 2005.

2. The United Nations, represented by the Department for Disarmament Affairs through its Regional Centre for Peace and Disarmament in Asia and the Pacific (hereinafter referred to as “the United Nations”), will organize the meeting in cooperation with the Government.

3. The United Nations would like to take this opportunity to tender its gratitude to the Government for its offer to host the Meeting.

* Entered into force on 11 January 2005, in accordance with the provisions of the letters.
4. Some 12 experts from the five Central Asian States have been invited by the United Nations to participate in the Meeting. Up to eight staff members of the United Nations, including four interpreters, will also attend.

5. I wish to propose that the following terms shall apply to the Meeting:
   a) The United Nations shall be responsible for costs and services related to the following:
      (i) Travel of participants: Round-trip travel to Tashkent for participants and officials of the United Nations;
      (ii) Accommodation and meals;
      (iii) Conference facility, meeting room and office space as required;
      (iv) Interpretation services and facilities;
      (v) Documents to be distributed at the Meeting;
      (vi) Nameplates and badges of the participants;
      (vii) Rent of office equipment including computers, a printer and photocopier; and
      (viii) Communications.
   b) The Government shall be responsible for costs and services related to the following:
      (i) Administrative support personnel including secretarial assistance;
      (ii) Local transportation between the airport and hotel, as well as, transportation to and from the premises of the Meeting as necessary;
      (iii) Office supplies and stationery;
      (iv) Banners and information signs of the meeting; and
      (v) One reception

6. a) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as "the Convention"), to which the Government is not a party, shall nevertheless be applicable in respect of the Meeting. The participants invited by the United Nations 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 Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

   b) Without prejudice to the provisions of the Convention, all participants and persons performing functions in connection with the Meeting shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of the functions in connection with the Meeting.

   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 Meeting. The participants invited by the United Nations 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 Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention.
7. All participants and persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from the Republic of Uzbekistan. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Meeting, visas shall be granted not later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival for those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Meeting.

8. It is further understood that the Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials arising out of:
   a) Injury to person or damage to or loss of property in the conference or office premises provided for the Meeting by the Government;
   b) Injury to persons or damage to or loss of property caused by or incurred in using the transportation provided or arranged by the Government;
   c) The employment for the Meeting of personnel, if provided or arranged by the Government; and the Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

9. 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. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

10. Any dispute between the United Nations and the Government concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention 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 Chairperson, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the appointment by 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 Chairperson, then such an 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 third 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.

11. I further propose that upon receipt of your Government’s 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 Uzbekistan regarding the provision of host
facilities by your Government for the Meeting. This Agreement shall enter into force from the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

Please accept, Excellency, the assurance of my highest consideration.

[Signed] Nobuyasu Abe
Under Secretary-General
for Disarmament Affairs

H.E. Mr. Alisher Vohidov
Permanent Representative of the
Republic of Uzbekistan to the United Nations
New York

II

11 January 2005

Excellency,

I have the honour to refer to your letter dated January 10, 2005 relating to the arrangements for the hosting of a United Nations-sponsored Expert Group Meeting on the draft Central Asian Nuclear-Weapon-Free Zone Treaty (hereinafter “the Meeting”) to be held in Tashkent, the Republic of Uzbekistan on February 7–9, 2005.

In reply, I have the honour to confirm that the terms of your proposal are acceptable to the Government of the Republic of Uzbekistan.

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of the Republic of Uzbekistan, which shall enter into force on today’s date and shall remain in force for the duration of the Meeting and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

Accept, Excellency, the assurances of my highest consideration.

[Signed] Alisher Vohidov
Permanent Representative
of the Republic of Uzbekistan
to the United Nations

H.E. Mr. Nobuyasu Abe
Under-Secretary-General
for Disarmament Affairs
New York

PREAMBLE

The Government of the Republic of Burundi and the United Nations;


Recalling that in the resolution the Security Council reaffirmed its full support for the process of the Arusha Peace and Reconciliation Agreement for Burundi, signed at Arusha on 28 August 2000, called on all the Burundian parties to fully honour their commitments, and assured them of its determination to support their efforts to that end;

Recalling that in the resolution the Security Council took note with satisfaction of the ceasefire agreements signed on 7 October 2002 by the transitional Government with Mr. Jean-Bosco Ndayikengururkiye’s Forces pour la défense de la démocratie (CNDD-FDD) and Mr. Alain Mugabarabona’s Forces nationales de libération (Palipehutu-FNL) as well as the comprehensive ceasefire agreement signed on 16 November 2003 in Dar-es-Salaam between the transitional Government and Mr. Pierre Nkurunziza’s CNDD-FDD;

Recalling that the Security Council decided in the resolution to authorize the deployment of a peacekeeping operation in Burundi entitled United Nations Operation in Burundi (“ONUB”), pursuant to the mandate specified in the above-mentioned resolution, in order to support and help to implement the efforts undertaken by Burundians to restore lasting peace and bring about national reconciliation, as provided under the Arusha Agreement;

Reaffirming that the role of the United Nations Operation in Burundi is neutral and impartial;

Have agreed as follows:

I. Definitions

1. For the purposes of this Agreement the following definitions shall apply:

(a) “ONUB” means the United Nations Operation in Burundi established in accordance with Security Council resolution 1545 (2004) of 21 May 2004 and consisting of:

(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 26, include any member of ONUB to whom he or she delegates a special 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 ONUB; and

(iii) A “military component” consisting of military and civilian personnel made available to ONUB by participating States at the request of the Secretary-General;

∗ Entered into force on 17 June 2005 by signature, in accordance with paragraph 63. Translated from French by the Secretariat of the United Nations.
(b) A “member of ONUB” means the Special Representative of the Secretary-General and any member of the civilian or military components;

(c) “The Government” means the Government of the Republic of Burundi;

(d) “The territory” means the territory of the Republic of Burundi;

(e) A “participating State” means a State providing civilian and military personnel, services, equipment, provisions, supplies, material and other goods to ONUB;

(f) The “Convention” means the Convention on Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 to which Burundi is a Party;

(g) “Contractors” means persons, other than members of ONUB, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of ONUB activities. Such contractors shall not be considered third party beneficiaries to this Agreement;

(h) “Vehicles” means civilian and military vehicles in use by ONUB and operated by members of ONUB, participating States and contractors in support of ONUB activities;

(i) “Vessels” means civilian and military vessels in use by ONUB and operated by members of ONUB, participating States and contractors in support of ONUB activities;

(j) “Aircraft” means civilian and military aircraft in use by ONUB and operated by members of ONUB, participating States and contractors in support of ONUB activities.

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 ONUB or any member thereof or to contractors apply throughout Burundi.

III. Application of the Convention

3. ONUB, 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 Burundi is a Party.

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

IV. Status of ONUB

5. ONUB 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. ONUB 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 ONUB and its international status:

   (a) The United Nations shall ensure that ONUB shall conduct its operation in Burundi with full respect for the principles and rules of the international 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 for the Protection of Cultural Property in the Event of Armed Conflict;

   (b) The Government undertakes to treat at all times the military personnel of ONUB with full respect for the principles and rules of the 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.

   ONUB and the Government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and rules of the above-mentioned international instruments.

7. The Government undertakes to respect the exclusively international status of ONUB.

Section A. United Nations flag, markings and identification

8. The Government recognizes the right of ONUB to display within Burundi 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, ONUB shall give sympathetic consideration to observations or requests of the Government.

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

Section B. Communications

10. ONUB 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 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) ONUB shall have the right to install, in consultation with the Government, and operate United Nations radio stations to disseminate information relating to its mandate. ONUB shall also have the right to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within Burundi with each other and with United Nations offices in other countries, and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. The United Nations radio stations and telecommunications services shall be operated in accordance with the International Telecommunication Convention and Regulations and the relevant frequencies on which any such station may be operated shall be decided upon in cooperation with the Government.
(b) ONUB shall enjoy, within the territory of Burundi, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of ONUB, 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 and shall be allocated expeditiously. It is understood that connections with the local system of telephone, facsimile and other electronic data may be made only after consultation and in accordance with arrangements with the Government, it being understood that the use of the local system of telephone, facsimile and other electronic data shall be charged at the most favourable rate.

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

Section C. Travel and transport

12. ONUB and its members as well as contractors shall enjoy, together with vehicles, including vehicles of contractors used exclusively in the performance of their services for ONUB, vessels, aircraft and equipment, freedom of movement without delay throughout the territory of Burundi. That freedom shall, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within Burundi, be coordinated with the Government. The Government undertakes to supply ONUB, 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. ONUB vehicles, including all military vehicles, vessels and aircraft, shall not be subject to registration or licensing by the Government it being understood that they shall carry third-party insurance required by international law in that regard. Other forms of compensation for cases not covered by this insurance may be negotiated within a framework to be agreed.

14. ONUB and its members as well as contractors, together with their vehicles, including vehicles of contractors used exclusively in the performance of their services for ONUB, vessels and aircraft may use roads, bridges, canals and other waters, port facilities, airfields and airspace without the payment of dues, tolls or charges, including wharfage and compulsory pilotage charges. However, ONUB shall endeavour, where possible, to use national companies that provide port and airport services to the extent that such companies have the requisite technical capacities. ONUB will not claim exemption from charges, which are in fact charges for services rendered, it being understood that such charges for services rendered shall be charged at the most favourable rates.
CHAPTER II

Section D. Privileges and immunities of ONUB

15. ONUB, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provisions of article II of the Convention which apply to ONUB shall also apply to the property, funds and assets of participating States used in connection with ONUB, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of ONUB 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 ONUB 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 ONUB, 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 ONUB, and he or she 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, fuel and other goods which are for the exclusive and official use of ONUB 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, fuel 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 Burundi 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 ONUB and the Government at the earliest possible date.

V. Facilities for ONUB and its contractors

Premises required for conducting the operational and administrative activities of ONUB and for accommodating its members

16. The Government shall provide to ONUB free of charge, to the extent possible, 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 ONUB. Without prejudice to the fact that all such premises remain Burundi territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by ONUB to those premises shall be guaranteed.

17. The Government undertakes to assist ONUB as far as possible in obtaining water, electricity and other facilities 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 ONUB as to essential government services. It is understood that payment shall be made by ONUB on terms to be agreed with the competent authority. ONUB shall be responsible for the maintenance and upkeep of facilities so provided.

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

19. The Special Representative or the Force Commander or their staff alone may consent to the entry of any government officials or of any other person who are not members of ONUB to such premises.

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant all necessary authorizations, permits and licences required for the import and export of equipment, provisions, supplies, materials and other goods exclusively used in support of ONUB, even in the case of import and export by contractors, free of any restrictions and without the payment of duties, charges or taxes including value-added tax.

21. The Government undertakes to assist ONUB as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, materials and other goods and services purchased locally by ONUB or by contractors for the official and exclusive use of ONUB, the Government shall make appropriate administrative arrangements for the remission or return of any excise or tax payable as part of the price. The Government shall exempt ONUB and contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, ONUB shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

22. For the proper performance of the services provided by contractors, other than Burundian nationals, in support of ONUB, the Government agrees to provide contractors with facilities concerning their entry into and departure from Burundi as well as their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions, all necessary visas, licences or permits. Contractors, other than Burundian nationals, shall be accorded exemption from taxes in Burundi on the services provided to ONUB, including corporate, income, social security and other similar taxes arising directly from the provisions of such services.

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

Recruitment of local personnel

24. ONUB 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 ONUB and to accelerate the process of such recruitment.
CHAPTER II

Currency

25. The Government undertakes to make available to ONUB, against reimbursement in mutually acceptable currency, local currency required for the use of ONUB, including the pay of its members, at the rate of exchange most favourable to ONUB.

VI. Status of the members of ONUB

Privileges and immunities

26. The Special Representative, the Commander of the military component of ONUB, 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.

27. Officials of the United Nations assigned to the civilian component to serve with ONUB, as well as United Nations Volunteers who shall be assimilated thereto, remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

28. Military observers and civilian personnel other than United Nations officials whose names are for that 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.

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

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

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

32. Members of ONUB shall have the right to import and export free of duty their personal effects in connection with their arrival in and departure from Burundi. They shall be subject to the laws and regulations of Burundi governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Burundi with ONUB. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of ONUB, including the military component, upon prior written notification. On departure from Burundi, members of ONUB 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 ONUB.
33. The Special Representative shall cooperate with the Government and shall render all assistance within his or her power in ensuring the observance of the customs and fiscal laws and regulations of Burundi by the members of ONUB, in accordance with the present Agreement.

**Entry, residence and departure**

34. The Special Representative and members of ONUB shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Burundi.

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

36. For the purpose of such entry or departure, members of ONUB 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 37 of the present Agreement, except in the case of first entry, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations or appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

**Identification**

37. The Special Representative shall issue to each member of ONUB before or as soon as possible after such member’s first entry into Burundi, as well as to all locally recruited personnel and contractors, a numbered identity card, showing the bearer’s name and photograph. Except as provided for in paragraph 36 of the present Agreement, such identity card shall be the only document required of a member of ONUB.

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

**Uniforms and arms**

39. Military members, military observers and civilian police officers of ONUB shall wear, while performing official duties, the 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 ONUB may be authorized by the Special Representative at other times. Military members, military observers and civilian police officers of ONUB and United Nations Security Officers designated by the Special Representative may possess and carry arms while on official duty in accordance with their orders.
Permits and licences

40. 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 ONUB, including locally recruited personnel, of any ONUB vehicles and for the practice of any profession or occupation in connection with the functioning of ONUB, provided that no permit 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.

41. The Government agrees to accept as valid, and where necessary to validate, free of charge and without any restrictions, licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for ONUB. Without prejudice to the foregoing, the Government further agrees to grant expeditiously, free of charge and without any restrictions, necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

42. Without prejudice to the provisions of paragraph 39, 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 ONUB for the carrying or use of firearms or ammunition in connection with the functioning of ONUB.

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

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

44. The military police of ONUB shall have the power of arrest over the military members of ONUB. 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 43 above may take into custody any other person who commits an offence on the premises of ONUB. 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.

45. Subject to the provisions of paragraphs 26 and 28, officials of the Government may take into custody any member of ONUB:

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

(b) When such a member of ONUB 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 ONUB, where after the provisions of paragraph 51 shall apply mutatis mutandis.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (b), ONUB or the Government as the case may be, may conduct a preliminary interrogation but may not delay the transfer of custody to the competent authority of ONUB or of the
Government, as the case may be. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

47. ONUB 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. In the event of a traffic accident involving a member of ONUB, the Special Police for roads and the competent services of ONUB shall collaborate to establish the facts and draw up the requisite reports. Each authority 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 44–46.

Safety and security

48. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to and in respect of ONUB, its property, assets and members. In particular:

(i) The Government shall take all appropriate measures to ensure the safety and security of members of ONUB. It shall take all appropriate steps to protect members of ONUB, their equipment and premises from attack or any action that prevents them from discharging their mandate. This is without prejudice to the fact that all premises of ONUB are inviolable and subject to the exclusive control and authority of the United Nations.

(ii) If members of ONUB are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

(iii) The Government shall establish the following acts as crimes under its national law, and make them punishable by appropriate penalties taking into account their grave nature:

(a) A murder, kidnapping or other attack upon the person or liberty of any member of ONUB;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any member of ONUB likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.
(iv) The Government shall establish its jurisdiction over the crimes set out in paragraph 48 (iii) above: (a) when the crime was committed in its territory; (b) when the alleged offender is one of its nationals; (c) when the alleged offender, other than a member of ONUB, is present in its territory, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim.

(v) The Government shall ensure the prosecution without exception and without delay of persons accused of acts described in paragraph 48 (iii) above who are present within its territory (if the Government does not extradite them) as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to ONUB or its members which, if committed in relation to the forces of the Government or against the local civilian population, would have rendered such acts liable to prosecution.

49. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect ONUB, its property and members during the exercise of their functions.

**Jurisdiction**

50. All members of ONUB 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 ONUB and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of ONUB has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any evidence available to it. Subject to the provisions of paragraph 26:

(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 57 of the present Agreement;

(b) Military members of the military component of ONUB 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 Burundi.

52. If any civil proceeding is instituted against a member of ONUB before any court of Burundi, the Special Representative shall be notified immediately, and he or she 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 55 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 ONUB is unable because of official duties or authorized absence to protect his or her interests in the proceeding, the court shall at the defendant’s request suspend the proceed-
ing until the elimination of the disability, but for no more than ninety days. Property of a member of ONUB that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of ONUB 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

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

VII. Limitation of liability of the United Nations

54. Third-party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to ONUB except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in paragraph 55 of the present Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury, or, if the claimant did not know or could not have reasonably known of such loss or injury, within six months from the time he or she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of ONUB. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within such financial limitations as are approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character, not resulting from the operational necessity of ONUB, to which ONUB or any member thereof is a party and over which the courts of Burundi do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission 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. The awards of the commission shall be notified to the parties and, if against a member of ONUB, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.
56. 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.

57. All other disputes between ONUB and the Government concerning the interpretation or application of the present Agreement shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

58. All differences between the United Nations and the Government of Burundi 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 set out in section 30 of the Convention.

IX. Supplemental arrangements and amendments

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

60. This Agreement may be amended by written agreement between the Government of the Republic of Burundi and the United Nations.

X. Liaison

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

XI. Miscellaneous provisions

62. Wherever the present Agreement refers to privileges, immunities and rights of ONUB and to the facilities Burundi undertakes to provide to ONUB, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

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

64. The present Agreement shall remain in force until the departure of the final element of ONUB from Burundi, except that:

(a) The provisions of paragraphs 50, 57 and 58 shall remain in force;

(b) The provisions of paragraphs 54 and 55 shall remain in force until all claims made in accordance with the provisions of paragraph 54 have been settled.

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 Bujumbura on 17 June 2005.
ARRANGEMENT ON THE PREVENTION AND TREATMENT OF CRIMINAL OFFENCES SUPPLEMENTARY TO THE AGREEMENT BETWEEN THE UNITED NATIONS AND BURUNDI CONCERNING THE STATUS OF THE UNITED NATIONS OPERATION IN BURUNDI. BUKUMURA, 17 JUNE 2005

The Special Representative of the Secretary-General of the United Nations in Burundi and the Minister for Foreign Affairs and Cooperation of the Republic of Burundi;

Recalling the Agreement between the United Nations and Burundi concerning the status of the United Nations Operation in Burundi, signed at Bukumbura on 17 June 2005 (“the Agreement”);

Recalling paragraph 59 of that Agreement, which provides that the Special Representative and the Government of Burundi may conclude supplemental arrangements to that Agreement;

Recalling paragraph 5 of the Agreement which provides, inter alia, that UNB and its members shall respect all the laws and regulations of the Republic of Burundi and that the Special Representative shall take all appropriate measures to ensure the observance of those obligations;

Recalling paragraph 43 of the Agreement which provides, inter alia, that the Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNB;

Recalling also paragraph 51 (b) of the Agreement according to which military members of the military component of UNB 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 Burundi;

Recognizing the advisability of making supplemental arrangements for the treatment of such criminal offences as may be committed by members of UNB;

Having agreed to enter into a supplemental arrangement to that end as provided for by paragraph 59 of the Agreement;

Have agreed as follows:

1. The Special Representative undertakes to enforce such preventive measures as may be necessary to deal with misconduct by members of UNB.

2. The Special Representative undertakes on behalf of UNB to take all appropriate measures to ensure that participating countries shall promptly notify such crimes as may be committed by members of their contingent serving with UNB to their relevant national authorities for proper legal action under their domestic laws. The Special Repre-
sentative also undertakes to inform the Government of the action taken by those countries in that regard and the outcomes of the proceedings.

3. This supplemental arrangement is without prejudice to and without exception to the provisions of the Agreement, of which it is a part, especially the provisions dealing with the privileges and immunities of members of OUNB and the procedures to be followed whenever the Government charges any member of OUNB with a criminal offence.

4. This supplemental arrangement shall enter into force on the date of its signature and shall remain in force for as long as the Agreement remains in force.

Done at Bujumbura on 17 June 2005.

For the United Nations: For the Government of the Republic of Burundi

[Signed] CAROLYN MCAKIE [Signed] H.E. THÉRENCE SINUNGURUZA
Special Representative of the Secretary-General for Burundi Minister for Foreign Affairs and Coopera-

Arrangement on air navigation supplementary to the Agreement between the United Nations and Burundi concerning the status of the United Nations Operation in Burundi, Bujumbura, 17 June 2005

The Special Representative of the Secretary-General of the United Nations in Burundi and the Minister for Foreign Affairs and Cooperation of the Republic of Burundi;

Recalling the Agreement between the United Nations and Burundi concerning the status of the United Nations Operation in Burundi, signed at Bujumbura on 17 June 2005 ("the Agreement");

Recalling paragraph 59 of that Agreement which provides that the Special Representative and the Government of Burundi may conclude supplemental arrangements to that Agreement;

Recalling the provisions of paragraph 12 of the Agreement that the United Nations Operation in Burundi ("ONUB") and its members as well as contractors shall enjoy, together with vehicles, including vehicles of contractors used exclusively in the performance of their services for OUNB, vessels, aircraft and equipment, freedom of movement without delay throughout the territory of Burundi;

Recalling that paragraph 12 also provides that, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within the territory of Burundi, that freedom shall be coordinated with the Government;

Recognizing that it is advisable, without prejudice to paragraph 12 of the Agreement, that OUNB should give prior notice to the relevant authorities of Burundi of OUNB flights in order to ensure secure and unhindered use of the airspace of the Republic of Burundi;

* Entered into force on 17 June 2005 by signature, in accordance with paragraph 4. Translated from French by the Secretariat of the United Nations.
Having agreed to enter into a supplemental arrangement in that regard as provided for by paragraph 59 of the Agreement;

Have agreed as follows:

1. ONUB undertakes where possible to submit to the competent Burundian authorities requests for overflight and landing at least an hour prior to the scheduled flight and shall provide the following information:

   (a) Type of aircraft;
   (b) Aircraft registration;
   (c) Flight number;
   (d) Name of the operator;
   (e) Route;
   (f) Date and estimated time of arrival;
   (g) Cargo (freight or passengers);
   (h) Pilot’s name.

2. In case of an emergency, the above-mentioned advance notice is not mandatory.

3. This supplemental arrangement is without prejudice to and without exception to the provisions of the Agreement, of which it is a part.

4. This supplemental arrangement shall enter into force on the date of its signature and shall remain in force for as long as the Agreement remains in force.

Done at Bujumbura on 17 June 2005.

For the United Nations:

[Signed] Carolyn McAskie
Special Representative of the Secretary-General for Burundi

For the Government of the Republic of Burundi:

[Signed] H.E. Thérence Sinunguruza
Minister for Foreign Affairs and Cooperation

(d) Exchange of letters constituting an agreement between the United Nations and the Government of Uruguay regarding the hosting of three events under the project “Weapons Destruction and Stockpile Management”, to be held in Uruguay from 12 to 16 September 2005.

New York, 6 July and 29 August 2005*

6 July 2005

Excellency,

The United Nations, represented by the Department for Disarmament Affairs (DDA) (hereinafter referred to as “the United Nations”), acting through the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the

* Entered into force on 29 August 2005, in accordance with the provisions of the letters.
Caribbean (hereinafter referred to as “UN-LiREC”) is organizing three events in Uruguay from 12 to 16 September 2005.

Under its Project entitled “Weapons Destruction and Stockpile Management”, UN-LiREC will provide the Government technical assistance and assume the coordinating role in the implementation of the following three events (hereinafter referred to as “the Events”).

A. Destruction of Firearms (hereinafter referred to as “the Destruction”) to be undertaken at the “GERDAU LAYSA” located in Montevideo, from 12 to 15 September 2005;

B. Organization of a national seminar entitled “Public Security and Firearms Legislation Seminar: Uruguay” (hereinafter referred to as “the Seminar”) to be held on the premises of the Ibis Hotel, located in Montevideo, on 16 September 2005; and

C. Coordination of a public event to celebrate the destruction of firearms in Montevideo (hereinafter referred to as “the Public Event”) to be held in Montevideo, on 15 September 2005.

The United Nations will implement the Events in accordance with the Programme of Action as adopted at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects in July 2001.

The following participants, invited by UN-LiREC, will attend:

(a) Destruction:

(i) Technical advisory team from: Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS), Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Material (CIFTA), Royal Canadian Mounted Police (RCMP), the Small Arms and Demobilization Unit of the United Nations Development Programme (UNDP/SADU), and host country participants; and

(ii) Officials of DDA, i.e., the UN-LiREC Director, one Programme Coordinator and three advisors.

The total number of participants invited for the Destruction will be approximately 38.

(b) Seminar:

(i) Representatives of the following institutions who are partners in the Project: Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS), Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Material (CIFTA), and the United Nations Development Programme (UNDP) in Uruguay;

(ii) Participants from Ministry of Defence, Ministry of Foreign Affairs, Ministry of Interior, Registro Nacional d Armas (RENAR), National Police, Customs representatives, Public Ministry, Judicial Power, Army representatives, NGO representatives, Legislative Power; and

(iii) Officials of DDA, i.e., the UN-LiREC Director, one Programme Coordinator and three advisors.
The total number of participants in the Seminar will be approximately 50.

(c) Public Event:

(i) United Nations agencies in Montevideo and host country participants; and

(ii) Officials of DDA, i.e., the UN-LiREC Director, one Programme Coordinator and three advisors.

The above 20 participants will be providing a demonstration opened to the public in a square, to be witnessed by approximately 780 persons.

With the present letter, I wish to propose that the following terms shall apply to the Events:

1. The United Nations shall be responsible for the costs and services listed in annex I.*

2. The Government shall be responsible for the costs and services listed in annex II.*

3. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as “the Convention”), to which the Government is a party, shall be applicable in respect of the Events. In particular, the participants invited by the United Nations acting through UN-LiREC shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Events shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

4. Without prejudice to the provisions of the Convention, all participants and persons, performing functions in connection with the Events shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Events.

5. 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 Events.

6. All participants and United Nations officials performing functions in connection with the Events shall have the right of unimpeded entry into and exit from Uruguay. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Events, visas shall be granted not later than two weeks before the opening of the Events. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Events are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Events.

* The annex is not published herein.
7. The Government shall furnish such police protection as may be required to ensure the safety of the participants and United Nations personnel and the effective functioning of the Events in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

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

   a) Injury to persons or damage to or loss of property at the destruction sites, or in the conference or office premises of the Seminar, or in the Public Event site which are provided for the Events;

   b) Injury to persons or damage to or loss of property caused by or incurred in using the transportation provided or arranged by the Government;

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

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

9. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention or any other applicable agreement, shall, unless the parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiations or any other agreed mode of settlement shall be submitted at the request of either party for a final decision 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 Chairperson, 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 of the second one of them appoint the Chairperson, 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.

10. I further propose that upon receipt of your Government’s confirmation in writing of the above, this exchange of letters, together with its annexes I and II which form an integral part thereof, shall constitute an Agreement between the United Nations and the Government of Uruguay regarding the hosting of the Events, which shall enter into force on the date of your reply and shall remain in force for the duration of the Events and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

Please accept, Excellency, the assurances of my highest consideration.
His Excellency  
Mr. Felipe Paolillo  
Permanent Representative of Uruguay  
to the United Nations  
New York

II

New York, 29 August 2005

Mr. Under-Secretary-General,

I wish to acknowledge receipt of your letter dated July 6th 2005, in which you inform on the organization of three events in Uruguay from September 12 to 16th, 2005, acting through the United Nations Regional Center for Peace, Disarmament and Development in Latin America and the Caribbean – UN-LiREC – for which you propose the terms to apply to the events.

To this respect, I wish to confirm with this letter that the Government of Uruguay agrees to the terms detailed in the above mentioned letter, together with its annexes I and II which form an integral part of this communication, constituting an Agreement between the United Nations and the Government of Uruguay regarding the hosting of the Events, entering into force on the date of this reply and remaining in force for the duration of the Events and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

[Signed] Ambassador Alejandro Artucio  
Permanent Representative of Uruguay

Mr. Nobuyasu Abe  
Under-Secretary-General for Disarmament  
United Nations  
New York

Freetown, 22 December 2005*

Whereas the Security Council, in its resolution 1620 (2005) of 31 August 2005, requested the Secretary-General to establish the United Nations Integrated Office in Sierra Leone (UNIOSIL), effective 1 January 2006, in order to continue to assist the Government of Sierra Leone to consolidate peace following the withdrawal of the United Nations Mission in Sierra Leone (UNAMSIL);  

* Entered into force on 1 November 2005, in accordance with paragraph 4.
Whereas the Security Council, in its resolution 1626 (2005) of 19 September 2005 authorized the United Nations Mission in Liberia (UNMIL), subject to the consent of the Government of Sierra Leone, to deploy from November 2005 up to 250 United Nations military personnel to Sierra Leone in order to provide security for the Special Court for Sierra Leone (the “Military Guard Force”);

Whereas the Security Council, in that same resolution, also authorized UNMIL, subject to the consent of the Government of Sierra Leone, to deploy an adequate number of military personnel to Sierra Leone, if and when needed, to evacuate the Military Guard Force and Officials of the Special Court for Sierra Leone in the event of a serious security crisis affecting the Force and the Court (the “Rapid Reaction Force”);

Whereas the Government of Sierra Leone hereby gives its consent to the deployment to Sierra Leone of the Military Guard Force and, if and when needed, of the Rapid Reaction Force;


Wishing to make the provisions of the SOFA applicable *mutatis mutandis* in respect of UNIOSIL;

Wishing to make the provisions of the SOMA applicable *mutatis mutandis* in respect of the Military Guard Force and, if and when deployed to Sierra Leone, the Rapid Reaction Force;

Now, therefore, the United Nations and the Government of Sierra Leone hereby agree as follows:

1. The provisions of the SOFA shall apply *mutatis mutandis* in respect of UNIOSIL.

2. The provisions of the SOFA shall apply *mutatis mutandis* in respect of the Military Guard Force and, if and when deployed to Sierra Leone, the Rapid Reaction Force.

3. The provisions of the Convention on the Safety of United Nations and Associated Personnel shall apply to and in respect of UNIOSIL, its property, assets, members and associated personnel. They shall also apply to and in respect of the members of the Military Guard Force and, if and when deployed to Sierra Leone, the Rapid Reaction Force.

4. The present Agreement shall enter into force on 1 November 2005.

In witness whereof, the undersigned, being the duly authorized representative of the United Nations and the duly authorized plenipotentiary of the Government of Sierra Leone, have, on behalf of the Parties, affixed their signatures to the present Agreement.

Done at Freetown, Sierra Leone, this 22nd day of December 2005.

For the United Nations:  
[Signed] VICTOR DA SILVA ANGELO  
Executive Representative of the Secretary-General for Sierra Leone

For the Government of Sierra Leone:  
[Signed] AL-HAJI MOMODU KOROMA  
Minister of Foreign Affairs and International Cooperation


The United Nations and the Government of Sudan;


Recalling that in that resolution the Security Council welcomed the signing of the Comprehensive Peace Agreement between the Government of Sudan and the Sudan People’s Liberation Movement/Army in Nairobi, Kenya on 9 January 2005;

Recalling that in that resolution the Security Council authorized the deployment of the United Nations Mission in Sudan (UNMIS) with the mandate specified in that resolution;

Further recalling that in that resolution the Security Council requested that the Secretary-General and the Government of Sudan, following appropriate consultation with the Sudan People’s Liberation Movement, conclude a status-of-forces agreement.

Therefore agree as follows:

I. Definitions

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

(a) “UNMIS” means the United Nations Mission in Sudan, established in accordance with Security Council resolution 1590 (2005) of 24 March 2005, which tasks UNMIS, inter alia, with supporting the implementation of the Comprehensive Peace Agreement between the Government of Sudan and the Sudan People’s Liberation Movement/Army of 9 January 2005. UNMIS shall consist of:

(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 26, include any member of UNMIS to whom he or she 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 UNMIS;

(iii) A “military component” consisting of military and civilian personnel made available to UNMIS by participating States at the request of the Secretary-General;

(b) A “member of UNMIS” means the Special Representative of the Secretary-General and any member of the civilian or military components;

(c) “The Government” means the Government of Sudan, the Government of National Unity of Sudan and any successor Government of Sudan;

(d) “The territory” means the territory of Sudan;

* Entered into force on 28 December 2005 by signature, in accordance with paragraph 62 of the Agreement.
(e) A “participating State” means a State providing personnel, services, equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, to any of the above-mentioned components of UNMIS;


(g) “Contractors” means persons, other than members of UNMIS, engaged by the United Nations, including juridical as well as natural persons and their employees and sub-contractors, to perform services for UNMIS and/or to supply equipment, provisions, supplies, materials and other goods, including spare parts and means of transport, in support of UNMIS activities. Such contractors shall not be considered third party beneficiaries to this Agreement;

(h) “Vehicles” means civilian and military vehicles in use by the United Nations and operated by members of UNMIS, participating States or contractors in support of UNMIS activities;

(i) “Vessels” means civilian and military vessels in use by the United Nations and operated by members of UNMIS, participating States or contractors in support of UNMIS activities;

(I) [Sic] “Aircraft” means civilian and military aircraft in use by the United Nations and operated by members of UNMIS, participating States or contractors in support of UNMIS activities.

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 UNMIS or any member thereof or to contractors shall apply in Sudan only.

III. Application of the Convention

3. UNMIS, 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.

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

IV. Status of UNMIS

5. UNMIS 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. UNMIS and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of these obligations.

6. Without prejudice to the mandate of UNMIS and its international status:
(a) The United Nations shall ensure that UNMIS shall conduct its operation in Sudan with full respect for the principles and rules of the international 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 for the Protection of Cultural Property in the Event of Armed Conflict;

(b) The Government undertakes to treat at all times the military personnel of UNMIS with full respect for the principles and rules of the 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.

UNMIS and the Government shall ensure accordingly that members of their respective military personnel are fully acquainted with the principles and rules of the above-mentioned international instruments.

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

**United Nations flag, markings and identification**

8. The Government recognizes the right of UNMIS to display within Sudan 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 such cases, UNMIS shall give sympathetic consideration to observations or requests of the Government.

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

**Communications**

10. UNMIS shall enjoy the facilities in respect to communications provided in article III of the Convention. 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) UNMIS shall have the right to establish, install and operate United Nations radio stations under its exclusive control to disseminate to the public in Sudan information relating to its mandate. Programmes broadcast on such stations shall be under the exclusive editorial control of UNMIS and shall not be subject to any form of censorship. UNMIS will make the broadcast signal of such stations available to the state broadcaster upon request for further dissemination through the state broadcasting system. Such United Nations radio stations shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such stations may operate shall be decided upon in cooperation with the Government. If no decision has been reached fifteen (15) working days after the matter has been raised by UNMIS with the Government, the Government shall immediately allocate suitable frequencies for use by such stations.
UNMIS shall be exempt from any taxes on and fees for the allocation of frequencies for use by such stations, as well as from any taxes on or fees for their use.

(b) UNMIS shall have the right to disseminate to the public in Sudan information relating to its mandate through official printed materials and publications, which UNMIS may produce itself or through private publishing companies in Sudan. The content of such materials and publications shall be under the exclusive editorial control of UNMIS and shall not be subject to any form of censorship. UNMIS shall be exempt from any prohibitions or restrictions regarding the production or the publication or dissemination of such official materials and publications, including any requirement that permits be obtained or issued for such purposes. This exemption shall also apply to private publishing companies in Sudan which UNMIS may use for the production, publication or dissemination of such materials or publications.

(c) UNMIS shall have the right to install and operate radio sending and receiving stations, as well as satellite systems, in order to connect appropriate points within the territory of Sudan with each other and with United Nations offices in other countries, and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government. If no decision has been reached fifteen (15) working days after the matter has been raised by UNMIS with the Government, the Government shall immediately allocate suitable frequencies to UNMIS for this purpose. UNMIS shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as from any taxes on or fees for their use.

(d) UNMIS shall enjoy, within the territory of Sudan, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNMIS, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The Government shall, within fifteen (15) working days of being so requested by the UNMIS, allocate suitable frequencies to UNMIS for this purpose. UNMIS shall be exempt from any taxes on and fees for the allocation of frequencies for this purpose, as well as from any taxes on or fees for their use. Connections with the local system of telephone, facsimile and other electronic data may be made only after consultation and in accordance with arrangements with the Government. Use of the local system of telephone, facsimile and other electronic data shall be charged at the most favourable rate.

(e) UNMIS may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNMIS. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNMIS or its members. In the event that postal arrangements applying to private mail of members of UNMIS 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. UNMIS, its members and contractors, together with their property, equipment, provisions, supplies, materials and other goods, including spare parts, as well as vehicles, vessels and aircraft, including the vehicles, vessels and aircraft of contractors used exclusively in the performance of their services for UNMIS, shall enjoy full and unrestricted freedom of movement without delay throughout Sudan by the most direct route possible, without the need for travel permits or prior authorization or notification, except in the case of movements by air, which will comply with the customary procedural requirements for flight planning and operations within the airspace of Sudan as promulgated and specifically notified to UNMIS by the Civil Aviation Authority of Sudan. This freedom shall, with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within Sudan, be coordinated with the Government. The Government shall, where necessary, provide UNMIS with maps and other information, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating UNMIS’s movements and ensuring the safety and security of its members.

13. Vehicles, vessels and aircraft shall not be subject to registration or licensing by the Government, it being understood that all vehicles shall carry third party insurance. UNMIS shall provide to the Government, from time to time, updated lists of UNMIS vehicles.

14. UNMIS and its members and contractors, together with vehicles, vessels and aircraft, including vehicles, vessels and aircraft of contractors used exclusively in the performance of their services for UNMIS, may use roads, bridges, rivers, canals and other waters, port facilities, airfields and airspace without the payment of any form of monetary contributions, dues, tolls, user fees, airport taxes, parking fees, overflight fees, port fees or charges, including wharfage and compulsory pilotage charges. However, UNMIS will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges shall be charged at the most favourable rates.

Privileges and immunities of UNMIS

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

(a) The right of UNMIS, as well as of contractors, to import, by the most convenient and direct route by sea, land or air, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNMIS or for resale in the commissaries provided for below. For this purpose, the Government agrees expeditiously to establish, at the request of UNMIS, temporary customs clearance facilities for UNMIS at locations in Sudan convenient for UNMIS not previously designated as official ports of entry for Sudan;
(b) The right of UNMIS to establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNMIS, 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 UNMIS and shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) The right of UNMIS, as well as of contractors, to clear ex customs and excise warehouse, free of duty, taxes, fees and charges and free of other prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNMIS or for resale in the commissaries provided for above;

(d) The right of UNMIS, as well as of contractors, to re-export or otherwise dispose of such property and equipment, including spare parts and means of transport, as far as they are still usable, and all unconsumed provisions, supplies, materials, fuel 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 Sudan 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 UNMIS and the Government at the earliest possible date.

V. Facilities for UNMIS and its contractors

Premises required for conducting the operational and administrative activities of UNMIS

16. The Government shall if possible provide without cost to UNMIS and in agreement with the Special Representative for as long as may be required such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNMIS, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 11. Without prejudice to the fact that all such premises remain territory of Sudan, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by UNMIS to those premises shall be guaranteed.

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

Provisions, supplies and services, and sanitary arrangements

20. The Government agrees to grant promptly, upon presentation by UNMIS or by contractors of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, used in support of UNMIS, including in respect of import by contractors, free of any restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by contractors, free of any restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

21. The Government undertakes to assist UNMIS as far as possible in obtaining equipment, provisions, supplies, fuel, materials and other goods and services from local sources required for its subsistence and operations. In respect of equipment, provisions, supplies, fuel, materials and other goods and services purchased locally by UNMIS or by contractors for the official and exclusive use of UNMIS, the Government shall make appropriate administrative arrangements for the remission or return of any excise, tax or monetary contribution payable as part of the price. The Government shall exempt UNMIS and contractors from general sales taxes in respect of all local purchases for official use. In making purchases on the local market, UNMIS shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. In accordance with the Financial Regulations and Rules of the United Nations, UNMIS shall, when purchasing goods and services, endeavour to give due consideration to local contractors.

22. For the proper performance of the services provided by contractors, other than Sudan nationals resident in Sudan, in support of UNMIS, the Government agrees to provide contractors with facilities for their entry into and departure from Sudan, without delay or hindrance, and for their residence in Sudan, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to contractors, free of charge and without any restrictions and within forty-eight (48) hours of application, all necessary visas, licenses, permits and registrations. Contractors, other than Sudan nationals resident in Sudan, shall be accorded exemption from taxes and monetary contributions in Sudan on services, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, provided to UNMIS, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

23. UNMIS and the Government shall cooperate with respect to sanitary services and shall extend to each other their fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.
Recruitment of local personnel

24. UNMIS 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 UNMIS and to accelerate the process of such recruitment.

Currency

25. The Government shall facilitate, as necessary, the free exchange of mutually acceptable currency in local currency required for the use of UNMIS, including the pay of its members, at the prevailing commercial rate of exchange.

VI. Status of the members of UNMIS

Privileges and immunities

26. The Special Representative, the Commander of the military component of UNMIS 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.

27. Officials of the United Nations assigned to the civilian component to serve with UNMIS, as well as United Nations Volunteers, who shall be assimilated thereto, remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

28. Military observers, military liaison officers, United Nations civilian police and civilian personnel other than United Nations officials whose names are for that 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.

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

30. Locally recruited personnel of UNMIS shall enjoy the immunities concerning official acts and exemption from taxation and immunity from national service obligations provided for in Sections 18 (a), (b) and (c) of the Convention.

31. Members of UNMIS 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 Sudan. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

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

33. 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 Sudan by the members of UNMIS, in accordance with the present Agreement.

**Entry, residence and departure**

34. The Special Representative and members of UNMIS shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Sudan.

35. The Government undertakes to facilitate the entry into and departure from Sudan, without delay or hindrance, of the Special Representative and members of UNMIS and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNMIS shall be exempt from passport and visa regulations and immigration inspection and restrictions, as well as from payment of any fees or charges on entering into or departing from Sudan. They shall also be exempt from any regulations governing the residence of aliens in Sudan, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Sudan.

36. For the purpose of such entry or departure, members of UNMIS 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 37 of the present Agreement, except in the case of first entry, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations or appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

**Identification**

37. The Special Representative shall issue to each member of UNMIS before or as soon as possible after such member’s first entry into Sudan, as well as to all locally recruited personnel and contractors, a numbered identity card, showing the bearer’s name and photograph. Except as provided for in paragraph 36 of the present Agreement, such identity card shall be the only document required of a member of UNMIS.

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

**Uniforms and arms**

39. Military members and United Nations military observers, United Nations military liaison officers and civilian police of UNMIS 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 UNMIS may be authorized by the Special Representative at other times. Military members, military observers, and civilian police of UNMIS, United Nations Security Officers and United Nations close protection officers designated by the Special Representative may possess and carry arms, ammunition and other items of military equipment, including global positioning devices, while on official duty in accordance with their orders. Those carrying weapons while on official duty other than those undertaking close protection duties must be in uniform at that time.

Permits and licenses

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

41. The Government agrees to accept as valid, and where necessary promptly to validate, free of charge and without any restrictions, licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by contractors exclusively for UNMIS. Without prejudice to the foregoing, the Government further agrees to grant promptly, free of charge and without any restrictions, necessary authorizations, licenses and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels.

42. Without prejudice to the provisions of paragraph 39, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNMIS for the carrying or use of firearms or ammunition in connection with the functioning of UNMIS.

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

43. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNMIS, including locally recruited personnel. To this end, personnel designated by the Special Representative shall police the premises of UNMIS and 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 UNMIS.

44. The military police of UNMIS shall have the power of arrest over the military members of UNMIS. 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 43 above may take into custody any other person on the premises of UNMIS. 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.

45. Subject to the provisions of paragraphs 26 and 28, officials of the Government may take into custody any member of UNMIS:
(a) When so requested, by the Special Representative; or

(b) When such a member of UNMIS is apprehended in the commission or attempt-
    ed 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 UNMIS,
    whereafter the provisions of paragraph 51 shall apply mutatis mutandis.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (b),
UNMIS 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.

47. UNMIS and the Government shall assist each other in carrying out all neces-
   sary 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 on the terms specified
   by the authority delivering them. Each party 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 44 to 46.

Safety and security

48. The Government shall ensure that the provisions of the Convention on the Safety
   of United Nations and Associated Personnel are applied to and in respect of UNMIS, its
   members and associated personnel and their equipment and premises. In particular:

   (i) The Government shall take all appropriate measures within its capabilities to
       ensure the safety, security and freedom of movement of UNMIS, its members and associ-
       ated personnel and their property and assets. It shall take all appropriate steps, within its
       capabilities, to protect members of UNMIS and its associated personnel and their equip-
       ment and premises from attack or any action that prevents them from discharging their
       mandate. This is without prejudice to the fact that all premises of UNMIS are inviolable
       and subject to the exclusive control and authority of the United Nations;

   (ii) If members of UNMIS or its associated personnel are captured, detained or
        taken hostage in the course of the performance of their duties and their identification has
        been established, they shall not be subjected to interrogation and they shall be promptly
        released and returned to United Nations or other appropriate authorities. Pending their
        release such personnel shall be treated in accordance with universally recognized stand-
        ards of human rights and the principles and spirit of the Geneva Conventions of 1949;

   (iii) The Government shall ensure that the following acts are established as crimes
        under its national law and make them punishable by appropriate penalties, taking into
        account their grave nature:

        a) A murder, kidnapping or other attack upon the person or liberty of any member
           of UNMIS or its associated personnel;

        b) A violent attack upon the official premises, the private accommodation or the
           means of transportation of any member of UNMIS or its associated personnel
           likely to endanger his or her person or liberty;
c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

d) An attempt to commit any such attack; and

e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack;

(iv) The Government shall establish its jurisdiction over the crimes set out in paragraph 48 (iii) above: (a) when the crime was committed on the territory of Sudan; (b) when the alleged offender is a national of Sudan; (c) when the alleged offender, other than a member of UNMIS, is present in the territory of Sudan, unless it has extradited such a person to the State on whose territory the crime was committed, or to the State of his or her nationality, or to the State of his or her habitual residence if he or she is a stateless person, or to the State of the nationality of the victim;

(v) The Government shall ensure the prosecution, without exception and without delay, of persons accused of acts described in paragraph 48 (iii) above who are present in the territory of Sudan (if the Government does not extradite them), as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNMIS or its members or associated personnel which, if committed in relation to the forces of the Government or against the local civilian population, would have rendered such acts liable to prosecution.

49. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect UNMIS, its members and associated personnel and their equipment during the exercise of their functions.

**Jurisdiction**

50. All members of UNMIS, 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 or for UNMIS and after the expiration of the other provisions of the present Agreement.

51. Should the Government consider that any member of UNMIS 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 26:

(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 57 of the present Agreement. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Sudan shall ensure that the member of UNMIS concerned is brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights, to which Sudan is a Party;
(b) Military members of the military component of UNMIS 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 Sudan.

52. If any civil proceeding is instituted against a member of UNMIS before any court of Sudan, 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 55 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. In that event, the courts and authorities of Sudan shall grant the member of UNMIS concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law. If the Special Representative certifies that a member of UNMIS is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant’s request, suspend the proceeding until the elimination of the disability, but for no more than ninety (90) days. Property of a member of UNMIS that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNMIS 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

53. The Special Representative or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNMIS who dies in Sudan, as well as that member’s personal property located within Sudan, in accordance with United Nations procedures.

VII. Limitation of liability of the United Nations

54. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to UNMIS, except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in paragraph 55 of the present Agreement, provided that the claim is submitted within six (6) months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss or injury, within six (6) months from the time he or she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of the operation. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within such financial limitations as have been approved by the General Assembly in its resolution 52/247 of 26 June 1998.
VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character, not resulting from the operational necessity of UNMIS, to which UNMIS or any member thereof is a party and over which the courts of Sudan 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 (30) days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General 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 (30) days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of UNMIS, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

56. 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.

57. All other disputes between UNMIS and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

58. 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 set out in section 30 of the Convention.

IX. Supplemental arrangements

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

X. Liaison

60. The Special Representative, the Force Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.
XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNMIS and to the facilities Sudan undertakes to provide to UNMIS, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

62. The present Agreement shall enter into force immediately upon signature by or for the Secretary-General of the United Nations and the Government.

63. The present Agreement shall remain in force until the departure of the final element of UNMIS from Sudan, except that:

   (a) The provisions of paragraphs 50, 53, 57 and 58 shall remain in force;
   (b) The provisions of paragraphs 54 and 55 shall remain in force until all claims made in accordance with the provisions of paragraph 54 have been settled.

64. Without prejudice to existing agreements regarding their legal status and operations in Sudan, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Sudan and perform functions in relation to UNMIS.

65. Without prejudice to existing agreements regarding their legal status and operations in Sudan, the provisions of the present Agreement may, as appropriate, be extended to specific specialized agencies and related organizations of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Sudan and perform functions in relation to UNMIS, provided that this is done with the written consent of the Special Representative, the specialized agency or related organization concerned and the Government.

IN WITNESS WHEREOF, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have, on behalf of the Parties, signed the present Agreement.

Done at Khartoum on the 28th day of the month of December 2005.

For the United Nations: For the Government of Sudan:
[Signed] Jan Pronk [Signed] Lam Akol
Special Representative of the Secretary-General Minister of Foreign Affairs or Sudan


Khartoum, 28 December 2005*

The United Nations Mission in Sudan (“UNMIS”) and the Government of National Unity of Sudan (“the Government”) (the Parties),

* Entered into force on 28 December 2005 by signature, in accordance with paragraph 12 of the Agreement.
Recalling the Agreement between the United Nations and Sudan Concerning the Status of the United Nations Mission in Sudan, signed at Khartoum on____ 2005 (the “SOFA”);

Recalling paragraph 59 of the SOFA that provides for supplemental arrangements,

UNMIS and the Government hereby agree as follows:

Travel and transport

1. The Parties will develop mutually acceptable procedures for determining the authenticity of the registration of United Nations vehicles, including motor vehicles and boats. Such procedures shall not prevent or hinder UNMIS from operating its vehicles.

Privileges and immunities

2. The obligation of officials of the United Nations, including locally recruited personnel of UNMIS, who are nationals of Sudan, to fulfill national service requirements under the law of Sudan shall be deferred for the duration of their employment with the United Nations.

3. UNMIS agrees that when they employ local recruited personnel, who are nationals of Sudan, they shall notify the Government of when that employment begins and ends. The Government agrees, upon notification from UNMIS, to exempt the individual from national service requirements for the duration of the individual’s service with UNMIS.

Entry, residence and departure

4. Upon request from UNMIS, the Government shall issue, without delay and free of charge, multiple entry visas to the SRSG and officials of the United Nations assigned to the civilian component of UNMIS, United Nations Volunteers, military observers, military liaison officers, military staff officers, United Nations civilian police and contractors. These shall be issued either at a Sudanese Embassy abroad or upon arrival in Sudan and shall be issued in a document recognized for international travel, such as a national passport, a United Nations laissez-passer or similar document issued by a competent authority.

5. Upon request from UNMIS, the Government shall issue, without delay and free of charge, multiple entry visas to UNMIS military personnel of national contingents, upon arrival, at their place of entry in Sudan.

6. The above visa issuance procedures are without prejudice to the provisions of paragraphs 35 and 36 of the SOFA and relevant privileges and immunities of the United Nations and its officials, of UNMIS and its members and contractors.

Safety and security/freedom of movement

7. UNMIS recognizes that the capacity of the Government to ensure the safety and security of United Nations members may be affected by such notifications, or the lack thereof, as are made available to it regarding the movement of UNMIS members.

8. The parties note that paragraph 65 of the SOFA requires the written consent of all three parties referred to therein, namely: the Government; the Special Representative;
and the special agency or related organization concerned, in order for the extension of the provisions of the SOFA to such agency or organization to take effect.

**Final provisions**

9. Nothing contained in, or relating to, this Agreement shall be deemed a waiver, express or implied, of any immunity or of any privilege, exemption or other immunity enjoyed by the United Nations and its officials, UNMIS and its officials, experts on mission, or by persons performing services on behalf of UNMIS, whether pursuant to the Convention on Privileges and Immunities of the United Nations of 1946, the SOFA, any other convention, or otherwise.

10. This arrangement may be modified in writing by mutual agreement of the Parties.

11. This supplemental arrangement is without prejudice to the provisions of the SOFA. It is subject to that Agreement and is not to be understood to derogate from any of its terms.

12. This supplemental arrangement shall enter into force on the date of its signature and shall remain in force for as long as the SOFA remains in force.

Done at Khartoum, on 28 of December 2005.

For the United Nations: For the Government of Sudan

[Signed] Jan Pronk [Signed] Lam Akol

Special Representative of the Secretary-General for Sudan Minister of Foreign Affairs of Sudan

3. Other agreements

(a) Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea.

Phnom Penh, 6 June 2003

WHEREAS the General Assembly of the United Nations, in its resolution 57/228 of 18 December 2002, recalled that the serious violations of Cambodian and international humanitarian law during the period of Democratic Kampuchea from 1975 to 1979 continue to be matters of vitally important concern to the international community as a whole;

WHEREAS in the same resolution the General Assembly recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security;

WHEREAS the Cambodian authorities have requested assistance from the United Nations in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, interna-

1 Entered into force on 29 April 2005 by notification, in accordance with article 32.
CHAPTER II

The purpose of the present Agreement is to regulate the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979. The Agreement provides, *inter alia*, the legal basis and the principles and modalities for such cooperation.

**Article 2. The Law on the Establishment of Extraordinary Chambers**

1. The present Agreement recognizes that the Extraordinary Chambers have subject matter jurisdiction consistent with that set forth in "the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea" (hereinafter: "the Law on the Establishment of the Extraordinary Chambers"), as adopted and amended by the Cambodian Legislature under the Constitution of Cambodia. The present Agreement further recognizes that the Extraordinary Chambers have personal jurisdiction over senior leaders of Democratic Kampuchea and those who were most responsible for the crimes referred to in article 1 of the Agreement.

2. The present Agreement shall be implemented in Cambodia through the Law on the Establishment of the Extraordinary Chambers as adopted and amended. The Vienna Convention on the Law of Treaties, and in particular its articles 26 and 27, applies to the Agreement.
3. In case amendments to the Law on the Establishment of the Extraordinary Chambers are deemed necessary, such amendments shall always be preceded by consultations between the parties.

Article 3. Judges

1. Cambodian judges, on the one hand, and judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations (hereinafter: “international judges”), on the other hand, shall serve in each of the two Extraordinary Chambers.

2. The composition of the Chambers shall be as follows:
   (a) The Trial Chamber: three Cambodian judges and two international judges;
   (b) The Supreme Court Chamber, which shall serve as both appellate chamber and final instance: four Cambodian judges and three international judges.

3. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to judicial offices. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. In the overall composition of the Chambers due account should be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

5. The Secretary-General of the United Nations undertakes to forward a list of not less than seven nominees for international judges from which the Supreme Council of the Magistracy shall appoint five to serve as judges in the two Chambers. Appointment of international judges by the Supreme Council of the Magistracy shall be made only from the list submitted by the Secretary-General.

6. In the event of a vacancy of an international judge, the Supreme Council of the Magistracy shall appoint another international judge from the same list.

7. The judges shall be appointed for the duration of the proceedings.

8. In addition to the international judges sitting in the Chambers and present at every stage of the proceedings, the President of a Chamber may, on a case-by-case basis, designate from the list of nominees submitted by the Secretary-General, one or more alternate judges to be present at each stage of the proceedings, and to replace an international judge if that judge is unable to continue sitting.

Article 4. Decision-making

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:
   (a) A decision by the Trial Chamber shall require the affirmative vote of at least four judges;
   (b) A decision by the Supreme Court Chamber shall require the affirmative vote of at least five judges.
2. When there is no unanimity, the decision of the Chamber shall contain the views of the majority and the minority.

Article 5. Investigating judges

1. There shall be one Cambodian and one international investigating judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.

2. The co-investigating judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to such a judicial office.

3. The co-investigating judges shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the investigation is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

4. The co-investigating judges shall cooperate with a view to arriving at a common approach to the investigation. In case the co-investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed unless the judges or one of them requests within thirty days that the difference shall be settled in accordance with article 7.

5. In addition to the list of nominees provided for in article 3, paragraph 5, the Secretary-General shall submit a list of two nominees from which the Supreme Council of the Magistracy shall appoint one to serve as an international co-investigating judge, and one as a reserve international co-investigating judge.

6. In case there is a vacancy or a need to fill the post of the international co-investigating judge, the person appointed to fill this post must be the reserve international co-investigating judge.

7. The co-investigating judges shall be appointed for the duration of the proceedings.

Article 6. Prosecutors

1. There shall be one Cambodian prosecutor and one international prosecutor competent to appear in both Chambers, serving as co-prosecutors. They shall be responsible for the conduct of the prosecutions.

2. The co-prosecutors shall be of high moral character, and possess a high level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.

3. The co-prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the prosecution is limited to senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
4. The co-prosecutors shall cooperate with a view to arriving at a common approach to the prosecution. In case the prosecutors are unable to agree whether to proceed with a prosecution, the prosecution shall proceed unless the prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with article 7.

5. The Secretary-General undertakes to forward a list of two nominees from which the Supreme Council of the Magistracy shall select one international co-prosecutor and one reserve international co-prosecutor.

6. In case there is a vacancy or a need to fill the post of the international co-prosecutor, the person appointed to fill this post must be the reserve international co-prosecutor.

7. The co-prosecutors shall be appointed for the duration of the proceedings.

8. Each co-prosecutor shall have one or more deputy prosecutors to assist him or her with prosecutions before the Chambers. Deputy international prosecutors shall be appointed by the international co-prosecutor from a list provided by the Secretary-General.

**Article 7. Settlement of differences between the co-investigating judges or the co-prosecutors**

1. In case the co-investigating judges or the co-prosecutors have made a request in accordance with article 5, paragraph 4, or article 6, paragraph 4, as the case may be, they shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

2. The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three appointed by the Supreme Council of the Magistracy, with one as President, and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General. Article 3, paragraph 3, shall apply to the judges.

3. Upon receipt of the statements referred to in paragraph 1, the Director of the Office of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.

4. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the co-investigating judges or the co-prosecutors. They shall immediately proceed in accordance with the decision of the Chamber. If there is no majority, as required for a decision, the investigation or prosecution shall proceed.

**Article 8. Office of Administration**

1. There shall be an Office of Administration to service the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges and the Prosecutors’ Office.

2. There shall be a Cambodian Director of this Office, who shall be appointed by the Royal Government of Cambodia. The Director shall be responsible for the overall management of the Office of Administration, except in matters that are subject to United Nations rules and procedures.
3. There shall be an international Deputy Director of the Office of Administration, who shall be appointed by the Secretary-General. The Deputy Director shall be responsible for the recruitment of all international staff and all administration of the international components of the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges, the Prosecutors’ Office and the Office of Administration. The United Nations and the Royal Government of Cambodia agree that, when an international Deputy Director has been appointed by the Secretary-General, the assignment of that person to that position by the Royal Government of Cambodia shall take place forthwith.

4. The Director and the Deputy Director shall cooperate in order to ensure an effective and efficient functioning of the administration.

**Article 9. Crimes falling within the jurisdiction of the Extraordinary Chambers**


**Article 10. Penalties**

The maximum penalty for conviction for crimes falling within the jurisdiction of the Extraordinary Chambers shall be life imprisonment.

**Article 11. Amnesty**

1. The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement.

2. This provision is based upon a declaration by the Royal Government of Cambodia that until now, with regard to matters covered in the law, there has been only one case, dated 14 September 1996, when a pardon was granted to only one person with regard to a 1979 conviction on the charge of genocide. The United Nations and the Royal Government of Cambodia agree that the scope of this pardon is a matter to be decided by the Extraordinary Chambers.

**Article 12. Procedure**

1. The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.

2. The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party. In the interest of securing a fair and public hearing and credibility of the
procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers. Any exclusion from such proceedings in accordance with the provisions of article 14 of the Covenant shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice.

Article 13. Rights of the accused

1. The rights of the accused enshrined in articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing; to be presumed innocent until proved guilty; to engage a counsel of his or her choice; to have adequate time and facilities for the preparation of his or her defence; to have counsel provided if he or she does not have sufficient means to pay for it; and to examine or have examined the witnesses against him or her.

2. The United Nations and the Royal Government of Cambodia agree that the provisions on the right to defence counsel in the Law on the Establishment of Extraordinary Chambers mean that the accused has the right to engage counsel of his or her own choosing as guaranteed by the International Covenant on Civil and Political Rights.

Article 14. Premises

The Royal Government of Cambodia shall provide at its expense the premises for the co-investigating judges, the Prosecutors' Office, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration. It shall also provide for such utilities, facilities and other services necessary for their operation that may be mutually agreed upon by separate agreement between the United Nations and the Government.

Article 15. Cambodian personnel

Salaries and emoluments of Cambodian judges and other Cambodian personnel shall be defrayed by the Royal Government of Cambodia.

Article 16. International personnel

Salaries and emoluments of international judges, the international co-investigating judge, the international co-prosecutor and other personnel recruited by the United Nations shall be defrayed by the United Nations.

Article 17. Financial and other assistance of the United Nations

The United Nations shall be responsible for the following:

(a) Remuneration of the international judges, the international co-investigating judge, the international co-prosecutor, the Deputy Director of the Office of Administration and other international personnel;

(b) Costs for utilities and services as agreed separately between the United Nations and the Royal Government of Cambodia;
(c) Remuneration of defence counsel;
(d) Witnesses’ travel from within Cambodia and from abroad;
(e) Safety and security arrangements as agreed separately between the United Nations and the Government;
(f) Such other limited assistance as may be necessary to ensure the smooth functioning of the investigation, the prosecution and the Extraordinary Chambers.

Article 18. Inviolability of archives and documents

The archives of the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration, and in general all documents and materials made available, belonging to or used by them, wherever located in Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

Article 19. Privileges and immunities of international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration

1. The international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, 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 and alien registration;
   (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. The international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration shall enjoy exemption from taxation in Cambodia on their salaries, emoluments and allowances.

Article 20. Privileges and immunities of Cambodian and international personnel

1. Cambodian judges, the Cambodian co-investigating judge, the Cambodian co-prosecutor and other Cambodian personnel shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement. Such immunity shall continue to be accorded after termination of employment with the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.

2. International personnel shall be accorded:
   (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement. Such immunity shall continue to be accorded after termination of employment with the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.
judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration;

(b) Immunity from taxation on salaries, allowances and emoluments paid to them by the United Nations;

(c) Immunity from immigration restrictions;

(d) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.

3. The United Nations and the Royal Government of Cambodia agree that the immunity granted by the Law on the Establishment of the Extraordinary Chambers in respect of words spoken or written and all acts performed by them in their official capacity under the present Agreement will apply also after the persons have left the service of the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.

Article 21. Counsel

1. The counsel of a suspect or an accused who has been admitted as such by the Extraordinary Chambers shall not be subjected by the Royal Government of Cambodia to any measure which may affect the free and independent exercise of his or her functions under the present Agreement.

2. In particular, the counsel shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of personal baggage;

(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 or civil jurisdiction in respect of words spoken or written and acts performed by them in their official capacity as counsel. Such immunity shall continue to be accorded to them after termination of their functions as a counsel of a suspect or accused.

3. Any counsel, whether of Cambodian or non-Cambodian nationality, engaged by or assigned to a suspect or an accused shall, in the defence of his or her client, act in accordance with the present Agreement, the Cambodian Law on the Statutes of the Bar and recognized standards and ethics of the legal profession.

Article 22. Witnesses and experts

Witnesses and experts appearing on a summons or a request of the judges, the co-investigating judges, or the co-prosecutors shall not be prosecuted, detained or subjected to any other restriction on their liberty by the Cambodian authorities. They shall not be subjected by the authorities to any measure which may affect the free and independent exercise of their functions.

Article 23. Protection of victims and witnesses

The co-investigating judges, the co-prosecutors and the Extraordinary Chambers shall provide for the protection of victims and witnesses. Such protection measures shall
include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the identity of a victim or witness.

**Article 24. Security, safety and protection of persons referred to in the present Agreement**

The Royal Government of Cambodia shall take all effective and adequate actions which may be required to ensure the security, safety and protection of persons referred to in the present Agreement. The United Nations and the Government agree that the Government is responsible for the security of all accused, irrespective of whether they appear voluntarily before the Extraordinary Chambers or whether they are under arrest.

**Article 25. Obligation to assist the co-investigating judges, the co-prosecutors and the Extraordinary Chambers**

The Royal Government of Cambodia shall comply without undue delay with any request for assistance by the co-investigating judges, the co-prosecutors and the Extraordinary Chambers or an order issued by any of them, including, but not limited to:

(a) Identification and location of persons;
(b) Service of documents;
(c) Arrest or detention of persons;
(d) Transfer of an indictee to the Extraordinary Chambers.

**Article 26. Languages**

1. The official language of the Extraordinary Chambers and the Pre-Trial Chamber is Khmer.

2. The official working languages of the Extraordinary Chambers and the Pre-Trial Chamber shall be Khmer, English and French.

3. Translations of public documents and interpretation at public hearings into Russian may be provided by the Royal Government of Cambodia at its discretion and expense on condition that such services do not hinder the proceedings before the Extraordinary Chambers.

**Article 27. Practical arrangements**

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Extraordinary Chambers, a phased-in approach shall be adopted for their establishment in accordance with the chronological order of the legal process.

2. In the first phase of the operation of the Extraordinary Chambers, the judges, the co-investigating judges and the co-prosecutors will be appointed along with investigative and prosecutorial staff, and the process of investigations and prosecutions shall be initiated.

3. The trial process of those already in custody shall proceed simultaneously with the investigation of other persons responsible for crimes falling within the jurisdiction of the Extraordinary Chambers.
4. With the completion of the investigation of persons suspected of having committed the crimes falling within the jurisdiction of the Extraordinary Chambers, arrest warrants shall be issued and submitted to the Royal Government of Cambodia to effectuate the arrest.

5. With the arrest by the Royal Government of Cambodia of indicted persons situated in its territory, the Extraordinary Chambers shall be fully operational, provided that the judges of the Supreme Court Chamber shall serve when seized with a matter. The judges of the Pre-Trial Chamber shall serve only if and when their services are needed.

**Article 28. Withdrawal of cooperation**

Should the Royal Government of Cambodia change the structure or organization of the Extraordinary Chambers or otherwise cause them to function in a manner that does not conform with the terms of the present Agreement, the United Nations reserves the right to cease to provide assistance, financial or otherwise, pursuant to the present Agreement.

**Article 29. Settlement of disputes**

Any dispute between the Parties concerning the interpretation or application of the present Agreement shall be settled by negotiation, or by any other mutually agreed upon mode of settlement.

**Article 30. Approval**

To be binding on the parties, the present Agreement must be approved by the General Assembly of the United Nations and ratified by Cambodia. The Royal Government of Cambodia will make its best endeavours to obtain this ratification by the earliest possible date.

**Article 31. Application within Cambodia**

The present Agreement shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

**Article 32. Entry into force**

The present 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.

Done at Phnom Penh on 6 June 2003 in two copies in the English language.

For the United Nations:

[Signed] Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

For the Royal Government of Cambodia:

[Signed] Sok An
Senior Minister in Charge of the Council of Ministers
(b) Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the International Criminal Court.
New York, 8 November 2005

Whereas the United Nations and the International Criminal Court (the “Court”) have concluded a Relationship Agreement between the United Nations and the International Criminal Court (the “Relationship Agreement”), which entered into force on 4 October 2004;

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding between the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court Regarding Coordination of Security Arrangements (the “MOU on Security Arrangements”), which entered into force on 22 February 2005;


Whereas United Nations Security Council resolution 1565 (2004) of 1 October 2004 provides, inter alia, that MONUC will have the mandate, in support of the Government of National Unity and Transition of the Democratic Republic of the Congo (the “Government”), to investigate human rights violations to put an end to impunity, and to continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations;

Whereas the Rome Statute of the International Criminal Court (the “Rome Statute”) was ratified by the Democratic Republic of the Congo on 11 April 2002 and entered into force for the Democratic Republic of the Congo on 1 July 2002;

Whereas the Government has referred to the Prosecutor of the Court (the “Prosecutor”) the situation of crimes within the jurisdiction of the Court which may have been committed on the territory of the Democratic Republic of the Congo since 1 July 2002 and that the Prosecutor has initiated an investigation;

Whereas, in article 10 of the Relationship Agreement, the United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required and whereas it is further stipulated in that article that the terms and conditions on which any such facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

† Entered into force on 8 November 2005 by signature, in accordance with article 25.
Whereas, in article 15 of the Relationship Agreement, with due regard to its responsibilities and competence under the Charter and subject to its rules as defined under applicable international law, the United Nations undertakes to cooperate with the Court;

Whereas, in article 18 of the Relationship Agreement, the United Nations undertakes, with due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, to cooperate with the Prosecutor of the Court and to enter with the Prosecutor into such arrangements or agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations under article 54 of the Statute;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in articles 10 and 18 of the Relationship Agreement;

Now, therefore, the United Nations, acting through MONUC, and the Court (the “Parties”) have agreed as follows:

Chapter I. General provisions

Article I. Purpose

This Memorandum of Understanding (the “MOU”) sets out the modalities of cooperation between the United Nations and the Court in connection with investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of the Democratic Republic of the Congo since 1 July 2002.

Article 2. Cooperation

1. The United Nations undertakes to cooperate with the Court and the Prosecutor in accordance with the specific modalities set out in this MOU.

2. This MOU may be supplemented from time to time by means of written agreement between the signatories or their designated representatives setting out additional modalities of cooperation between the United Nations and the Court or the Prosecutor.

3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms. In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3. Basic principles

1. It is understood that MONUC shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and areas of deployment and without prejudice to its ability to discharge its other mandated tasks.

2. The Court acknowledges that the Government has primary responsibility for the safety and security of all individuals, property and assets present on its territory. Without prejudice to the MOU on Security Arrangements, neither the United Nations nor MONUC shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor’s investigations. In particular, nothing
in this MOU shall be understood as establishing or giving rise to any responsibility on the part of the United Nations or MONUC to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Prosecutor in the course of his or her investigations.

Article 4. Reimbursement

1. All services, facilities, cooperation, assistance and other support provided to the Court by the United Nations or by MONUC pursuant to this MOU shall be provided on a fully reimbursable basis.

2. The Court shall reimburse the United Nations or MONUC in full for and in respect of all clearly identifiable direct costs that the United Nations or MONUC may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support pursuant to this MOU.

3. The Court shall not be required to reimburse the United Nations or MONUC for or in respect of:

   (a) Costs that the United Nations or MONUC would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Court pursuant to this MOU;

   (b) Any portion of the common costs of the United Nations or of MONUC;

   (c) Depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations or MONUC in the course of providing services, facilities, cooperation, assistance or support pursuant to this MOU.

Chapter II. Services, facilities and support

Article 5. Administrative and logistical services

1. At the request of the Court, MONUC is prepared to provide administrative and logistical services to the Court, including:

   (a) Access to MONUC’s information technology facilities, subject to compliance with MONUC’s information technology protocols, policies and rules, in particular with respect to the use of external applications and the installation of software;

   (b) With the prior written consent of the Government and on the understanding that the Court purchases compatible equipment for that purpose, access to MONUC’s internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within the Democratic Republic of the Congo;

   (c) Engineering and construction assistance;

   (d) Storage for items of Court owned equipment or property on a space-available basis, it being understood that risk of damage to, or deterioration or loss of, such equipment or property during its storage by MONUC shall lie with the Court. The Court hereby agrees to release the United Nations, including MONUC, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;
(e) Access to MONUC’s vehicle maintenance facilities for the purpose of first line maintenance of the Court’s vehicles, it being understood that MONUC is not in a position to guarantee parts, consumables, or workmanship;

(f) With the prior written consent of the Government, the sale at prevailing market rates of petrol, oil and lubricants (POL), subject to availability and to the priority that is to be accorded to MONUC’s own operational requirements;

(g) With the prior written consent of the Government, the sale at prevailing market rates of emergency rations (Meals Ready to Eat—MRE) and water, subject to availability and to the priority that is to be accorded to MONUC’s own operational requirements, it being understood that such items can only be sold where no alternative sources are available or in emergency situations, and provided that MONUC has surplus emergency stocks;

(h) Provided that staff/officials of the Court are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from the Democratic Republic of the Congo as are members of MONUC, assistance to staff/officials of the Court in completing those formalities when arriving or departing on flights that are also carrying members of MONUC. It is understood that it is the Court’s responsibility to ensure that its staff/officials are in possession of appropriate travel documents and that MONUC is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Court;

(i) On an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the Court on MONUC premises, it being understood that MONUC will consider requests for such services on a case-by-case basis, taking duly into consideration the security of its own members and assets and the availability of alternative suitable accommodation in the vicinity. It shall be a condition of the accommodation of any staff member/official of the Court on MONUC premises that he or she first sign a waiver of liability as set out in annex A* of this MOU. The Court shall advise its staff/officials concerned of this requirement and shall instruct them to complete and sign that waiver. MONUC and the Court shall make practical arrangements for the transmittal to MONUC of completed and signed waivers at least 5 (five) working days in advance of the arrival of the staff/officials concerned at the MONUC premises at which they are to be accommodated. The United Nations shall not be responsible in any way for the safety or security of any staff/officials of the Court who are accommodated on MONUC premises pursuant to a request by the Court.

2. The Court shall make requests for such services in writing. In making such requests, the Court shall specify the nature of the administrative or logistical services sought, when they are sought and for how long. MONUC shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, MONUC shall simultaneously inform the Court in writing of the date on which it is able to commence provision of the services concerned and of their estimated cost.

* The annex is not published herein. For the text of the annex, see United Nations, Treaty Series, vol. 2363.
3. Should MONUC, in its sole discretion, determine that the provision of the administrative or logistical services requested by the Court is beyond the staffing capabilities of MONUC, MONUC shall nevertheless provide such services if the Court first agrees to provide MONUC with the funds needed by it to recruit and pay for the services of additional administrative support staff to assist MONUC in performing the said administrative or logistical services and provides all related infrastructure and common services requirements necessary to accommodate such staff.

Article 6. Medical services

1. In the event of a medical emergency affecting staff/officials of the Court while they are present in MONUC’s areas of deployment, MONUC undertakes, subject to availability and to the security of its own members and assets, to provide, on request by the Court:

(a) On-site medical support to the staff/officials of the Court concerned, and

(b) Transportation to the nearest available appropriate medical facility, including emergency medical evacuation services to an appropriate country, it being understood that it is the Court’s responsibility to arrange for subsequent hospitalisation and further medical treatment in that country,

it being further understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. MONUC shall provide Level I medical services for staff/officials of the Court at MONUC’s United Nations owned medical facilities in the Democratic Republic of the Congo on a space-available basis, it being understood that, in the delivery of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

3. Level I, II or III medical services may be provided to staff/officials of the Court at facilities in the Democratic Republic of the Congo operated by MONUC’s troop contributing countries, subject to the consent of the competent authorities of the troop contributing country concerned and to agreement between MONUC and the Court, it being understood that, in the delivery of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations. MONUC shall be responsible for reimbursing the troop contributing country concerned for the costs of such services that may be provided to staff/officials of the Court. MONUC will then recover the sums concerned from the Court.

4. It is understood that no Level IV medical services are provided by MONUC in the Democratic Republic of the Congo, either at United Nations owned facilities or at facilities operated by troop contributing countries. The Court understands that it will need to make its own arrangements for such services, if desired or needed.

5. The Court shall advise its staff/officials travelling to the Democratic Republic of the Congo on official business of the requirement to complete and sign a Release from
Liability Form, as set out in annex B’ of this MOU, as a condition to obtaining medical services pursuant to this MOU and shall accordingly instruct them to complete and sign such a form before travelling and to carry a copy with them at all times while in the Democratic Republic of the Congo. MONUC and the Court shall make practical arrangements for the transmittal to MONUC of completed and signed forms in advance of the arrival of the staff/officials concerned in the Democratic Republic of the Congo. Without prejudice to the foregoing, it is nevertheless understood that no staff member or official of the Court will be denied medical services provided for in this MOU solely on the grounds of his or her not having previously completed and signed a Release from Liability Form if, at the time of the medical emergency or of arrival at the medical facility, he or she is physically unable to complete and sign such a form.

Article 7. Loan of items of United Nations owned equipment (UNOE)

1. At the request of the Court and with the prior written consent of the Government, MONUC is prepared temporarily to loan to the Court available items of United Nations owned equipment (“UNOE”).

2. The Court shall make such requests in writing. In making such requests, the Court shall specify the items of UNOE whose loan is being sought, when their loan is sought and for how long. MONUC shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, MONUC shall simultaneously inform the Court of the date on which the items of UNOE whose loan is sought can be provided.

3. In the event that MONUC agrees to loan any item of UNOE to the Court, MONUC and the Court shall execute an Agreement of Temporary Possession, as set out in annex C’ of this MOU.

4. The installation, regular maintenance and repair of items of UNOE temporarily loaned to the Court shall be carried out by MONUC.

5. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with assistance provided pursuant to this article:

   (a) Shall include the costs of installation and of repairs, other than regular maintenance, carried out by MONUC;

   (b) Shall not include the costs of regular maintenance carried out by MONUC.

6. It is understood that items of UNOE loaned to the Court pursuant to this MOU are provided on an “as is” basis. The Court acknowledges that neither MONUC nor the United Nations make any warranties, express or implied, as to the condition of such items or their suitability for any intended use.

7. The Court shall be fully responsible and accountable to MONUC for the custody and safekeeping of all items of UNOE temporarily loaned to it. It shall return such equipment to MONUC in the same condition as when it was loaned to it, reasonable wear and tear excepted. The Court shall compensate MONUC for any loss of, or damage to, such equipment beyond reasonable wear and tear.

* The annex is not published herein. For the text of the annex, see United Nations, Treaty Series, vol. 2363.
8. The Court shall, except as and when necessary to preserve the integrity of its proceedings or evidence, afford MONUC and its authorized personnel access at all reasonable times to premises in which any temporarily loaned item of UNOE is located for the purpose of inspecting, maintaining, installing or removing such item.

Article 8. Transportation

1. At the request of the Court and subject to signature of a waiver of liability by the staff member/official of the Court concerned as set out in annex D* of this MOU, MONUC shall provide aircraft passenger services to staff/officials of the Court on a space-available basis aboard its regular flights, it being understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

2. MONUC is prepared to give favourable consideration, when appropriate and on a case-by-case basis, to requests by the Court for additional ground time at landing sites.

3. MONUC may provide special flights to the Court at the Court’s request.

4. At the request of the Court and with the prior written consent of the Government, MONUC may provide assistance to the Court by transporting on MONUC aircraft witnesses who are voluntarily cooperating with the Court. MONUC will consider such requests on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, seat availability on MONUC aircraft and the availability of alternative means of transportation, such as commercial flights. Neither MONUC nor the United Nations shall be responsible for the security or safety of any witnesses whom MONUC might transport on its aircraft in response to such requests. It shall be a condition to the transportation of any witness on MONUC aircraft pursuant to such a request that the witness concerned first sign a waiver of liability as set out in annex E* of this MOU and that a staff member/official of the Court accompany the witness during the entire period of his or her transportation by MONUC. In the event that it is necessary to protect the identity of a particular witness, the Court and MONUC shall consult with each other, at the Court’s request, with a view to putting in place practical arrangements that will make it possible for the witness concerned to complete the waiver of liability as set out in annex E of this MOU while at the same time protecting his or her identity.

5. At the request of the Court and subject to the signature of a waiver of liability by the staff member/official of the Court concerned as set out in annex F* of this MOU, MONUC shall provide transportation in its motor vehicles to staff/officials of the Court on a space-available basis, it being understood that, in the provision of such services, staff/officials of the Court shall be accorded the same priority as is accorded to officials of the specialized agencies and of the other related organizations of the United Nations.

6. At the request of the Court and with the prior written consent of the Government, MONUC may provide assistance to the Court by transporting in MONUC motor vehicles witnesses who are voluntarily cooperating with the Court. The provisions of paragraph 4 of this article shall apply in respect of such requests, mutatis mutandis, except that the

* The annex is not published herein. For the text of the annex, see United Nations, Treaty Series, vol. 2363.
waiver that is to be signed by any witness who may be transported by MONUC pursuant to any such request shall be as set out in annex F of this MOU.

7. At the request of the Court, MONUC shall provide air or ground transportation services for items of Court owned equipment or property on a space-available basis, it being understood that, in the provision of such services, items of Court owned equipment or property shall be accorded the same priority as is accorded to equipment or property of the specialized agencies and of the other related organizations of the United Nations. Risk of damage to, or loss of, items of Court owned equipment or property during such transportation shall lie with the Court. The Court hereby agrees to release the United Nations, including MONUC, from any claim in respect of damage to, or loss of, such equipment or property.

8. The Court shall make all requests regarding the provision of transportation by MONUC under this article in writing. In making such requests, the Court shall specify for whom or what and the date on, and the locations between, which transportation is sought. MONUC shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. If MONUC accedes to a request, it shall simultaneously provide the Court with a written estimate of the cost of the transportation services chargeable to it.

9. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with services provided pursuant to this article shall include, inter alia, those arising from the payment by the United Nations of any additional insurance premiums and of any increase in fees for the charter of aircraft and, in the case of any special flights provided pursuant to paragraph 3 of this article, the cost of fuel consumed by United Nations or contingent owned aircraft and of helicopter or aircraft flying hours.

10. MONUC confirms to the Court that it is prepared, in principle, to give consideration to requests from the Government to assist the Government in the transportation of:

(a) Suspects or accused persons, for the purpose of their transfer to the Court;

(b) Witnesses who have received a summons from the competent authorities of the Democratic Republic of the Congo to attend for questioning, for the purpose of their transfer to the location in the Democratic Republic of the Congo identified in that summons.

Article 9. Military support

1. At the request of the Prosecutor and with the prior written consent of the Government, MONUC may provide military support to the Prosecutor for the purpose of facilitating his or her investigations in areas where MONUC military units are already deployed.

2. The Prosecutor shall make requests for such support in writing. When making such requests, the Prosecutor shall provide such information as the location, date, time and nature of the investigation that is to be conducted and the number of staff/officials of the Court involved, as well as an evaluation of the attendant risks of which he or she may be aware.

3. MONUC will review such requests on a case-by-case basis, taking into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities, the consistency of the support requested with its mandate.
and Rules of Engagement and the capacity of the Government to provide adequate security
for the investigation concerned. MONUC shall inform the Prosecutor in writing whether
or not it accedes to such requests as soon as possible and in any event within 10 (ten) work-
ing days of their receipt.

4. In the event that MONUC agrees to a request, MONUC shall, on the basis of the
information provided by the Prosecutor, determine in an operational order the extent,
nature and duration of the military support to be provided, together with an estimate of
the total reimbursable cost of the operation chargeable to the Court. The Prosecutor shall
acknowledge in writing his or her agreement to that operational order.

5. Any military units and equipment that MONUC might deploy pursuant to such an
order shall remain exclusively and at all times under MONUC’s command and control.

6. Without prejudice to article 4 of this MOU, it is understood that the costs that are
reimbursable by the Court in connection with support provided pursuant to this article
shall include, *inter alia*, the cost of fuel consumed by United Nations or contingent owned
vehicles, vessels or aircraft and of any helicopter or aircraft flying hours.

7. The provisions of this article shall also apply *mutatis mutandis* with respect to
requests submitted by the Registrar for the purpose of facilitating investigations pursuant
to an order of a Pre-Trial Chamber or a Trial Chamber.

**CHAPTER III. Cooperation and legal assistance**

*Article 10. Access to documents and information held by MONUC*

1. Requests by the Prosecutor for access to documents held by MONUC are gov-
erned by article 18 of the Relationship Agreement.

2. Requests by the Prosecutor for access to such documents shall be communicated
by the Prosecutor in writing to the Under-Secretary-General for Peacekeeping Operations
and simultaneously copied to the Legal Counsel of the United Nations and to the Special
Representative of the Secretary-General for the Democratic Republic of the Congo.

3. Such requests shall identify with a reasonable degree of specificity the document
or the category or categories of documents to which the Prosecutor wishes to be afforded
access, shall explain succinctly how and why such document or documents or the informa-
tion that they contain is relevant to the conduct of the Prosecutor’s investigations and
explain why that information cannot reasonably be obtained by other means or from some
other source.

4. The Under-Secretary-General for Peacekeeping Operations or an Assistant Sec-
retary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as
soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. The United Nations, acting through the Under-Secretary-General for Peacekeep-
ing Operations or an Assistant Secretary-General for Peacekeeping Operations, may, on
its own initiative, make available to the Prosecutor documents held by MONUC that the
United Nations may have reason to believe may be of use to the Prosecutor in generating
new evidence in connection with his or her investigations.

6. Unless otherwise specified in writing by the Under-Secretary-General for Peace-
keeping Operations or an Assistant Secretary-General for Peacekeeping Operations, docu-
ments held by MONUC that are provided by the United Nations to the Prosecutor shall be understood to be provided in accordance with and subject to the arrangements envisaged in article 18, paragraph 3, of the Relationship Agreement. The United Nations will affix to all documents so provided a stamp clearly marking them as “Article 54 Confidential—United Nations (MONUC)”.

7. Where documents have, or are to be understood as having, been provided by the United Nations in accordance with and subject to the arrangements envisaged in article 18, paragraph 3, of the Relationship Agreement, the Prosecutor shall restrict the availability of those documents within his or her Office on a strictly “need to know” basis. He or she shall also respect the safety of the sources of such documents and of the information that they contain and shall refrain from any action that might place those sources or their families in danger. Subject to these restrictions and conditions, it is understood that such documents are provided to the Prosecutor for the purpose of generating new evidence in connection with any investigations that he or she may conduct into crimes within the jurisdiction of the Court which may have been committed on the territory of the Democratic Republic of Congo since 1 July 2002.

8. In the event that the Prosecutor subsequently wishes to disclose any such document to another organ of the Court or to a third party, including to a suspect or to an accused, convicted or sentenced person or to his or her legal representative, the Prosecutor shall:

   (a) Submit a request in writing to the Under-Secretary-General for Peacekeeping Operations for the consent of the United Nations to such disclosure;

   (b) Simultaneously copy any such request to the Legal Counsel of the United Nations;

   (c) In the request, identify the organ, organs, person or persons to whom it is wished to disclose the document concerned and explain why such disclosure is sought;

   (d) Attach to the request a copy or copies of the document or documents concerned. Such an attachment may take the form of a diskette, compact disc (CD) or digital video disk (DVD) containing copies of the documents concerned in scanned form.

9. It is understood that the United Nations shall be free, in the case of any such request, either to decline it, or to accede to it without conditions, or to accede to it subject to such conditions, limitations, qualifications or exceptions as it might deem appropriate. In particular, the United Nations shall be free to accede to any such request on condition that the document be disclosed in redacted form only and to specify the redactions that shall be made to it for that purpose.

10. It is further understood that the consent of the United Nations to the disclosure of a document held by MONUC that has, or is understood to have, been provided by it in accordance with and subject to the arrangements envisaged in article 18, paragraph 3, of the Relationship Agreement may only be granted in writing, by the Under-Secretary-General for Peacekeeping Operations or by an Assistant Secretary-General for Peacekeeping Operations.

11. In the event that the response of the United Nations to a request for its consent to the disclosure of such a document occasions difficulties to the Prosecutor, the Prosecutor and the Under-Secretary-General for Peacekeeping Operations shall, at the Prosecutor’s
request, consult with a view to finding an appropriate way to resolve the matter in a manner that accommodates the needs, concerns and obligations of the United Nations and of the Prosecutor.

12. It is understood that, in the normal course of events, the United Nations will provide the Prosecutor with photocopies of documents held by MONUC and not with original versions. The United Nations is, nevertheless, prepared, in principle, to make available to the Prosecutor, on a temporary basis, the original versions of specific documents, should the Prosecutor indicate that such original versions are needed for evidentiary or forensic reasons. Requests for such original versions shall be communicated by the Prosecutor in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations. The United Nations undertakes to endeavour to accede to such requests whenever possible. It is nevertheless understood that the United Nations shall be free to decline any such request or to accede to it subject to such conditions, limitations, qualifications or exceptions as it might deem appropriate. It is further understood that the agreement of the United Nations to make available original versions of documents may only be given in writing, by the Under-Secretary-General for Peacekeeping Operations or by an Assistant Secretary-General for Peacekeeping Operations.

13. For the purposes of this article, documents are understood to include communications, notes and records in written form, including records of meetings and transcripts of audio- or video-taped conversations, facsimile transmissions, electronic mail, computer files and maps, whether generated by members of MONUC or received by MONUC from third parties.

14. References in this article to documents are to be understood to include other recorded forms of information, which may be in the form, *inter alia*, of audiotapes, including audiotapes of radio intercepts, video recordings, including video recordings of crime scenes and of statements by victims and potential witnesses, and photographs.

15. Without prejudice to article 4 of this MOU, it is understood that costs that are reimbursable by the Court in connection with assistance provided pursuant to this article shall include, *inter alia*:

(a) The costs of copying documents provided to the Prosecutor;
(b) The costs of transmitting those copies to the Prosecutor;
(c) Costs incurred in, or necessarily incidental to, making available and transmitting to the Prosecutor original versions of documents pursuant to paragraph 12 of this article.

16. The United Nations undertakes to alert the Prosecutor to developments in the situation in the Democratic Republic of the Congo which it may consider to be of relevance to the conduct of his or her investigations.

17. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor for Investigations, the Deputy Prosecutor for Prosecutions and the Head of the Jurisdiction, Complementarity and Cooperation Division.

18. The provisions of this article shall also apply *mutatis mutandis* with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber.
Article 11. Interview of members of MONUC

1. The United Nations undertakes to cooperate with the Prosecutor by taking such steps as are within its powers and capabilities to make available for interview by the Prosecutor members of MONUC whom there is good reason to believe may have information that is likely to be of assistance to the Prosecutor in the conduct of his or her investigations and that cannot reasonably be obtained by other means or from some other source. It is understood that, in the case of interviews conducted on the territory of the Democratic Republic of the Congo, MONUC will only so cooperate with the prior written consent of the Government.

2. Requests by the Prosecutor to interview members of MONUC shall be communicated in writing to the Under-Secretary-General for Peacekeeping Operations and simultaneously copied to the Legal Counsel of the United Nations and to the Special Representative of the Secretary-General for the Democratic Republic of the Congo.

3. Such requests shall identify the member of MONUC whom the Prosecutor wishes to interview, identify with a reasonable degree of specificity the category or categories of information that the Prosecutor believes that the member of MONUC concerned might be able to provide, explain succinctly how and why such information is relevant to the conduct of the Prosecutor’s investigations and explain why that information cannot reasonably be obtained by other means or from some other source.

4. The Under-Secretary-General for Peacekeeping Operations shall respond to the Prosecutor in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

5. It is understood that military members of national contingents assigned to the military component of MONUC remain subject to the military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once he or she has obtained the response of the Under-Secretary-General for Peacekeeping Operations to a request to interview a military member of a national contingent assigned to MONUC’s military component, he or she may need to approach the competent authorities of the State contributing the contingent to which that member of MONUC belongs with a view to arranging for him or her to be interviewed.

6. Whenever so requested by the Under-Secretary-General for Peacekeeping Operations, the Prosecutor shall accept the presence of a representative of the United Nations at and during the interview of a member of MONUC. The Under-Secretary-General for Peacekeeping Operations shall provide reasons in writing for any such request.

7. Unless otherwise specified by the Under-Secretary-General for Peacekeeping Operations, information provided by members of MONUC to the Prosecutor during the course of their interview shall be understood to be provided in accordance with and subject to the arrangements envisaged in article 18, paragraph 3, of the Relationship Agreement. The Court shall affix to all records of such interviews a stamp clearly marking them as “Article 54 Confidential—United Nations (MONUC)”. In the event that the Prosecutor may subsequently wish to disclose such information or records to another organ of the Court or to a third party, including to a suspect or to an accused, convicted or sentenced person or to his or her legal representative, the provisions of article 10, paragraphs 8 to 11, of this MOU shall apply, mutatis mutandis.
8. It is understood that members of MONUC who may be interviewed by the Prosecutor are not at liberty to provide the Prosecutor with copies of any confidential documents of the United Nations that might be in their possession. It is further understood that, if the Prosecutor wishes to obtain copies of such documents, he or she should direct any request to that end to the Under-Secretary-General for Peacekeeping Operations in accordance with article 10, paragraph 2, of this MOU. At the same time, it is understood that, unless otherwise specified by the Under-Secretary-General for Peacekeeping Operations, members of MONUC are at liberty to refer to such documents and disclose their contents in the course of their interview.

9. The provisions of this article shall also apply with respect to the interview by the Prosecutor of:

(a) Former members of MONUC;
(b) Contractors engaged by the United Nations or by MONUC to perform services or to supply equipment, provisions, supplies, materials or other goods in support of MONUC’s activities (“contractors”);
(c) Employees of such contractors (“employees of contractors”).

10. The Court shall bear all costs incurred in connection with the interview of members of MONUC.

11. The provisions of this article shall not apply to cases in which the Prosecutor wishes to interview a member of MONUC who the Prosecutor has reason to believe may be criminally responsible for a crime within the jurisdiction of the Court.

12. References in paragraphs 4, 5, 6 and 7 of this article to the Under-Secretary-General for Peacekeeping Operations are to be understood to include the Assistant Secretaries-General for Peacekeeping Operations.

13. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor for Investigations, the Deputy Prosecutor for Prosecutions and the Head of the Jurisdiction, Complementarity and Cooperation Division.

14. The provisions of this article shall also apply mutatis mutandis with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber.

**Article 12. Testimony of members of MONUC**

1. Requests by the Prosecutor for the testimony of officials of the United Nations assigned to serve with MONUC are governed by article 16 of the Relationship Agreement. That article shall also apply mutatis mutandis with respect to requests by the Court for the testimony of other members of MONUC, including United Nations Volunteers, military observers, military liaison officers, civilian police, experts performing missions for the United Nations and military members of national contingents assigned to serve with MONUC’s military component.

2. Requests by the Prosecutor for the testimony of members of MONUC shall be communicated in writing to the Legal Counsel of the United Nations and shall be simultaneously copied to the Under-Secretary-General for Peacekeeping Operations and to the Special Representative of the Secretary-General for the Democratic Republic of the Congo.
The Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs shall respond to the Court in writing as soon as possible and in any event within 30 (thirty) days of the receipt of the request.

3. Requests shall identify the member of MONUC whom the Prosecutor wishes to testify, identify with a reasonable degree of specificity the matter or matters on which the Prosecutor wishes the member of MONUC concerned to testify, explain succinctly how and why such testimony is relevant to the Prosecutor’s case and explain why testimony on the matter or matters concerned cannot reasonably be obtained from some other source.

4. It is understood that only the Legal Counsel of the United Nations or the Assistant Secretary-General for Legal Affairs may, on behalf of the Secretary-General, execute the waiver contemplated in article 16 of the Relationship Agreement in respect of a member of MONUC. It is further understood that any such waiver must be executed in writing.

5. It is understood that military members of national contingents assigned to the military component of MONUC remain subject to the military rules, regulations and discipline of the State contributing the contingent to which they belong. The Prosecutor accordingly understands that, once he or she has obtained the response of the Legal Counsel of the United Nations or of the Assistant Secretary-General for Legal Affairs to a request for the testimony of a military member of a national contingent assigned to MONUC’s military component, he or she may need to approach the competent authorities of the State contributing the contingent to which that member of MONUC belongs with a view to arranging for his or her testimony.

6. The provisions of this article shall also apply with respect to the testimony of:
   (a) Former members of MONUC;
   (b) Contractors;
   (c) Employees of contractors.

7. The Court shall bear all costs incurred in connection with the testimony of members of MONUC.

8. The provisions of this article shall not apply to cases in which the Court seeks to exercise its jurisdiction over a member of MONUC who may be alleged to be criminally responsible for a crime within the jurisdiction of the Court.

9. References in this article to the Prosecutor are to be understood to include the Deputy Prosecutor for Investigations, the Deputy Prosecutor for Prosecutions and the Head of the Jurisdiction, Complementarity and Cooperation Division.

10. The provisions of this article shall also apply mutatis mutandis with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of the Pre-Trial Chamber or a Trial Chamber.

**Article 13. Assistance in tracing witnesses**

1. At the request of the Prosecutor and with the prior written consent of the Government, MONUC may assist the Prosecutor by taking such steps as may be within its powers and capabilities to identify, trace and locate witnesses or victims not members of MONUC whom the Prosecutor wishes to contact in the course of his or her investigations and who there is good reason to believe may be present in MONUC’s areas of deployment.
MONUC will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the risks to victims or witnesses that may arise from any attempt by MONUC to identify, trace or locate them, as well as any attendant risks to their families, dependants or third parties.

2. The Prosecutor shall make requests for assistance under this article in writing. When making such requests, he or she shall provide MONUC in writing with an evaluation of the risks of which he or she is aware that are likely to be attendant on any attempt to identify, trace or locate the victims or witnesses concerned. MONUC shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. MONUC shall not be responsible for the safety or security of any witnesses or victims whom it may endeavour to identify and locate pursuant to this article, nor shall it be responsible for the safety or security of their families or dependants or of any third parties.

4. The provisions of this article shall also apply mutatis mutandis with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber.

**Article 14. Assistance in respect of interviews**

1. At the request of the Prosecutor and with the prior written consent of the Government, MONUC may agree to allow the Prosecutor to conduct on MONUC premises interviews of witnesses who are not members of MONUC and who are voluntarily cooperating with the Prosecutor in the course of his or her investigations. MONUC will consider such requests by the Prosecutor on a case-by-case basis, taking duly into consideration the security of its own members and assets, the performance of its other mandated tasks and operational priorities and the availability of suitable alternative locations for the conduct of such interviews.

2. The Prosecutor shall make requests for assistance under this article in writing. When making such requests, he or she shall explain in writing why the use of MONUC premises is being sought and shall provide MONUC in writing with an evaluation of the risks attendant on the interview of the witness concerned of which he or she may be aware. MONUC shall inform the Prosecutor in writing whether or not it accedes to a request as soon as possible and in any event within ten (10) working days of its receipt.

3. It shall be a condition to the interview of any witness on MONUC premises pursuant to this article that a staff member/official of the Court accompany the witness throughout the time that he or she is present on MONUC premises.

4. Neither MONUC nor the United Nations shall be responsible for the security or safety of any staff/officials of the Court or of any witnesses while they are on MONUC premises for the purpose of the conduct of interviews pursuant to this article.

5. The provisions of this article shall also apply mutatis mutandis with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber.
Article 15. Assistance in the preservation of physical evidence

1. At the request of the Prosecutor and with the prior written consent of the Government, MONUC may assist the Prosecutor by storing items of physical evidence for a limited period of time in secure rooms, closets or safes on MONUC premises.

2. The Prosecutor shall make such requests in writing. In making such requests, the Prosecutor shall specify the items of physical evidence whose storage is sought, where their storage is sought and for how long. MONUC shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 (ten) working days of its receipt. In the event that it accedes to a request, MONUC shall simultaneously inform the Court of the date on which storage can be provided, where and for how long.

3. Notwithstanding MONUC’s previous accession to a request to store a particular item of evidence, MONUC may, at any time and upon giving reasonable notice in writing, require the Prosecutor to remove that item from its premises.

4. It is understood that the risk of damage to, or deterioration or loss of, items of physical evidence during their storage by MONUC shall lie with the Court. The Court hereby agrees to release the United Nations, including MONUC, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such items of physical evidence.

5. The provisions of this article shall also apply mutatis mutandis with respect to requests submitted by the Registrar for the purpose of facilitating investigations pursuant to an order of a Pre-Trial Chamber or a Trial Chamber.

Article 16. Arrests, searches and seizures and securing of crime scenes

1. MONUC confirms to the Court that it is prepared, in principle and consistently with its mandate, to give consideration, on a case-by-case basis, to requests from the Government to assist the Government in:

   (a) Carrying out the arrest of persons whose arrest is sought by the Court;

   (b) Securing the appearance of a person whose appearance is sought by the Court;

   (c) Carrying out the search of premises and seizure of items whose search and seizure are sought by the Court;

it being understood that MONUC, if and when it accedes to such requests to assist the Government, does not in any way take over responsibilities that lie with the Government.

2. MONUC confirms to the Court that it is prepared, in principle and consistently with its mandate, to secure the scenes of possible crimes within the jurisdiction of the Court (crime scenes) which it may encounter in the course of carrying out its mandate, pending arrival of the relevant authorities of the Democratic Republic of the Congo. MONUC shall notify the Prosecutor as soon as possible of the existence of any such crime scene. MONUC further confirms to the Court that it is prepared, in principle and consistently with its mandate, to give consideration to requests from the Government to assist the Government in securing such crime scenes, pending arrival of staff/officials of the Court.
Chapter IV. Security

Article 17. Security arrangements

1. The provisions of this article are supplemental and additional to those of the MOU on Security Arrangements and shall be understood to be without prejudice to, and not to derogate in any manner from, its terms.

2. At the request of the Court, MONUC shall, upon presentation of a valid form of identification, issue to staff/officials of the Court identity cards granting them access to MONUC facilities as official visitors for the duration of their mission in the Democratic Republic of the Congo. The Court shall make such requests in writing, at least five (5) working days in advance of the arrival of the staff/officials concerned in the Democratic Republic of the Congo.

3. MONUC shall permit staff/officials of the Court to attend security-related briefings provided by MONUC, as and when deemed appropriate by the Special Representative of the Secretary-General for the Democratic Republic of the Congo.

4. MONUC shall, in case of emergency, provide temporary shelter within MONUC premises to staff/officials of the Court who present themselves at such premises and request protection, pending their emergency evacuation or relocation to another country, if necessary.

5. The Court shall inform MONUC, at least five (5) working days in advance of their arrival in the Democratic Republic of the Congo, of the identities of those staff/officials of the Court who will be carrying firearms and of the specifications of the firearms concerned.

6. Staff/officials of the Court carrying firearms shall, upon entering MONUC premises or boarding any MONUC vehicle, vessel or aircraft, report to the senior MONUC security officer or other senior member of MONUC present that they are carrying firearms and shall, upon request, surrender those firearms to MONUC for the duration of their stay on such premises or journey on such vehicle, vessel or aircraft. It is understood that the risk of damage to, or loss of, such firearms during their storage by MONUC shall lie with the Court. The Court hereby agrees to release the United Nations, including MONUC, and their officials, agents, servants and employees from any claim in respect of such damage or loss.

7. The Court shall instruct its staff/officials:

(a) To follow at all times security instructions and directives issued by or under the authority of the Special Representative of the Secretary-General for the Democratic Republic of the Congo;

(b) To comply at all times with operational directions or orders issued to them by members of MONUC while they are under their immediate protection;

(c) To comply at all times while they are on MONUC premises, are aboard MONUC vehicles, vessels or aircraft or are under the immediate protection of members of MONUC, with all MONUC instructions, directives and policies regarding the care, carriage, display and use of firearms.

8. MONUC confirms to the Court that, subject to the security of its own members, it is prepared to provide temporary shelter within MONUC premises to witnesses who are
not members of MONUC and who are cooperating with the Prosecutor in the course of his or her investigations in the event that they come under imminent threat of physical violence and present themselves at such premises and request protection.

**Chapter V. Implementation**

**Article 18. Payments**

1. MONUC shall submit invoices to the Court for the provision of services, facilities, cooperation, assistance and support under this MOU on a regular basis.

2. The Court shall make payment against such invoices within 30 (thirty) days of the date printed on them.

3. Payment shall be made in United States Dollars, either in cash or by means of bank transfer made payable to the United Nations bank account specified on the invoice concerned.

**Article 19. Communications**

1. MONUC and the Court or the Prosecutor, as the case may be, shall each designate official contact persons exclusively responsible:

   (a) For making, receiving and responding to requests under articles 5, 7, 8, 9, 13, 14, 15 and 17 of this MOU for administrative and logistical services, the loan of items of UNOEU, transportation, military support, assistance in tracing witnesses, assistance in respect of interviews, assistance in the preservation of physical evidence and the issuance of identity cards;

   (b) For transmitting and receiving medical release forms under article 6, paragraph 4, of this MOU;

   (c) For providing and receiving notifications regarding firearms under article 17, paragraph 5, of this MOU; and

   (d) For submitting and receiving invoices and for making and receiving payments under article 18 of this MOU.

These designated official contact persons shall be the exclusive channels of communication on these matters between MONUC and the Court or the Prosecutor.

2. All requests, notices and other communications provided for or contemplated in this MOU shall be made in writing, either in English or in French.

3. All requests and communications provided for or contemplated in this MOU shall be treated as confidential, unless the Party making the request or communication specifies otherwise in writing. The United Nations, MONUC, the Court and the Prosecutor shall restrict the dissemination and availability of such requests and communications and the information that they contain within their respective organizations or offices on a strictly “need to know” basis. They shall also take the necessary steps to ensure that those handling such requests and communications are aware of the obligation strictly to respect their confidentiality.
Article 20. Consent of the Government

Until such time as MONUC and the Government may conclude an agreement by which the Government gives its written consent to MONUC providing the Court and its Prosecutor with the services, facilities, cooperation, assistance and support that are provided for in article 8, paragraphs 4 and 6, and in articles 9, 13, 14 and 15 and, when provided on the territory of the Democratic Republic of the Congo, the assistance provided for in article 11 of this MOU, it shall be the responsibility of the Court or the Prosecutor, as the case may be, to obtain the prior written consent of the Government, as provided for in those articles.

Article 21. Planning

The Court shall regularly prepare and submit to MONUC a rolling work plan for the three months ahead, indicating the nature and scope of the services, facilities, cooperation, assistance and support that it anticipates requesting from MONUC pursuant to articles 5, 7, 8, 9, 11, 13, 14 and 15 of this MOU, as well as the size, timing and duration of each of the missions that it anticipates sending to the Democratic Republic of the Congo during that time.

Article 22. Consultation

1. The Parties shall keep the application and implementation of this MOU under close review and shall regularly and closely consult with each other for that purpose.

2. The Parties shall consult with each other at the request of either Party on any difficulties, problems or matters of concern that may arise in the course of the application and implementation of this MOU.

3. Any differences between the Parties arising out or in connection with the implementation of this MOU shall be settled by consultations between the Prosecutor or the Court, as the case may be, and the Under-Secretary-General for Peacekeeping Operations or an Assistant Secretary-General for Peacekeeping Operations. If such differences are not settled by such consultations, they shall be referred to the President of the Court and to the Secretary-General of the United Nations for resolution.

Article 23. Indemnity

1. Each Party shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the other Party, its officials, agents, servants and employees from and against, all suits, proceedings, claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys’ fees, settlement payments, damages and all other related costs and expenses (the “Liability”), brought by its officials, agents, servants or employees, based on, arising out of, related to, or in connection with the implementation of this MOU, unless the Liability results from the gross negligence or willful misconduct of the other Party or of the other Party’s officials, agents, servants or employees.

2. The Court shall, at its sole cost and expense, be responsible for resolving, and shall indemnify, hold and save harmless, and defend the United Nations, including MONUC, and their officials, agents, servants and employees from and against, all suits, proceedings,
claims, demands, losses and liability of any nature or kind, including, but not limited to, all litigation costs, attorneys’ fees, settlement payments, damages and all other related costs and expenses (the “Liability”), brought by third parties, including, but not limited, to invitees of the Court, witnesses, victims, suspects and accused, convicted or sentenced persons or any other third parties, based on, arising of, related to, or in connection with the implementation of this MOU, unless the Liability results from the gross negligence or wilful misconduct of the United Nations, including MONUC, or their officials, agents, servants or employees.

Chapter VI. Miscellaneous and final provisions

Article 24. Assistance to MONUC

This MOU does not apply in respect of any activities that the Prosecutor might undertake, at the request of the Special Representative of the Secretary-General for the Democratic Republic of the Congo, in order to assist MONUC in conducting its own investigations into a particular matter or incident. The terms on which any such assistance is given shall be the subject of separate arrangements between the Prosecutor and MONUC.

Article 25. Final provisions

1. This MOU shall enter into force on the date of its signature by the Parties.

2. This MOU shall remain in force indefinitely, notwithstanding the eventual termination of MONUC’s mandate.

3. This MOU may be modified or amended by written agreement between the Parties.

4. The annexes to this MOU are an integral part of this MOU.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have affixed their signatures, this 8 day of November 2005 at New York.

For and on behalf of the United Nations: For and on behalf of the Court:
[Signed] Jean-Marie Guéhenno [Signed] Luis Moreno-Ocampo
Under-Secretary-General for Peacekeeping Prosecutor
Operation

[Signed] Bruno Cathala
Registrar
New York, 8 December 2005.

Preamble

The United Nations Organization (hereinafter the “UN”) and the Government of the United States of America (hereinafter the “USG”), referred to collectively as “the Parties” and individually as “Party”;

Noting United Nations Security Council resolutions 1483 (2003), 1500 (2003), 1511 (2003), 1546 (2004) and other relevant resolutions and the reports of the Secretary-General of the United Nations and of the representatives of the United States before the Security Council, relating to the establishment and continuing presence in Iraq of a multinational force under unified command (the Multinational Force in Iraq or MNF-I) to contribute to the maintenance of security and stability in Iraq and to provide security for the UN presence in Iraq, including the United Nations Assistance Mission for Iraq (UNAMI);

Noting that the MNF-I is presently under the unified command of the United States of America;

Noting the letter of June 5, 2004, from Secretary of State Powell to the President of the Security Council annexed to UN Security Council resolution 1546 (2004);

Recalling also the letter of November 11, 2004, from the Chargé d’affaires ad interim of the Permanent Mission of the United States of America to the UN in New York addressed to the Under-Secretary-General for Political Affairs of the UN and the Under-Secretary-General’s reply of November 19, 2004, addressed to the Permanent Representative of the United States of America, setting out the mutual understanding of the USG and the UN of the security framework for UN personnel and facilities in Iraq, pending the conclusion of further detailed arrangements;


Desiring to take steps to provide a secure environment in which the United Nations is able to fulfill its important role in facilitating Iraq’s reconstruction and assisting the Iraqi people and government in the formation of institutions for representative government;

Noting the commitment of the Parties in assisting the people of Iraq and promoting the maintenance of security and stability in Iraq to act in accordance with international law; and

Recognizing the sovereign State of Iraq and its duly elected Government;

Have agreed as follows:

* * *

* Entered into force on 8 December 2005 by signature, in accordance with article VI of the Agreement.
1. For the purpose of ensuring the safety and security of UN personnel in Iraq so they can effectively perform their tasks, the USG shall exercise its authority as Commander, MNF-I, including over the distinct entity under the unified command of the MNF-I with a dedicated mission to provide security for the UN presence in Iraq, including the UNAMI, to endeavor to ensure that the security tasks described in this Agreement are undertaken by the MNF-I to the extent that such tasks are determined by the Commander to be operationally feasible and consistent with operational requirements. Security surrounding designated UNAMI premises shall be established on the basis of three concentric areas of responsibility: an inner area, a middle area, and an outer area. It is envisioned that establishment of security in the foregoing areas shall be based on the following understandings:

   a. The inner area or ring consists of designated UNAMI premises comprised of buildings and structures and the area immediately surrounding them up to and including the perimeter wall. Security in this area or ring shall be the responsibility of the UN.

   b. The middle area or ring consists of the area immediately surrounding and controlling access to designated UNAMI premises, including approaches to such premises. The middle area shall in each case include one or more secure vehicle and personnel search areas, located a safe distance from the perimeter wall of the concerned premises. Security in this area or ring shall be the responsibility of the MNF-I. Elements of the MNF-I in the outer area shall support units assigned to the middle area, as necessary. The MNF-I shall designate a quick reaction force for this purpose.

   c. The outer area or ring consists of all areas of Iraq outside of the middle and inner areas. Security in this area or ring shall be the responsibility of the MNF-I, in coordination with the Iraqi Security Forces (ISF), consistent with UN Security Council resolution 1546 (2004).

   d. The MNF-I shall provide: security for movements of UN personnel outside of designated UNAMI premises, including security of non-UNAMI premises that UN personnel may visit in the course of their official duties; search and rescue services support; damage survey and control support; emergency medical support, including emergency medical evacuation services; temporary, emergency evacuation of UN personnel from UNAMI premises; explosive device disposal services, as necessary, and hostage recovery support, when requested.

   e. The MNF-I and UNAMI shall develop and coordinate plans to address circumstances that might necessitate the temporary, emergency evacuation of personnel from UNAMI premises.

2. Should it be anticipated that the MNF-I will not be in the position to perform a particular task set forth in this article, or that it will only be able to do so at a substantially reduced level, because it is not operationally feasible or is inconsistent with operational requirements, the MNF-I shall, without delay, provide UNAMI with advance notification. In such an event, the MNF-I and UNAMI shall consult in accordance with paragraph 4 of article III of this Agreement concerning the prioritization of security tasks in support of UNAMI.
3. The UN shall take all necessary and appropriate steps to maintain and safeguard, preserve, and enhance the security of all UN officials and personnel present in Iraq consistent with the tasks described herein.

4. The Parties understand that, consistent with and as contemplated by UN Security Council resolution 1546 (2004), the ISF will progressively play a greater role in and will ultimately assume full responsibility for the maintenance of security and stability in Iraq. It is envisioned that the ISF will accordingly progressively assume responsibilities that are the MNF-I’s under this Agreement. This assumption of responsibility will occur at such time as the ISF are deemed, by the Commander, MNF-I, in consultation with UNAMI, to be tactically capable of providing such security and related services and the ISF agree to do so.

5. For the purposes of this Agreement, “UN personnel” means:
   a. The Special Representative of the Secretary-General for Iraq (“the SRSG”), officials of the United Nations assigned to serve with and persons assigned to perform missions for UNAMI in Iraq, and members of the United Nations Guard Unit established pursuant to the Security Council’s decision of October 1, 2004; and
   b. Officials of, and experts performing missions for, the specialized agencies and related organizations and the offices, funds and programs of the United Nations who are deployed to Iraq under the coordination of the SRSG and UNAMI and who have been cleared to travel to Iraq for that purpose by the UN Under-Secretary-General for Safety and Security.

Article II. Exchange of information

1. The Parties shall exchange in timely manner information on the security situation in Iraq, including security assessments, updates and incident reports, maps of the location of minefields and unexploded ordnance, hazard identification and analysis, route-status warnings, warnings of emergent threats, and threat analysis.

2. The Parties shall protect all classified or sensitive information that is provided by the other Party to it under this Agreement in accordance with the requirements of the providing Party so that it is given the equivalent level of protection as that given by the providing Party. UNAMI and the MNF-I are to jointly develop procedures for the communication, handling, dissemination, protection, storage and destruction of such information.

Article III. Coordination and implementation

1. The United States Department of Defense (DOD) shall carry out the provisions of this Agreement on behalf of the USG, and UNAMI shall carry out the provisions of this Agreement on behalf of the UN in close consultation and coordination with all appropriate levels.

2. MNF-I, on behalf of DOD, and UNAMI, on behalf of the UN, shall develop non-legally binding supplemental arrangements, as may be appropriate, in implementation of this Agreement including, inter alia, determinations related to the parameters of the inner and middle rings; measures related to minimization of risks to UN personnel during
MNF-I operations; methods, modalities and timing of notifications; and modalities related to the provision of temporary emergency evacuation services.

3. Nothing in this Agreement is intended to affect the authorities or privileges and immunities of the UN, including UNAMI, or the MNF-I, including as set forth in the UN Charter, UN Security Council resolution 1546 and other relevant resolutions. The Parties may address modalities for addressing these issues in such supplemental arrangements as may be developed under this article.

4. The SRSG and the Commander, MNF-I, or their designated representatives, shall meet regularly and upon request to review, or resolve issues arising from, the implementation of this Agreement and any supplemental arrangements as may be developed under this article. The Parties shall consult with each other without delay at the request of either Party on any difficulties or concerns that may arise in the implementation of this Agreement and any supplemental arrangements as may be developed under this article.

5. Nothing in this Agreement derogates from the Parties’ obligations related to reimbursement for services and commodities requested and received under the 607 Agreement. All services and commodities provided under this Agreement that are reimbursable under the 607 Agreement shall remain reimbursable in accordance with that Agreement.

6. Should it be decided that the unified command of the MNF-I is to be transferred to the armed forces of another State or that the ISF is to assume and the MNF-I is to relinquish any of the responsibilities provided for in this Agreement as envisioned in paragraph 4 of article I, the USG shall provide as much advance notice as possible to the UN of the plans concerned.

**Article IV. Claims**

The USG and the UN, including UNAMI, waive all claims they may have against each other for damage to, or loss or destruction of its property or injury or death to its personnel arising out of activities undertaken pursuant to this Agreement. Claims of third parties filed against the USG or the UN, including UNAMI, for damages or loss caused by their respective personnel and arising from activities under this Agreement shall be resolved by the Party against which such claims are filed in accordance with the laws, rules, and regulations applicable to that Party.

**Article V. Settlement of disputes**

1. Any dispute arising under this Agreement and any supplemental arrangements developed under article III of this Agreement shall be resolved at the lowest levels, if possible. Disputes that cannot be resolved at a lower level shall be forwarded to the appropriate authorities of the MNF-I and UNAMI for resolution.

2. In the event that there is continued disagreement between the Parties, consultations shall be continued through diplomatic channels. In no case shall any dispute arising under this Agreement and any supplemental arrangements developed under article III of this Agreement be referred to a third party for resolution.

**Article VI. Entry into force, termination and amendment**

1. This Agreement shall enter into force upon signature by both Parties.
2. This Agreement shall terminate upon the occurrence of any of the following events: the USG relinquishes Command of MNF-I, or the mandate of the MNF-I contained in UN Security Council resolution 1546 and any subsequent resolutions expires or is terminated, or the MNF-I relinquishes and the ISF assumes all of the responsibilities that are the MNF-I’s under this Agreement, or the Agreement is terminated by either Party upon 90 days written notice to the other Party.

3. This Agreement may be amended by the written agreement of the Parties.

4. Notwithstanding the termination of this Agreement, the obligations of the Parties pursuant to paragraph 2 of article II and article IV that arise before such termination shall continue to apply, unless otherwise agreed to in writing by the Parties.

Done at New York, this 8 day of December 2005, in duplicate.

For the United Nations Organization: For the Government of the United States of America:


Under-Secretary-General for Political Affairs Permanent Representative of the United States to the United Nations

4. International Court of Justice

Exchange of notes constituting an agreement between the Kingdom of the Netherlands and the International Court of Justice concerning the status of International Court of Justice trainees in the Netherlands.

The Hague, 14 October 2004

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the International Court of Justice and, with reference to the Exchange of Letters dated 26 June 1946 between the President of the International Court of Justice and the Minister for Foreign Affairs of the Netherlands as well as to the consultations between the Ministry and the Court regarding the registration of trainees who have been accepted by the Court into its traineeship programme in the Netherlands, has the honour to propose the following:

1. For the purposes of the present exchange of Notes, a “trainee” means a person who has been accepted by the International Court of Justice into its traineeship programme for the purpose of performing certain tasks for the Court without receiving salary from the Court therefor. A trainee shall in no case fall under the definition of official of the Court.

2. Within eight (8) days after first arrival of a trainee in the Netherlands, the International Court of Justice shall request the Ministry of Foreign Affairs to register the trainee in accordance with paragraph 3.

1 Entered into force provisionally on 14 October 2004 and definitively on 19 April 2005, in accordance with the provisions of the letters.
3. The Ministry of Foreign Affairs shall register a trainee for the purpose of his traineeship with the Court for a maximum period of one year, provided that the Court supplies the Ministry of Foreign Affairs with a declaration signed by the trainee, accompanied by adequate proof, to the effect that:
   
a) The trainee entered the Netherlands in accordance with the applicable immigration procedures;
   
b) The trainee has sufficient financial means for living expenses and for repatriation, as well as sufficient medical insurance (including coverage of costs of hospitalization for at least the duration of the traineeship plus one month) and third party liability insurance, and will not be a charge on the public purse of the Netherlands;
   
c) The trainee will not work in the Netherlands during his or her traineeship otherwise than as a trainee at the International Court of Justice;
   
d) The trainee will not bring any family members to reside with him or her in the Netherlands other than in accordance with the applicable immigration procedures;
   
e) The trainee will leave the Netherlands within 14 days after the end of the traineeship unless he or she is otherwise entitled to stay in the Netherlands in accordance with the applicable immigration legislation.

4. Upon registration of the trainee in accordance with paragraph 3, the Ministry of Foreign Affairs shall issue an identity card bearing the code ZF to the trainee.

5. The International Court of Justice shall not incur liability for damage resulting from non-fulfilment, by trainees registered in accordance with paragraph 3, of the conditions of the declaration referred to in that paragraph.

6. Trainees shall not enjoy any privileges or immunities.

7. In exceptional circumstances, the maximum period of one year mentioned in paragraph 3 may be extended once by a maximum period of one year.

8. The International Court of Justice shall notify the Ministry of Foreign Affairs of the final departure of the trainee from the Netherlands within eight (8) days after such departure, and shall at the same time return the trainee’s identity card.

If this proposal is acceptable to the Court, the Ministry suggests that this Note and the Court’s affirmative reply to it shall together constitute an Agreement between the Kingdom of the Netherlands and the International Court of Justice, of which the French and English texts are equally authentic and which shall be applied provisionally as from the date of such reply and which 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.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.

The International Court of Justice
Peace Palace
2517 KJ The Hague
The Hague, 14 October 2004

The International Court of Justice presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to acknowledge receipt of the Ministry’s Note DJZ/VE-949/04 of 14 October 2004, which reads as follows:

[See note I]

The International Court of Justice has the honour to inform the Ministry of Foreign Affairs that the proposal is acceptable to the Court. The Court accordingly agrees that the Ministry’s Note and this reply shall constitute an Agreement between the International Court of Justice and the Kingdom of the Netherlands, of which the French and English texts are equally authentic and which shall be applied provisionally as from the date of such reply and which 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.

The International Court of Justice avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Kingdom of the Netherlands the assurances of its highest consideration.

Ministry of Foreign Affairs
The Hague

5. United Nations Children’s Fund

Geneva, 8 November 2004.*

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* Entered into force on 24 June 2005, in accordance with article XXIII.
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_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 to 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 Republic of Bulgaria 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, cooperate in programmes in Bulgaria,

NOW, THEREFORE, UNICEF and the Government, in a spirit of friendly cooperation, have entered into the present Agreement.

(Article I. 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;


(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 Republic of Bulgaria;
(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 Republic of Bulgaria;

(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 Nations 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, decisions, 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 operations

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 the Government, UNICEF, 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 the Government, UNICEF 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 for 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 an 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 an office in the country, it may, with the agreement of the Government, provide support for programmes of cooperation agreed to between the Government and UNICEF 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.

2. 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 organizations;

   (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, transportation 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 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 customs duties shall be levied on the supplies, equipment and other materials imported by UNICEF 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 the value-added 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 rendered 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, copyright rights 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 groups 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 and 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 direct taxes, value-added tax, fees or tolls; 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.

Article 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 the 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.

The privileges, immunities and facilities provided under subparagraphs (d), (e), (f), and (g) above should be accorded only to internationally-recruited UNICEF officials.

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 customs 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

UNICEF officials, experts on mission and persons performing services for UNICEF shall be entitled:

(a) To prompt clearance and issuance, free of charge, of visas, licences or permits, where required;

(b) To unimpeded access to or from the country, and within the country, to all sites of cooperation activities, to the extent necessary for the implementation of programmes of cooperation.

Article XVII. Locally recruited personnel assigned to hourly rates

The terms 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 administrative facilities necessary for the independent exercise of their functions for UNICEF as may be agreed between the Parties.

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 12 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 Telecommunication 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 licenses for, and shall not impose undue restrictions on, the acquisition or use and 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 Republic of Bulgaria 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 for 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 wilful misconduct.

**Article XXII. Settlement of disputes**

Any dispute between the Government and UNICEF 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 the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

**Article XXIII. Entry into force**

1. The present Agreement shall enter into force, following signature, on the day after the exchange between the Parties of an instrument of ratification by the National Assembly of the Republic of Bulgaria and of an instrument constituting an act of formal confirmation by UNICEF.

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 appointed representative of UNICEF and duly authorized authorized plenipotentiary of the Government, have on behalf of the Parties signed the present Agreement.

Done at Geneva, this 8th day of November, 2004, in duplicate in the English language, which shall be the authoritative language. A translation of the Agreement into Bulgarian will be exchanged through official channels.

For the United Nations Children’s Fund: For the Government:
Signed MARIA CALIVIS
Regional Director for Central and Eastern Europe and the Commonwealth of Independent States:

For the United Nations Children’s Fund: For the Government:
Signed H.E. DIMITER TZANTCHEV
Permanent Representative of the Republic of Bulgaria to the United Nations and the other International Organizations in Geneva

6. Office of the United Nations High Commissioner for Refugees


The Office of the United Nations High Commissioner for Refugees (UNHCR) and the Government of the Federal Republic of Germany (host country),

Whereas the Office of the United Nations High Commissioner for Refugees was established by resolution 319 (IV) of the General Assembly of the United Nations of 3 December 1949,

Whereas the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly of the United Nations with resolution 428 (V) of 14 December 1950, provides inter alia that the High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

1 Entered into force provisionally on 1 July 2005 by signature, in accordance with article 5.
Whereas the Office of the United Nations High Commissioner for Refugees was established by the General Assembly as a subsidiary organ on the basis of Article 22 of the Charter of the United Nations and is thus an integral part of the United Nations, and therefore its status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, which was adopted by the United Nations General Assembly on 13 February 1946,

Whereas article 16 of the Statute of the Office of the United Nations High Commissioner for Refugees provides that the High Commissioner shall consult the governments of the countries of residence of refugees as to the need for appointing representatives therein, and if such a need is recognized, a representative approved by the government of that country may be appointed,

Whereas the Office of the United Nations High Commissioner for Refugees has been active in the Federal Republic of Germany since 26 September 1951, where personnel of the Office have been granted unimpeded access at any time to refugees and other persons coming within its mandate, thereby enabling the Office of the United Nations High Commissioner for Refugees to fulfil its mandate, and where the Office has maintained a representation at the Federal Office for the Recognition of Foreign Refugees ever since the latter was established in 1953,

have agreed as follows:

Article 1. Definitions

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


b) “UNHCR office” means all offices and premises, installations and facilities, that are held and used by the UNHCR in the host country.

c) “UNHCR officials” means all persons who are employed by the UNHCR on the basis of the Staff Regulations and Rules of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates, as provided in resolution 76 (1) of the General Assembly of the United Nations of 7 December 1946.

Article 2. Purpose and scope of the Agreement

This Agreement shall regulate matters relating to or arising out of the application mutatis mutandis of the UNV Headquarters Agreement to UNHCR and which concern the UNHCR office in the host country.

Article 3. Application of the UNV Headquarters Agreement

(1) The UNV Headquarters Agreement is to apply mutatis mutandis to UNHCR.
(2) The terms in the UNV Headquarters Agreement listed in subparagraphs (a) to (d) below are to be read as follows:

(a) “The UNV” or “the programme” means UNHCR;
(b) “The Executive Coordinator” means the UNHCR official who heads the UNHCR office in the host country;
(c) “The Headquarters district” means the UNHCR offices as defined in article 1 (b) above;
(d) “Officials of the Programme” means the UNHCR officials as defined in article 1 (c) above.

Article 4. Legal capacity

(1) UNHCR shall possess in the host country legal capacity, in particular the capacity
   — To contract,
   — To acquire and dispose of movable and immovable property,
   — To institute legal proceedings.

(2) For the purpose of this article, UNHCR shall be represented by the UNHCR official who heads the UNHCR office in the host country.

Article 5. Final provisions

(1) 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. It shall be provisionally applied as might be necessary from the date of its signature until the formal requirements for entry into force mentioned in the first sentence above have been fulfilled.

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

(3) The present Agreement shall cease to be in force twelve months after either of the Parties gives notice in writing to the other of its intention 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 UNHCR’s activities in the host country and the disposition of its property therein, and the resolution of any disputes between the Parties to this Agreement.

(4) All disputes between the Parties arising out of or relating to this Agreement are to be settled in accordance with the procedure set out in article 26 (2) of the UNV Headquarters Agreement.

Done at Berlin on 1 July 2005 in duplicate in the English and the German languages, both texts being equally authentic.

For the Office of the United Nations High Commissioner for Refugees

[Signed]

For the Government of the Federal Republic of Germany

[Signed]

WHEREAS the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly resolution 319 (IV) of 3 December 1949,

WHEREAS the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in its resolution 428 (V) of 14 December 1950 provides, inter alia, that the High Commissioner, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

WHEREAS the Office of the United Nations High Commissioner for Refugees, a subsidiary organ established by the General Assembly pursuant to Article 22 of the Charter of the United Nations, is an integral part of the United Nations, whose status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,

WHEREAS the Statute of the Office of the United Nations High Commissioner for Refugees provides in its article 16 that the High Commissioner shall consult the governments of the countries of residence of refugees as to the need for appointing representatives therein and that in any country recognising such need, there may be appointed a representative by the government of that country,

WHEREAS the Office of the United Nations High Commissioner for Refugees and the Government of the Democratic Socialist Republic of Sri Lanka wish to establish the terms and conditions under which the Office, within its mandate with regard to refugees, and also at the express request of the Government of the Democratic Republic of Sri Lanka with regard to offering protection and relief to internally displaced persons, shall be represented in the country,

NOW THEREFORE, the Office of the United Nations High Commissioner for Refugees and the Government of the Democratic Socialist Republic of Sri Lanka, in spirit of friendly cooperation, have entered into this Agreement.

Article I. Definitions

For the purpose of this Agreement the following definitions shall apply:

(a) “UNHCR” means the Office of the United Nations High Commissioner for Refugees.

1 Entered into force on 7 December 2005 by signature, in accordance with article XVI.
(b) “High Commissioner” means the United Nations High Commissioner for Refugees or the officials to whom the High Commissioner has delegated authority to act on his behalf.

(c) “Government” means the Government of the Democratic Socialist Republic of Sri Lanka.

(d) “Host Country” or “Country” means the Democratic Socialist Republic of Sri Lanka.

(e) “Parties” means UNHCR and the Government.


(g) “UNHCR Office” means all the offices and premises, installations and facilities occupied or maintained in the country.

(h) “UNHCR Representative” means the UNHCR official in charge or the UNHCR office in the country.

(i) “UNHCR officials” means all members of the staff of UNHCR employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who arc recruited locally and assigned to hourly rates as provided in General Assembly resolution 76 (1).

(j) “Experts on mission” means individuals, other than UNHCR officials or persons performing services on behalf of UNHCR, undertaking missions for UNHCR.

(k) “Persons performing services on behalf of UNHCR” means natural and juridical persons and their employees, other than nationals of the host country, retained by UNHCR to execute or assist in the carrying out of its programmes.

(l) “UNHCR personnel” means UNHCR officials, experts on mission and persons performing services on behalf of UNHCR.

**Article II. Purpose of this Agreement**

This Agreement embodies the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government open and/or maintain an office or offices in the country, and carry out its international protection and humanitarian assistance functions in favour of refugees, asylum-seekers and internally displaced persons.

This Agreement shall also apply to UNHCR funded projects to be implemented by the Government, as provided in article III, paragraph 3 below.

**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, asylum-seekers and internally displaced persons, shall be carried out on the basis of the Statute of UNHCR, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs and of article 35 of the Convention relating to the Status of Refugees of 1951 and articles 2
of the Protocol relating to the Status of Refugees of 1967 (attached as annexes I, II and III to the present Agreement), and in accordance with the United Nations Guiding Principles for the Internally Displaced.

2. The UNHCR office shall maintain consultations and cooperation with the Government with respect to the preparation and review of projects for refugees, asylum-seekers and internally displaced persons.

3. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitment of the Government and the High Commissioner with respect to the furnishing of funds, supplies, equipment and services or other assistance for refugees shall be set forth in project agreements to be signed by the Government and UNHCR.

4. The Government shall at all times grant UNHCR personnel unimpeded access to refugees, asylum-seekers and internally displaced persons, and to the sites of UNHCR projects in order to monitor all phases of their implementation.

Article IV. UNHCR office

1. The Government welcomes that UNHCR establishes and maintains an office or offices in the country for providing international protection and humanitarian assistance to refugees, asylum-seekers and internally displaced persons.

2. The UNHCR office will exercise functions as assigned by the High Commissioner, in relation to his mandate, including the establishment and maintenance of relations between UNHCR and other governmental or non-governmental organizations functioning in the country.

Article V. UNHCR personnel

1. UNHCR may assign to the office in the country such officials or other personnel as UNHCR deems necessary for carrying out its international protection and humanitarian assistance functions.

2. The categories of officials and the names of the officials included in these categories, and of other personnel assigned to the office in the country, shall be communicated to the Government periodically, normally on a quarterly basis, unless the Government requests an earlier communication.

3. UNHCR officials, experts on mission and other persons performing services on behalf of UNHCR shall be provided by the Government with a special identity card certifying their status under this Agreement.

4. UNHCR may designate officials to visit the country for purposes of consulting and cooperating with the corresponding officials of the Government or other parties involved in 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 supplies, equipment, and other materials, furnished by UNHCR; (c) seeking permanent solutions for the problem of refugees, asylum-seekers and internally displaced persons; 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 take such measures as may be necessary to facilitate the implementation of UNHCR humanitarian programmes by UNHCR officials/experts on missions and persons performing services on behalf of the UNHCR and shall also ensure that regulations or other legal provisions will not prejudice the operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees, asylum-seekers and internally displaced persons in the country. Such measures shall include the authorization to operate, in accordance with applicable procedures and free of licensing fees, UNHCR radio and other telecommunications equipment; the grant of air traffic rights and exemption of landing charges and royalties for aircraft engaged in emergency relief cargo transportation, transportation of refugees and/or UNHCR personnel. The exemption of royalties will apply to landing, parking and over-flying charges only.

2. The Government shall facilitate to the extent possible that the UNHCR office is supplied with the necessary public services and that such public services are supplied on terms not less favourable than those accorded to the United Nations Development Programme in Sri Lanka.

3. The Government shall take the necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel.

Article VII. Privileges and immunities

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials and experts on mission the relevant provisions of the General Convention (attached as annex IV* to the present Agreement). The Government also agrees to grant UNHCR and its personnel such additional privileges and immunities as may be mutually determined to be necessary for the effective exercise of the international protection and humanitarian assistance functions of UNHCR.

2. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR and its personnel the privileges, immunities, rights and facilities provided in articles VIII to X of this Agreement.

Article VIII. UNHCR office, property, funds and assets

1. UNHCR, its property, funds, and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case it has expressly waived its immunity; it being understood that this waiver shall not extend to any measure of execution.

* The annex is not published herein. For the text of the Convention, see United Nations, Treaty Series, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).
2. The premises of UNHCR office shall be inviolable. The property, funds and assets of UNHCR, wherever situated 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.

3. The archives of UNHCR, and in general all documents belonging to or held by it, shall be inviolable.

4. The funds, assets, income and other property of UNHCR shall be exempt from:
   (a) Any form of direct taxation, provided that UNHCR will not claim exemption from untaxed charges for public utility services;
   (b) Customs duties and prohibitions and restrictions on articles imported or exported by UNHCR for its official use, provided that articles imported under such exemption will not be sold in the country except under conditions agreed upon with the Government;
   (c) Customs duties and prohibitions and restrictions in respect of the import and export of its publications.

5. The import or supply of goods and services to UNHCR and international officials as defined in article X.1. below will be exempted from Value Added Tax (VAT) as granted under Protocol Note Verbale Number PR/POL/OI dated 4 June 2002, and from other duties or taxes afforded to diplomatic missions.

6. Any materials imported, exported or purchased in the country by UNHCR either directly or by an international implementing partner duly accredited by UNHCR to act on its behalf in connection with humanitarian assistance to refugees, and provided the consignee remains UNHCR, shall be exempt from customs duties, prohibitions and restrictions as well as from direct or indirect tax.

7. UNHCR shall not be subject to any financial controls, regulations or moratoria and may freely:
   (a) Acquire from authorised commercial agencies, hold and use negotiable currencies, maintain foreign-currency accounts, and acquire through authorised institutions, hold and use funds, securities and gold;
   (b) Bring funds, securities, foreign currencies and gold into the host country from any other country, use them within the host country or transfer them to other countries.

8. UNHCR shall enjoy the most favourable legal rate of exchange.

Article IX. Communication facilities

1. UNHCR shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government, including its diplomatic missions, or to other intergovernmental, international organizations in matters of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications, as well as rates for information to the press and radio.

2. The Government shall secure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings.
3. UNHCR shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags which shall have the same privileges and immunities as diplomatic couriers and bags.

4. The Government shall ensure that UNHCR be enabled to effectively operate its radio and other telecommunication equipment, including satellite communications systems, on networks using the frequencies allocated by or coordinated with the competent national authorities under the applicable International Telecommunications Union’s regulations and norms currently in force.

Article X. UNHCR officials

1. The UNHCR Representative shall enjoy, while in the country, in respect of himself, spouse and dependents, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys. For this purpose the Ministry of Foreign Affairs shall include his name in the diplomatic list.

2. UNHCR officials, while in the country, shall enjoy the following facilities, privileges and immunities:
   
   (a) Immunity from personal arrest and detention;
   
   (b) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with UNHCR;
   
   (c) Immunity from inspection and seizure of official luggage;
   
   (d) Immunity from any military service obligations or any other obligatory service;
   
   (e) Exemption, with respect to themselves, their spouses, their relatives dependent on them and other members of their households, from immigration restriction and alien registration;
   
   (f) Exemption from taxation in respect of salaries and all other remuneration paid to them by the UN/UNHCR;
   
   (g) Prompt clearance and issuance, without cost, of visas, licences or permits, if required, and free movement within, to or from the country to the extent necessary for the carrying out of UNHCR’s international protection and humanitarian assistance programmes;
   
   (h) The same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of the UNDP office in Sri Lanka;
   
   (i) The same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on them and other members of their households as are accorded in time of international crisis to diplomatic envoys;
   
   (j) The right to import:

   (i) Within 6 months of first taking up their post in Sri Lanka, free of duty, taxes and other levies, prohibitions and restrictions on imports, their furniture, appliances, and other effects including automobiles and other articles for personal use and consumption and not for gift or sale. Any goods and articles imported under such exemption shall normally be re-exported and shall not be sold within Sri Lanka, except with the prior permission of and subject to such terms as may
be agreed upon with the Government. If sold within Sri Lanka, such goods and articles will be liable to normal duties and taxes, and;

(ii) After first taking up their posts in Sri Lanka, free of duty, taxes and other levies, and without prohibition and restrictions on imports, reasonable quantities of food stuff and other articles for personal use and consumption and not for gift or sale, in accordance with applicable procedures and existing rules as established between the Government and the UNDP.

3. UNHCR officials who are nationals of, or permanent residents in the host country, shall enjoy those privileges and immunities provided for in the General Convention.

**Article XI. Locally recruited personnel assigned to hourly rates**

1. Persons recruited locally and assigned to hourly rates to perform services for UNHCR shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity.

2. The terms and conditions of employment for locally recruited personnel assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, regulations and rules and the applicable laws and regulations of Sri Lanka.

**Article XII. Experts on mission**

1. Experts performing missions 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:

   (a) Immunity from personal arrest or detention;

   (b) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity shall continue to be accorded notwithstanding that they are no longer employed on missions for UNHCR;

   (c) Inviolability for all papers and documents;

   (d) For the purpose of their official communications, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

   (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

   (f) The same immunities and facilities including immunity from inspection and seizure in respect of their personal baggage as are accorded to diplomatic envoys.

**Article XIII. Persons performing services on behalf of UNHCR**

1. Except as the Parties may otherwise agree, the Government shall grant to all persons performing services on behalf of UNHCR, other than nationals of the host country employed locally, the privileges and immunities specified in article V, section 18, of the General Convention. In addition, they shall be granted:

   (a) Prompt clearance and issuance, without cost, of visas, licences or permits necessary for the effective exercise of their functions;
(b) Free movement within, to or from the country, to the extent necessary for the implementation of the UNHCR humanitarian programmes.

*Article XIV. Waiver of immunity*

Privileges and immunities are granted to UNHCR personnel in the interests of the United Nations and 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 it can be waived without prejudice to the interests of the United Nations and UNHCR.

*Article XV. Settlement of disputes*

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

*Article XVI. General provisions*

1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue to be in force until terminated under paragraph 5 of this article.

2. This Agreement shall be interpreted in light of its primary purpose, which is to enable UNHCR to carry out its international mandate for refugees, and the Government of the Democratic Republic of Sri Lanka's request for UNHCR's support on behalf of internally displaced persons, fully and efficiently and to attain its humanitarian objectives in the country.

3. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with 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.

4. Consultations with a view to amending this Agreement may be held at the request of the Government or UNHCR. Amendments shall be made by joint written agreement.

5. 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, except as regards the normal cessation of the activities of UNHCR in the country and the disposal of its property in the country.
6. This Agreement supersedes and replaces the Memorandum of Understanding between UNHCR and the Government signed on 31 August of 1987.

IN WITNESS THEREOF the undersigned, being duly appointed representatives of the United Nations High Commissioner for Refugees and the Government, respectively, have on behalf of the Parties signed this Agreement.

Done a Colombo this 7th day of December 2005.

For the Office of the United Nations High Commissioner for Refugees

[Signed]

For the Government of the Democratic Socialist Republic of Sri Lanka

[Signed]

7. **Office of the United Nations High Commissioner for Human Rights**


The United Nations High Commissioner for Human Rights (hereinafter: the “OHCHR” or the “High Commissioner”) and the Government of the Kingdom of Nepal (hereinafter “His Majesty’s Government”),

Reaffirming the purposes and principles of the Charter of the United Nations, in particular international cooperation in promoting and encouraging respect for human rights,

Recognizing the importance of observing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments,

Considering the commitment undertaken by the Kingdom of Nepal, in signing and ratifying international human rights treaties, in extending invitations to the mechanisms of the Commission on Human Rights, and in implementing the recommendations made to it by the treaty bodies and special mechanisms of the Commission on Human Rights,

Considering also the reaffirmation of these commitments by the His Majesty’s Government in its declaration of 26 March 2004 entitled “His Majesty’s Government’s Commitment on the Implementation of Human Rights and International Humanitarian Law”,

Bearing in mind the interest of His Majesty’s Government to establish an OHCHR Office in Nepal, with a mandate to assist the Nepalese authorities in formulating and implementing policies and programmes for the promotion and protection of human rights, and to monitor developments in the country’s human rights situation, including the observance of international humanitarian law, and submit to the High Commissioner and, through her, to the Commission on Human Rights and the General Assembly, analytic reports on the human rights situation in Nepal, including the observance of international humanitarian law, and an overview of activities carried out by the OHCHR in Nepal,

* Entered into force provisionally on 10 April 2005 by signature, in accordance with article XXII.
Bearing in mind the mandate conferred on the High Commissioner by the General Assembly of the United Nations in its resolution 48/141 of 20 December 1993, in promoting and protecting human rights,

Noting the Memorandum of Understanding between the United Nations High Commissioner for Human Rights and His Majesty’s Government of Nepal concerning technical assistance to the National Human Rights Commission of Nepal signed on 13 December 2004,

Considering that the Office contemplated in this Agreement would have significant potential in promoting and protecting fundamental human rights, as well as facilitating the implementation of human rights commitments undertaken by His Majesty’s Government, including those contained in the international human rights treaties signed and ratified by Nepal,

Have agreed as follows:

Article I. Definitions

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

(a) “Office” means the Office of the United Nations High Commissioner for Human Rights in Kathmandu, and any other sub-offices which may be established in Nepal, in consultation with His Majesty’s Government;

(b) “His Majesty’s Government” means the Government of the Kingdom of Nepal;

(c) “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 and to which Nepal is party since 28 September 1965;

(d) “Parties” means the United Nations and the Government of the Kingdom of Nepal;

(e) “Head of the Office” means the United Nations official in charge of directing and supervising, on behalf and under the authority of the High Commissioner, the activities of the Office;

(f) “Officials of the Office” means the Head of the Office and all members of its staff, employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and are assigned to hourly rates, as provided for in United Nations General Assembly resolution 76 (I) of 7 December 1946;

(g) “Experts on missions” means individuals, other than officials of the United Nations, performing missions for OHCHR within the scope of article VI of the Convention;

Article II. Purpose and territorial scope of the Agreement

The purpose of this Agreement is to establish the Office of the High Commissioner in Nepal, regulate the status of the Office and its personnel, and facilitate its activities in cooperation with the His Majesty’s Government.
Article III. Application of the Convention

The Convention shall be applicable to the Office, its property, funds and assets and to its officials and experts on missions in Nepal.

Article IV. Mandate, general objectives and standards for operation of the Office

1. In accordance with its mandate set out in General Assembly resolution 48/141 of 20 December 1993 and this Agreement, the Office shall monitor the observance of human rights and international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, with a view to advising the authorities of Nepal on the formulation and implementation of policies, programmes and measures for the promotion and protection of human rights in Nepal, and the submission by the High Commissioner of analytic reports to the Commission on Human Rights, the General Assembly, and the Secretary-General. The Office shall provide advisory services and support in the areas of its competence to representatives of civil society, human rights non-governmental organizations and individuals.

2. The activities of the Office shall be guided by the following standards:

   (a) All activities of the Office shall be aimed at fulfilling its mandate and achieving its objectives;

   (b) The Office shall function, subject at all times to the provisions of the present Agreement, as a centre for consultations and dialogue, promoting a climate of trust in all sectors involved in and concerned by human rights issues and maintaining contact and coordination with the national Government;

   (c) The Office shall act with discretion and shall be guided, in its relations with all sectors involved in the areas of its competence, by the principles of the United Nations, including impartiality, independence, objectivity and transparency.

Article V. Functions of the Office

1. The Office shall have the following functions as prescribed by its mandate, which shall be exercised under the authority of the High Commissioner:

   (a) Monitor the situation of human rights and observance of international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, including investigation and verification through the deployment of international human rights officers throughout the country as required;

   (b) Engage all relevant actors, including non-state actors, for the purpose of ensuring the observance of relevant international human rights and humanitarian law;

   (c) Inform the competent authorities on human rights violations and other abuses in cases where it believes that domestic legal procedures applied by the competent national authorities are not consistent with those set forth in international instruments, and/or in cases where no or insufficient action has been taken and formulate recommendations with a view to possible preventive or remedial action by national authorities where the Office deems that the circumstances so require. To this end, the Office shall receive any information from any source, be it particular, private, public or official on these matters, which it could find relevant; the identity of the authors of the information may be kept confidential.
The Office may also recommend and promote measures to protect the authors of the information it receives, the victims and witnesses to the facts alleged therein. The Office shall counsel and encourage persons submitting information to it to bring any charges before the competent authorities as expeditiously as possible;

(d) Without prejudice to the autonomy of the Office to establish such contacts as it considers necessary to carry out its activities, the Office shall maintain constant communication with all competent government agencies, both civil and military, and with civil society organizations for the promotion and defence of human rights, with a view to observing and ensuring the independent and impartial follow-up of the human rights situation, taking into account the national context. To that end, the Office shall agree with His Majesty’s Government and with the competent State entities on the design and implementation of permanent mechanisms for communication, consultation and dialogue with the above-mentioned sectors;

(e) Advise the executive branch on the overall definition and in particular the implementation of human rights policies. Advice will also be provided to the legislative and judicial branches of His Majesty’s Government with a view to ensuring that all human rights legislation and judicial decisions are consistent with the relevant international instruments and commitments;

(f) Advise representatives of civil society and individuals on all matters related to the promotion and protection of human rights, including the use of national and international protection mechanisms;

(g) Advise and assist the National Human Rights Commission in the discharge of its statutory mandate, including promotion, protection and reporting, as per the Human Rights Act of 1997 and His Majesty’s Human Rights Commitment of 26 March 2004;

(h) Advise State and non-governmental entities on human rights education programmes and appropriate professional training programmes;

(i) Advise the United Nations Resident Coordinator and the Country Team on human rights protection and capacity-building in support of the peace process and development programming and coordinate human rights promotion and protection activities of the United Nations Country Team in Nepal;

(j) Ensure that the recommendations and decisions of the human rights bodies of the United Nations and other international organizations are taken into account by those government entities which have authority and responsibilities in that area, and advise them on the adoption of specific measures for their implementation;

2. The Office shall inform His Majesty’s Government regularly of any concerns and assessments it has with regard to issues covered by its mandate with a view to encouraging dialogue on those issues and eliciting His Majesty’s Government’s views on them. The Office shall issue public reports and statements as and when determined by the High Commissioner for Human Rights.

3. The Office shall report to the High Commissioner on the activities it carries out pursuant to its mandate and functions, any conditions which have facilitated or impeded its work, commitments and subsequent measures undertaken by His Majesty’s Government and recommendations on future actions.
4. The High Commissioner shall submit detailed and analytic public reports to the Commission on Human Rights of the United Nations as well as to the Secretary-General and the General Assembly, on the observance of human rights and international humanitarian law in Nepal, as well as an overview of activities carried out by the OHCHR in Nepal. It shall also make such comments and recommendations as it deems appropriate. For the purposes of implementing their respective mandates, the High Commissioner shall make the relevant information gathered by the Office available to the monitoring bodies for those human rights treaties to which Nepal is a party and to other United Nations human rights mechanisms and programmes.

The conclusions of the Office shall be based on an analysis and evaluation of elements concerning the facts and responsibility. Those conclusions and its recommendations shall be the results of the observation prescribed by its mandate and shall be aimed at encouraging the relevant actors to act in conformity with international human rights instruments and international obligations, including both human rights and humanitarian law. The High Commissioner shall share the report with His Majesty’s Government for informative purposes, prior to its submission to the Commission on Human Rights.

5. His Majesty’s Government may give its opinion of the reports of the High Commissioner referred to in the preceding paragraph, making any observations it deems appropriate on its content, which the High Commissioner will transmit to the Commission on Human Rights.

6. His Majesty’s Government shall make every effort to ensure that government institutions, including the National Human Rights Commission, receiving cooperation and advisory services from the Office are provided with sufficient resources to implement their mandate and the recommendations formulated by the Office. In this respect, the independence and integrity of the National Human Rights Commission will be safeguarded, in conformity with the Paris Principles adopted by the General Assembly in 1993.

7. His Majesty’s Government shall make every effort to disseminate the Office’s mandate and its statements and reports to all its officials, including the security forces, with a view to promoting cooperation by State authorities and institutions and to effectively contributing to the full implementation of the Office’s mandate.

8. His Majesty’s Government shall make every effort to respond to inquiries by the Office, and take prompt remedial action to ensure compliance with Nepal’s international human rights and humanitarian law obligations.

Article VI. Status of the Office

1. The headquarters of the Office shall be located in Kathmandu, with Sub-offices to be established in other locations in Nepal. The size of the Office and its staffing levels, in terms of international and national staff, shall be at the discretion of the High Commissioner for Human Rights, bearing in mind the views of His Majesty’s Government.

2. The Office, its property, funds and assets wherever located and by whomever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case, the Secretary-General of the United Nations has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.
3. The premises of the Office shall be inviolable. The property, funds and assets of the Office, wherever located and by whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

4. The archives of the Office, and in general all documents belonging to or held by it, shall be inviolable.

5. The appropriate authorities shall not enter the Office premises, except with the express consent of the Head of the Office and under conditions agreed to by him or her.

**Article VII. Funds, assets and other property**

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

   (a) May hold and use funds 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 or currency from one country to the other or within Nepal to other organizations or agencies of the United Nations system;

   (c) Shall enjoy the most favourable, legally available rate of exchange for its financial transactions.

**Article VIII. Exemption from taxation**

1. The Office, its funds, assets, income and other property shall:

   (a) Be exempt from all direct taxes. It is understood, however, that the Office will not claim exemption from taxes which are, in fact, charges for public utility services;

   (b) Be exempt from customs duties and prohibitions and restrictions on articles imported or exported by the Office for its official use. It is understood, however, that articles imported under such exemptions will not be sold in Nepal except under conditions agreed upon with His Majesty’s Government;

   (c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

**Article IX. Communications**

1. The Office shall enjoy, in respect of its official communications, communications facilities not less favourable than those accorded by His Majesty’s Government to any diplomatic mission or other intergovernmental organization in matters of establishment and operation, priorities, charges on mail, cables, telegrams, radiograms, telephotos, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of the Office shall be subject to censorship. Such immunity shall extend to printed matters, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. The Office shall have the right to use codes and to dispatch and receive correspondence either by courier or in sealed bag pouches, all of which shall be inviolable and not subject to censorship.
Article X. Officials of the Office

1. Officials of the Office 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 the Office;

(b) Be immune from inspection and seizure of their baggage;

(c) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(d) Be exempt from national service obligation;

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

(f) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of the diplomatic missions accredited to His Majesty's Government;

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

(h) 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 Nepal.

2. Officials of the Office, except for those who are Nepalese nationals or permanent residents shall also be entitled to:

(a) Import free of custom and excise duties limited quantities of certain articles intended for personal use or consumption and not for gift or sale;

(b) Import or acquire in Nepal a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing regulations of Nepal applicable to members of diplomatic missions of comparable ranks.

3. In addition to the privileges and immunities specified above, the Head of the Office, if he or she is not of Nepalese nationality, shall be accorded in respect of himself or herself, his or her spouse and minor children, the privileges and immunities, exemptions and facilities normally accorded to Heads of international missions. The name of the Head of the Office shall be included in the diplomatic list by the Ministry of Foreign Affairs of Nepal.

Article XI. Experts on missions

1. Representatives of OHCHR on temporary mission to Nepal and other persons on business of the Office shall be granted the privileges, immunities and facilities specified in article VI, sections 22 and 23 and article VII, section 26, of the Convention.

Article XII. Personnel recruited locally and assigned to hourly rates

1. Personnel recruited in Nepal and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.
Article XIII. Waiver of immunity

1. The privileges and immunities accorded under the present Agreement are granted in the interests of OHCHR, 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 articles X, XI and XII in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of OHCHR.

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

Article XIV. Freedom of movement and access to relevant information

1. The staff of the Office shall enjoy freedom of entry into, exit from, and movement throughout Nepal. His Majesty’s Government shall facilitate freedom of movement in areas of restricted access in coordination with the competent authorities. Freedom of movement shall include the following prerogatives, exercised in accordance with the mandates of the Office:

   (a) Access to all prisons, detention centres and places of interrogation, without prior notice. Officials of the Office shall have the option of meeting in private with any detained person or anyone held in those places, in accordance with the provisions of article V, paragraph 1 (a);

   (b) Access to the central and local authorities of all sectors of His Majesty’s Government, including the police and security forces as well as the National Human Rights Commission;

   (c) Direct and unsupervised contacts with individuals, representatives of nongovernmental sectors, private institutions, hospitals and medical centres, and the mass media;

   (d) Access to such official documents and material as may be needed for the proper discharge of the activities of the Office, except for those documents containing privileged information, and as stipulated by the Constitution of the Kingdom of Nepal.

Article XV. Laissez-passer

1. His Majesty’s Government shall recognize and accept the United Nations laissez-passer issued to officials of the Office as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention, His Majesty’s Government shall recognize and accept the United Nations certificates issued to persons travelling on business of OHCHR.

3. His Majesty’s Government agrees to issue any required visas for such certificates or laissez-passer.
Article XVI. Flags, emblems and distinctive signs

1. The Office may fly or display the United Nations flag and/or emblems on its premises, official vehicles and in any other manner agreed upon by the Parties.

Article XVII. Identification

1. At the request of the Head of the Office, His Majesty’s Government shall issue to the staff of the Office appropriate identity documents certifying that, as staff members of the Office, they enjoy privileges and immunities as well as freedom of movement and access to relevant information as required in the course of their duties.

2. Staff members of the Office shall show, but not surrender, their identity documents to any authorized Government official upon request.

3. Upon the termination of the functions of a staff member of the Office or upon his transfer, the Office shall ensure that his identity documents are promptly returned to His Majesty’s Government.

Article XVIII. Government undertakings

1. His Majesty’s Government shall provide to the Office and its staff throughout Nepal such security as is required and requested for the effective performance of their activities. To this end, the appropriate authorities shall ensure the security and protection of the Office and staff, and exercise diligence to ensure that the tranquillity of the Office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

2. His Majesty’s Government undertakes to respect the status of the Office and its staff, and to ensure that anyone associated with the Office is not subjected in any way to abuses, threats, reprisals or legal prosecution by reason of their status.

3. In all those cases where this Agreement refers to the privileges, immunities and rights of the Office and its staff, as well as to the facilities that His Majesty’s Government undertakes to grant, the Government shall ensure that the competent local authorities respect such privileges, immunities and rights and grant the facilities mentioned.

4. His Majesty’s Government shall use all the official media to widely publicize this Agreement to the population in general and to the national and departmental civilian, military and police authorities in particular. It shall also inform the competent authorities of the recommendations made by the Office in order for domestic legal procedures applied by these authorities to be consistent with those set forth in international instruments.

Article XIX. Settlement of disputes

1. Any dispute between the Office and His Majesty’s Government relating to the interpretation and application of the present Agreement or any other supplementary 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 the appointment of two arbitrators the third arbi-
trator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

**Article XX. Liaison with the Government**

His Majesty’s Government shall designate a high-level liaison entity with decision-making capacity responsible for communications with the Office for all matters relating to the activities of the Office.

**Article XXI. Supplementary agreements**

The High Commissioner and His Majesty’s Government may conclude agreements supplementary to this Agreement.

**Article XXII. Final provisions**

1. This Agreement shall apply provisionally from the date of its signature, and enter into force on the date that His Majesty’s Government notifies the United Nations High Commissioner for Human Rights on the fulfilment of its internal procedures to that effect. It supersedes and annuls the Memorandum of Understanding between the United Nations High Commissioner for Human Rights and His Majesty’s Government of Nepal concerning technical assistance to the National Human Rights Commission of Nepal signed on 13 December 2004,

2. This Agreement shall be for two years. The Parties may extend its validity for two-year periods through the exchange of written communications expressing their desire to that effect. Such communications shall be sent no later than 90 days prior to the end of the two-year period referred to in this paragraph.

3. The present agreement shall cease to be in force six months after either of the Parties has notified the other of its decision to terminate the Agreement, except as regards the normal cessation of the Office activities in the country and the disposal of its properties and assets.

Done at Geneva, on ____ 2005, in two original copies in the English language.

[Signed]  [Signed]
Minister of Foreign Affairs  United Nations High Commissioner
Kingdom of Nepal  for Human Rights
Kathmandu  Geneva
10 April 2005  8 April 2005
B. TREATIES CONCERNING THE LEGAL STATUS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS


During 2005, the following State acceded to the Convention.

<table>
<thead>
<tr>
<th>State</th>
<th>Date of receipt of instrument of accession</th>
<th>Specialized agencies</th>
</tr>
</thead>
</table>

As at 31 December 2005, there were 111 States parties to the Convention.

In addition, the following States parties undertook to apply the provisions of the Convention to the following specialized agencies:

<table>
<thead>
<tr>
<th>State</th>
<th>Date of receipt of instrument of application</th>
<th>Specialized agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guatemala</td>
<td>26 January 2005</td>
<td>IFC</td>
</tr>
<tr>
<td>Japan</td>
<td>15 August 2005</td>
<td>WIPO</td>
</tr>
</tbody>
</table>

2. International Labour Organization

Provisional Agreement between the Government of the Federal Democratic Republic of Ethiopia and the International Labour Organization concerning the Regional Office of the Organization in Addis Ababa***

Whereas the Government of Ethiopia and the International Labour Organization entered into an Agreement on 8 September 1997 (hereinafter: “the 1997 Agreement”) concerning the establishment of the Office of the Organization in Addis Ababa (hereinafter “the Office”), updating the previous Agreement dated 10 December 1964,

Whereas Article 10, paragraph 3 of the 1997 Agreement provides that it may be modified by mutual consent,

Whereas it has been agreed between the Parties that the 1997 Agreement should be provisionally complemented and amended, as appropriate, to take into account the provi-
sional transfer to Addis Ababa of the International Labour Organization's Regional Office for Africa, without prejudice to more favourable treatment which may be granted in the light of the practice followed for other international Organizations in Ethiopia,

Whereas the International Labour Organization staff to be provisionally transferred is composed by the Director of the Organization's Regional Office for Africa, the Deputy Director and administrative and technical personnel;

The Government of the Federal Democratic Republic of Ethiopia (hereinafter “the Government”) and the International Labour Organization (hereinafter “the Organization”) have agreed as follows:

**Article 1. Scope**

This provisional Agreement complements and amends, as appropriate, 1997 the Agreement. For all matters not referred to in this provisional Agreement, the 1997 Agreement shall continue to apply including, mutatis mutandis, to the Regional Office. This Agreement shall not narrow the effect of the other.

**Article 2. Communications**

1. The Organization shall enjoy treatment for its official communications and telecommunications equal to that accorded by the Government to any other United Nations organization or any other international organizations in Ethiopia.

2. The official communications and correspondence of the Organization shall be inviolable. The Government shall not apply any censorship to the Organization’s communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, film and sound recordings, and electronic mail.

3. The Organization shall have the right to dispatch and receive correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. The Government shall grant the Organization treatment not less favourable than that accorded to diplomatic missions in the matter of priorities, rates and taxes on mail cables and radio-telegrams and press rates for information to the press, radio and Internet.

**Article 3. Freedom from taxation**

1. With respect to all official activities, the Organization and its property shall be exempt from all forms of direct taxation; it is understood, however, that no claim of exemption shall be made from taxes which are, in fact, no more than charges for public utility services.

2. The Organization shall be exempt from value added tax levied against goods and services to be used for official purposes.

3. The Organization shall be exempt from customs duties and all other levies, prohibitions and restrictions on goods imported or exported by it for its official purposes; it is understood however, that articles imported under such exemption, if needed to be
sold, transferred or disposed of in Ethiopia, this shall be done in accordance with the law operating in Ethiopia.

Article 4. Privileges and immunities

The Government shall accord to the Director of the Organization’s Regional Office for Africa, including any official acting on his or her behalf during his or her absence from duty, his or her spouse and minor children the same privileges and immunities, exemptions and facilities as are accorded in international law and practice to diplomatic representatives of comparable rank. The Deputy Director of the Organization’s Regional Office for Africa shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable rank.

Article 5. Most favoured organization

The ILO shall enjoy treatment no less favourable than that accorded by the Government to any other international organization in Ethiopia.

Article 6. Final provisions

1. This provisional Agreement shall enter into force upon its signature and shall remain in force as long as the Organization’s Regional Office for Africa shall be established in Ethiopia.

2. This agreement may be modified by mutual consent. Each party shall give full and sympathetic consideration to any request for such modification.

In witness whereof the undersigned, duly authorized representatives of the Government and the Office, respectively, have, on behalf of both parties, signed the present Agreement.

Done at Geneva, this 7 September 2005, in duplicate, in the English language, both texts being equally authentic.

For the Government of the Federal Democratic Republic of Ethiopia

[Signed] Fisseha Yimer

Ambassador Plenipotentiary and Extraordinary,

Permanent Representative of the Federal Democratic Republic of Ethiopia to the United Nations Office in Geneva and other international organizations in Switzerland

For the International Labour Organization

[Signed] Patricia O’Donovan

Executive Director
3. United Nations Food and Agriculture Organization

(a) Agreements based on the standard “Memorandum of Responsibilities” in respect of Food and Agriculture Organization sessions

Agreements concerning specific sessions held outside the Food and Agriculture Organization (FAO) headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard “Memorandum of Responsibilities” text, were concluded in 2005 with the Governments of the following countries acting as hosts to such sessions: Albania, Austria, Brazil, Canada, Costa Rica, Ecuador, Ethiopia, Germany, Italy, Japan, the Libyan Arab Jamahiriya, Malaysia, Morocco, the Netherlands, Peru, Slovakia, the Sudan, the United Republic of Tanzania, Tunisia, Turkey, Viet Nam and Zimbabwe.

(b) Agreements based on the standard “Memorandum of Responsibilities” in respect of seminars, workshops, training courses and other meetings

An agreement concerning specific training activities containing provisions on privileges and immunities similar to the standard “Memorandum of Responsibilities” text was concluded in 2005 with the Government of Canada.

4. United Nations Educational, Scientific and Cultural Organization

For the purpose of holding international conferences on the territory of member States, the United Nations Educational, Scientific and Cultural Organization (UNESCO) concluded various agreements that contained the following provisions concerning the legal status of the Organization:

Privileges and immunities

The Government of [name of the State] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto to which it has been a party from [date].

In particular, the Government shall not place any restriction on the entry into, sojourn in, and departure from the territory of [name of the State] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization’s relevant rules and regulations.

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2. Certain departures from the standard text or amendments thereto were introduced at the request of the host Government.
**Damage and accidents**

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [name of State] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [name of State] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [name of State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

5. **International Bank for Reconstruction and Development**

Agreement between the Kingdom of Belgium and the International Bank for Reconstruction and Development on the establishment of a Liaison Office of this Organization in Belgium. Brussels, 26 April 1999

The Kingdom of Belgium and the International Bank for Reconstruction and Development, hereinafter referred to as “IBRD”,

Mindful of the need to make specific arrangements concerning the privileges and immunities which the IBRD liaison office may enjoy in Belgian territory,

Wishing to conclude, for that purpose, a supplementary agreement to the Articles of Agreement of IBRD and the Convention on the Privileges and Immunities of the Specialized Agencies, hereinafter referred to as the “Convention”, adopted at New York on 21 November 1947 by the United Nations General Assembly at its second session,

Have agreed as follows:

**Article 1**

1. The Director of the IBRD office shall enjoy the privileges granted to diplomatic personnel of diplomatic missions. The spouse and dependent children of the Director living at home shall enjoy the advantages granted to the spouse and dependent children of diplomatic personnel.

2. Without prejudice to article VI, section 19, of the Convention, the provisions of paragraph 1 shall not apply to Belgian nationals.

**Article 2**

The IBRD office and its personnel shall comply with Belgian law and regulations, in particular with respect to third party liability insurance for vehicles. The office shall maintain the appropriate coverage relative to third party liability insurance for the vehicles used in Belgium.

*Entered into force on 24 February 2005 by notification, in accordance with article 5. Translated from French by the Secretariat of the United Nations.*
Article 3

The Belgian Government shall facilitate the entry into Belgium, the stay therein and the departure therefrom of persons invited by the IBRD office for official purposes.

Article 4

1. Belgium and IBRD consider it their common intention to promote a high level of social protection for Belgian nationals and permanent residents of Belgium, respectively, on the one hand, and staff members of IBRD, on the other.


3. IBRD shall seek to guarantee each of its staff members the effective enjoyment of fundamental social rights.

4. On the basis of a joint review of their respective systems of social protection and social security, the Contracting Parties agree that the social security regime applicable to IBRD staff members shall guarantee them the benefit of an equivalent basis of social protection to the Belgian social security system.

5. In the light of the outcome of the review referred to in the previous paragraph, IBRD staff members, other than Belgian nationals and permanent residents of Belgium, who do not pursue any gainful occupation in Belgium other than that required by their functions, shall be covered by the social security regime applicable to the staff of this Organization, under the following conditions:

   (a) The social security regime applicable to IBRD staff members shall recognize the principles of Belgian law relating to the protection of information on the private life of individuals and to medical ethics (free choice of the patient, health-care provider’s choice of treatment and medical confidentiality);

   (b) Belgium and IBRD shall recognize the uniqueness of their social security system and regime.

6. By derogation to the provisions of paragraph 5, and according to the modalities referred to in the declaration annexed to this Agreement, Belgium and IBRD agree that Belgian nationals and permanent residents of Belgium who are staff members of the Belgian office of IBRD shall be covered by the social security regime applicable to IBRD staff members under the conditions set forth in paragraph 5.

Article 5

Each Party shall notify the other Party when it has completed the procedures required under its laws for the entry into force of this Agreement.

In Witness Whereof, the Plenipotentiaries have signed this Agreement.

Done at Brussels on 26 April 1999, in duplicate, in the French and Dutch languages, the two texts being equally authentic.
For the Kingdom of Belgium:  
**MICHEL GODFRIND**  
Ambassador  
Chairman of the Interministerial Committee SHAPE (CISHIC)

For IBRD:  
**JEAN-FRANCOIS RISCHARD**  
Vice-President for Europe of the World Bank

**Joint declaration annexed to article 4 of the Agreement between the Kingdom of Belgium and the International Bank for Reconstruction and Development on the establishment of an office of this Organization in Belgium**

For the implementation of article 4 of the Agreement between the Kingdom of Belgium and the International Bank for Reconstruction and Development on the establishment of an office of this Organization in Belgium and of this joint declaration, the Contracting Parties have agreed as follows:

**Article 1. Definition**

“Permanent resident of Belgium” means any person registered for more than six months in the Belgian National Register of natural persons.

“Equivalent basis of social protection” means a system of social protection that does not go as far as the level and scope of coverage of the Belgian social security system in respect of unemployment benefits or disability benefits.

**Article 2**

The derogation referred to in article 4, paragraph 6, of the Agreement between the Kingdom of Belgium and the International Bank for Reconstruction and Development on the establishment of an office of this Organization in Belgium shall remain valid as long as the outcome of the review referred to in article 4, paragraph 4, of the said Agreement guarantees IBRD staff members the benefit of an equivalent basis of social protection to the Belgian social security system.

**Article 3**

Within the framework of the implementation of article 4 of the Agreement between the Kingdom of Belgium and the International Bank for Reconstruction and Development on the establishment of an office of this Organization in Belgium and of article 2 of this joint declaration, the Contracting Parties undertake to cooperate closely by exchanging information in the event of significant changes made to their respective social security systems that might reduce the level and scope of social protection guaranteed to their insured.

Every five years from the date of signature of the above-mentioned Agreement, the Contracting Parties shall prepare a joint report containing an assessment of their cooperation in this area. This report shall determine if the condition referred to in article 2 remains valid.
6. World Health Organization

Basic Agreement between the World Health Organization and the Ministry of Health on behalf of the Government of Albania for the establishment of technical advisory cooperation relations. 6 September 2005

The World Health Organization (hereinafter referred to as “the Organization”); and

The Ministry of Health on behalf of the Government of Albania (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 and 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:

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.

* Entered into force on 6 September 2005 by signature, in accordance with article VI.
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 wilful 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 such other information as will enable the Organization to analyse 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 and 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 the 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 the Government of Albania shall be afforded the treatment provided for under section 21 of the said Convention.

Article VI

1. This Basic Agreement shall enter into force upon signature by the duly authorized representatives of the Organization and of the Government.

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.
IN WITNESS WHEREOF OF THE UNDERSIGNED, duly appointed representative of
the organization and the Government respectively, have, on behalf of the Parties signed
the present Agreement at________________ this 6 day of September 2005 in the English
language in four copies.

For the Government of Albania

Signed

The Minister of Health

For the World Health Organization

Signed

Marc Danzon, M.D.

Regional Director

7. United Nations Industrial Development Organization

The United Nations Industrial Development Organization (UNIDO) concluded vari-
ous agreements in 2005 that contained the following provisions relating to privileges and
immunities:

(a) Memorandum of Understanding between the United Nations Industrial
Development Organization and the Istanbul Chamber of Commerce (ICOC),
Turkey. 3 February 2005

4.4. Nothing in or relating to this Memorandum of Understanding shall be deemed
a waiver of any of the privileges and immunities of UNIDO.²

(b) Rental Agreement between the United Nations Industrial Development
Organization and the Bahrain Development Bank (BSC). 10 May 2005”

Article 9. Privileges and immunities

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied,
of any of the privileges and immunities which UNIDO is accorded under the Convention
on the Privileges and Immunities of the United Nations or under the Convention on the
Privileges and Immunities of the Specialized Agencies. Pursuant to those Conventions, the
premises shall be inviolable and no agent or authority of the LANDLORD or the State of
Bahrain may enter the premises without the express prior consent of the Director-General
of UNIDO.

² A similar provision was included in agreements concluded between UNIDO and the Republic
of Azerbaijan, 4 February 2005; the Ministry of Federal Planning, Public Investment and Services of
the Republic of Argentina, 15 April 2005; the Government of the Cordoba Province of the Republic of
Argentina, 7 September 2005; the Tanzania Sisal Board (TSB) and Katani Limited, 10 and 15 November
2005; the Beijing Housing Service Corporation for Diplomatic Missions, 21 November 2005; and the

¹ Entered into force upon signature on 3 February 2005.

" Entered into force retroactively on 1 April 2005.
(c) Letter of Agreement between the United Nations Industrial Development Organization and the International Maritime Organization. 6 and 26 September 2005

Waiver

25. Nothing contained in this Letter of Agreement shall constitute a waiver, expressed or implied, of any privilege or immunity which the Parties may enjoy, whether pursuant to the Convention on Privileges and Immunities of the Specialized Agencies or any other convention or agreement, law, order or decree of any international or national character.


6.1 The Parties mutually recognize the privileges and immunities accorded to each of them by virtue of general principles of international law and by such agreements on privileges and immunities as may be relevant. Nothing in this Agreement constitutes an express or implied waiver of the privileges and immunities of either Party.

\* Entered into force upon signature on 26 September 2005.
\*\* Entered into force upon signature on 18 October 2005.
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. Membership of the United Nations

As at 31 December 2005, the number of Member States remained at 191.

2. The World Summit

From 14 to 16 September 2005, the High-level plenary meeting of the sixtieth session
of the General Assembly, the World Summit, was held in New York and brought together
more than 170 Heads of States and Governments. This event constituted the largest gathering
of world leaders in history, and as such, it represented an opportunity to take landmark
decisions in the areas of development, security, human rights and the reform of the United
Nations. The selection of items to be discussed during the Summit was based on a set
of proposals outlined by the Secretary-General in his report entitled “In larger freedom:
towards development, security and human rights for all”,¹ which was a follow-up to the
outcome of the Millennium Summit.

The report of the Secretary-General and the set of proposals it contained were based on the report of the High-level Panel on Threats, Challenges and Change entitled “A more secure world: our shared responsibility”,² which detailed 101 recommendations made by the Panel on changes that could enhance the capacity and the efficiency of the United Nations to deal with new and future threats. The threats identified by the Panel were numerous, including economic and social, inter-State conflicts, internal conflicts, including civil war, genocide and large-scale atrocities, nuclear, radiological, chemical and biological weapons, terrorism, and organized crime. The Panel also made proposals for reforming the internal structure and the principal organs of the United Nations.

The Heads of State and Government who gathered at the 2005 World Summit adopted an outcome document that included a significant number of the High-level Panel recommendations, which had also been endorsed by the Secretary-General in his report. The recommendations and decisions contained in this 2005 World Summit Outcome were

¹ A/59/2005 and Adds.1–3.
adopted by General Assembly resolution 60/1 of 16 September 2005. Some of the recommendations and decisions are highlighted below.

(a) Values and principles

The Heads of State and Government reaffirmed that their common values and principles, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, were essential to international relations. They also acknowledged that good governance and the rule of law at the national and international levels were essential for sustained economic growth, sustainable development and the eradication of poverty and hunger. Furthermore, they pledged to enhance the efficiency, accountability and credibility of the United Nations system and, in this regard, they affirmed their resolve to create a more peaceful, prosperous and democratic world. They also decided to undertake concrete measures to continue finding ways to implement the outcome of the Millennium Summit, so as to provide multilateral solutions to problems of development, peace and collective security, human rights and the rule of law, as well as to strengthen the United Nations.

(b) Development

It was reaffirmed in the World Summit Outcome that good governance was essential for sustainable development and that sound economic policies, solid democratic institutions responsive to the needs of the people, and improved infrastructures were the basis for sustained economic growth, poverty eradication and employment creation. It was further reaffirmed that freedom, peace and security, domestic stability, respect for human rights, including the right to development, the rule of law, gender equality and market-oriented policies, as well as an overall commitment to just and democratic societies, were also essential and mutually reinforcing.

(c) Peace and collective security

(i) Establishment of a counter-terrorism strategy

The Heads of State and Government welcomed the Secretary-General’s identification of elements of a counter-terrorism strategy and stated that the General Assembly should further develop the elements with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses to counter terrorism, which would take into account the conditions conducive to the spread of terrorism. They also stressed the need to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism during the sixtieth session of the General Assembly and acknowledged that the question of convening a high-level conference under the auspices of the United Nations to formulate an international response to terrorism in all its forms and manifestations could be considered. The Heads of State and Government further recognized that international cooperation to fight terrorism must be conducted in

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3 A/59/2005, paras. 87–96 and annex I, chapter II.
conformity with international law and that States must ensure that any measures taken
to combat terrorism comply with their obligations under international law, in particular
human rights law, refugee law and international humanitarian law.

In its report, the High-level Panel had, inter alia, recommended that the General
Assembly adopt a definition of terrorism and proposed certain elements to be included
therein. The Secretary-General fully endorsed this recommendation in his report and
stated that it would make “clear that, in addition to actions already proscribed by existing
conventions, any action constitutes terrorism if it is intended to cause death or serious
bodily harm to civilians or non-combatants with the purpose of intimidating a population
or compelling a Government or an international organization to do or abstain from doing
any act.” He strongly urged world leaders to unite behind the proposal by the Panel. The
question of a definition of terrorism was not addressed in the World Summit Outcome.

(ii) Establishment of a Peacebuilding Commission

The Heads of State and Government emphasized the need for a coordinated, coher-
ent and integrated approach to post-conflict peacebuilding and reconciliation with a view
to achieving sustainable peace. In this regard, they recognized the need for a dedicated
institutional mechanism to address the special needs of countries emerging from conflict
towards recovery, reintegration and reconstruction, and to assist them in laying the foun-
dation for sustainable development. Therefore, they decided to establish a Peacebuilding
Commission as an intergovernmental advisory body, which would have the objective of
bringing together all relevant actors to marshal resources, to advise on, and to propose
integrated strategies for post-conflict peacebuilding and recovery. The Commission would
focus attention on the reconstruction and institution-building efforts necessary for recov-
ery from conflict and support the development of integrated strategies in order to lay
the foundation for sustainable development. Furthermore, the Peacebuilding Commis-
sion would provide recommendations and information to improve the coordination of all
relevant actors within and outside the United Nations, develop best practices, help ensure
predictable financing for early recovery activities and extend the period of attention by the
international community to post-conflict recovery. In doing so, the Commission would act
in all matters on the basis of consensus of its members.

Moreover, the Commission would meet in various configurations, depending on the
country under consideration. The following representatives would be included: the coun-
try concerned, the other countries from the region that are engaged in the post-conflict
process, the countries involved in relief efforts, the relevant regional organizations, the
major financial, troop and civilian police contributors, the senior United Nations repre-
sentatives in the field, and the relevant regional and international institutions.

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5 A/59/2005, para. 91.
6 See also section 3 (c) of the present chapter, dealing with “Other peacekeeping matters”.
(iii) **Sanctions**

The Heads of State and Government stated in the World Summit Outcome that sanctions should be implemented and monitored effectively with clear benchmarks, be periodically reviewed and remain for as limited a period as necessary to achieve their objectives. They should be terminated once the said objectives have been achieved. They called upon the Security Council to improve its monitoring of the implementation and effects of sanctions in order to ensure that they are implemented in an accountable manner, to review regularly the results of such monitoring and to develop a mechanism to address special economic problems arising from their application. Finally, the Council was also called upon to ensure that fair and clear procedures exist for placing and removing individuals and entities on sanctions lists, as well as for granting humanitarian exceptions.

(d) **Human rights and the rule of law**

(i) **Human rights**

The Heads of State and Government recognized that all human rights, the rule of law and democracy were interlinked and mutually reinforcing, and that they belonged to the universal and indivisible core values and principles of the United Nations. They also resolved to strengthen the United Nations human rights machinery with the aim of ensuring effective enjoyment by all of all human rights, including the right to development. Therefore, they decided to reinforce the Office of the United Nations High Commissioner for Human Rights, including doubling its budget over the next five years, so as to enable it to effectively carry out its mandate of responding to the broad range of human rights challenges, particularly in the areas of technical assistance and capacity-building.

Furthermore, they reaffirmed their commitment to present for adoption a final draft United Nations declaration on the human rights of the world’s indigenous peoples, as well as the need to finalize a comprehensive draft convention on the rights of persons with disabilities. They also stressed the need to include gender and child-protection perspectives in the human rights agenda.

(ii) **Establishment of a Human Rights Council**

In the World Summit Outcome, the Heads of State and Government stated their commitment to further strengthening the United Nations human rights machinery by creating a Human Rights Council that would replace the Commission on Human Rights. This Council would be responsible for promoting universal respect for the protection of human rights and fundamental freedoms for all. The Council would also address situations of violations of human rights, including gross and systematic violations, make recommendations thereon, and promote the effective coordination and mainstreaming of human rights within the United Nations system. Details regarding its mandate, size, composition, working methods and procedure were to be established later, following open, transparent and inclusive negotiations on the subject.
(iii)  Rule of law

The Heads of State and Government recognized the need for the universal adherence to and implementation of the rule of law at both national and international levels. They supported the idea of establishing a rule of law assistance unit within the Secretariat, which would strengthen United Nations activities to promote the rule of law, including through technical assistance and capacity-building activities.

(iv)  Democracy

The Heads of State and Government reaffirmed that democracy was a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In this regard, they welcomed the establishment of a Democracy Fund at the United Nations.

(v)  Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

The Heads of State and Government stated that each individual State had the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. It was also stressed that the responsibility to protect comprised the prevention of such crimes, including the incitement thereof. The international community, through the United Nations, had the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations from those crimes, and would be prepared to take collective action through the Security Council should those peaceful means be insufficient and in cases where the State concerned failed to offer adequate protection. The need for the General Assembly to continue consideration of the responsibility to protect populations from such crimes was also stressed.

(e)  Strengthening the United Nations

(i)  General Assembly

The central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations was reaffirmed, as well as the role of the Assembly in the process of standard-setting and the codification of international law.

(ii)  Security Council

The Heads of State and Government reaffirmed the primary responsibility of the Security Council for the maintenance of international peace and security and supported the early reform of the Council to make it more broadly representative, efficient and transparent. They committed themselves to continuing their efforts to reach a decision to that end and requested the General Assembly to review the reform progress by the end of 2005. They further recommended that the Council adapt its working measures to ensure a greater involvement of States not members of the Council in its work.
(iii) Secretariat and management reform

The need for an efficient, effective and accountable Secretariat of the United Nations, whose staff should act in accordance with Article 100 of the Charter, in a culture of organizational accountability, transparency and integrity, was recognized in the World Summit Outcome. Consequently, the Secretary-General’s efforts to ensure ethical conduct, more extensive financial disclosure for United Nations officials and enhanced protection for those who reveal wrongdoing within the Organization were welcomed. The Secretary-General was urged to scrupulously apply the existing standards of conduct and to develop a system-wide code of ethics for all United Nations personnel. In this regard, the Secretary-General was requested to submit to the General Assembly at its sixtieth session details on the ethics office he intended to create. The urgent need to substantially improve the United Nations oversight and management processes was also recognized and, in this regard, the importance of operational independence of the Office of Internal Oversight Services was emphasized.

Support was expressed for efforts undertaken with regard to the implementation of the Secretary-General’s policy of zero tolerance regarding sexual exploitation and abuse by United Nations personnel. In this context, the Secretary-General was encouraged to submit proposals to the General Assembly for a comprehensive approach to victims’ assistance by 31 December 2005.

Finally, the Heads of State and Government condemned attacks against personnel engaged in United Nations activities and stressed the need to conclude, during the sixtieth session of the General Assembly, negotiations on a protocol expanding the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel.

(iv) Pacific settlement of disputes

The obligation for States to settle their disputes by peaceful means in accordance with Chapter VI of the Charter of the United Nations was emphasized, including by using, when appropriate, the International Court of Justice. It was further emphasized that States should act in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. The important role of the good offices of the Secretary-General was recognized and support was expressed for efforts undertaken to strengthen his capacity in this area.

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7 See Secretary-General’s bulletin ST/SGB/2005/22 “Ethics Office—establishment and terms of reference”.

8 United Nations, Treaty Series, vol. 2051, p. 363. For a discussion on the negotiations of the Optional Protocol, see section 17 of this chapter regarding “Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly”.

9 General Assembly resolution 2625 (XXV) of 24 October 1970, annex.
(v) **Charter of the United Nations**

Regarding the use of force, the Heads of State and Government reaffirmed that the relevant provisions of the Charter were sufficient to address the full range of threats to international peace and security.

It was decided that, in view of the fact that the Trusteeship Council no longer met and had no remaining functions, Chapter XIII of the Charter and references to the Council in Chapter XII should be deleted.

Furthermore, taking into account resolution 50/52 adopted by the General Assembly on 11 December 1995, and recalling the related discussions on the subject in the Assembly, it was decided that references to “enemy States” in Articles 53, 77 and 107 of the Charter should be deleted.

Finally, the Security Council was requested to consider the composition, mandate and working methods of the Military Staff Committee.

### 3. Peace and security

#### (a) Peacekeeping missions and operations

**(i) Peacekeeping missions and operations established in 2005**

**The Sudan**

On 24 March 2005, the Security Council adopted resolution 1590 (2005) and decided to establish the United Nations Mission in the Sudan (UNMIS) for an initial period of six months. The Council requested the Secretary-General to transfer all functions performed by the special political mission, the United Nations Advance Mission in the Sudan (UNAMIS), to UNMIS on the date of its establishment.

Additionally, the Council decided that the mandate of UNMIS should include, *inter alia*, the support of the implementation of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army by monitoring and verifying the implementation of the Ceasefire Agreement and investigating its violations, the assistance to the establishment of the disarmament, demobilization and reintegration programme and its implementation through voluntary disarmament and weapons collection and destruction, as well as the assistance in restructuring the police service and in the training of civilian police. UNMIS should also assist in promoting the rule of law, which implied the establishment of an independent judiciary and the protection of human rights, as both contribute to combating impunity and to long-term peace and stability. Furthermore, UNMIS should assist in developing and consolidating the national legal framework, as well as ensuring an adequate human rights presence, capacity, and expertise within UNMIS to carry out activities pertaining to human rights.

The mandate of UNMIS also comprised facilitating and coordinating the voluntary return of refugees and internally displaced persons, as well as humanitarian assistance by, *inter alia*, helping to establish the necessary security conditions, and providing demining assistance.
In the same resolution, the Council, acting under Chapter VII of the Charter of the United Nations, decided that UNMIS was authorized to take the necessary action to protect United Nations personnel, facilities, installations, and equipment, and to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, and personnel of the joint assessment mechanism and assessment and evaluation commission. Without prejudice to the responsibility of the Government of the Sudan, UNMIS should also protect civilians under imminent threat of physical violence.


(ii) Changes in the mandate and/or extensions of time limits of ongoing peacekeeping missions or operations in 2005

a. Cyprus


b. Syria and Israel


c. Lebanon


d. Western Sahara

e. Georgia


f. Sierra Leone


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UNAMSIL successfully completed its mandate on 31 December 2005. See subsection (iv) of this section on “Political and peacebuilding missions concluded in 2005”.  

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g. Democratic Republic of the Congo


On 6 September 2005, the Council adopted resolution 1621 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized an increase of MONUC personnel. The Council further authorized MONUC to provide additional support to the Independent Electoral Commission for the transport of electoral materials.

In resolution 1635 (2005), the Security Council authorized another increase of personnel in the military strength of MONUC to allow for the deployment of an infantry battalion in Katanga, with enabling assets including its own air mobility and appropriate medical support, to provide additional security within its area of operations during the electoral period.

h. Ethiopia and Eritrea


In resolution 1622 (2005), the Council adopted and approved the reconfiguration of the UNMEE military component, which included an increase in the number of military observers, and assistance to the parties in the mine action sector.

10 UNAMSIL successfully completed its mandate on 31 December 2005. See subsection (iv) of this section on “Political and peacebuilding missions concluded in 2005”.
On 23 November 2005, the Security Council adopted resolution 1640 (2005), in which it deeply deplored Eritrea’s continued imposition of restrictions on the freedom of movement of UNMEE and demanded that the Government of Eritrea reverse, without further delay or preconditions, its decision to ban UNMEE helicopter flights, as well as other additional restrictions imposed on the operations of UNMEE, and also provide the Mission with the access, assistance, support and protection required for the performance of its duties. It also demanded that Ethiopia accept fully and without further delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission and immediately take, without preconditions, concrete steps to enable the Commission to demarcate the border completely and promptly.

i. Liberia


In resolution 1626 (2005), the Security Council authorized UNMIL, subject to the consent of the troop-contributing countries concerned and the Government of Sierra Leone, to deploy United Nations military personnel to Sierra Leone from November 2005 in order to provide security for the Special Court for Sierra Leone.

On 11 November 2005, the Security Council adopted resolution 1638 (2005) by which it decided that the mandate of UNMIL should also include the apprehension and detention of former President Charles Taylor in the event of his return to Liberia and, in that case, to transfer him or facilitate his transfer to Sierra Leone for prosecution before the Special Court for Sierra Leone. The Mission should also keep the Liberian Government, the Sierra Leonean Government and the Council fully informed in this regard.

j. Côte d’Ivoire


On 1 February 2005, the Council adopted resolution 1584 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized UNOCI and the French forces which support it to monitor the implementation of the measures to prevent the supply, sale or transfer to Côte d’Ivoire of arms or any related matériel, in particular military aircraft and equipment, in cooperation with UNMIL, UNAMSIL and the Governments concerned, as imposed by resolution 1572 (2004). It further authorized UNOCI to collect arms and any related matériel brought into Côte d’Ivoire in violation of those measures and to dispose of such arms and related matériel as appropriate.
The Council also requested the Secretary-General, to create, as referred to in resolution 1572 (2004), a group of experts consisting of no more than three members (the Group of Experts), to examine and analyze information gathered by UNOCI and the French forces in the context of the monitoring mandate set out in the resolution. The Group of Experts was also tasked to gather and analyze all relevant information in Côte d’Ivoire and countries of the region on the flow of arms and related matériel and on the provision of assistance, advice or training related to military activities, as well as networks operating in violation of the measures imposed by resolution 1572 (2004). The Group of Experts should also consider and recommend ways of improving the capabilities of States, in particular those in the region, to ensure the effective implementation of the measures imposed by resolution 1572 (2004); exchange with UNOCI and the French forces information that might be of use in fulfilling its monitoring mandate; provide the Security Council Committee established by resolution 1572 (2004) with a list, with supporting evidence, of those found to have violated the measures imposed by that resolution and those found to have supported them in such activities, for possible future measures by the Council; and cooperate with other relevant groups of experts, in particular that established on Liberia by resolutions 1521 (2003) and 1579 (2004).

In resolution 1603 (2005), the Security Council authorized the Secretary-General to begin the necessary planning and preparations, including troop and police generation, to facilitate a timely deployment in the event that the Council decided to increase the UNOCI authorized strength of troops and police and to adjust its mandate.

In resolution 1609 (2005), the Security Council decided that the mandate of UNOCI should include, inter alia, the monitoring of the cessation of hostilities and movements of armed groups; prevention of any hostile action, in particular within the Zone of Confidence, and the investigation of violations of the ceasefire; assistance to the Government of National Reconciliation in monitoring the borders, with particular attention to the situation of Liberian refugees and to any cross-border movement of combatants; disarmament, demobilization, reintegration, repatriation and resettlement; and protection of United Nations personnel, institutions and civilians, including the support, in coordination with the Ivorian and South African authorities, of provision of security for members of the Government of National Reconciliation.

Its mandate further included monitoring the arms embargo, support for humanitarian assistance, support for the organization of open, free and fair elections, assistance in the field of human rights, monitoring of Ivorian mass media, in particular with regard to any incidents of incitement by the media to hatred, intolerance and violence, assistance to the Government of National Reconciliation in conjunction with the African Union, the Economic Community of West African States (ECOWAS) and other international organizations in restoring a civilian policing presence throughout Côte d’Ivoire, and assistance to the Ivorian parties with the implementation of temporary and interim security measures in the northern part of the country, as well as re-establishing the authority of the judiciary and the rule of law throughout Côte d’Ivoire.

The Council also authorized, for a period of seven months, until 24 January 2006, an increase in the military as well as in the civilian police components of UNOCI. The Council further authorized the temporary redeployment of military and civilian police personnel among UNMIL, UNAMSIL and UNOCI to deal with challenges which could
not be handled within the authorized personnel ceiling of a given mission, subject to certain conditions.

On 21 October 2005, the Security Council adopted resolution 1633 (2005) and, acting under Chapter VII of the Charter of the United Nations, demanded that all Ivorian parties cooperate fully in their operations by guaranteeing the safety, security and freedom of movement of the personnel, as well as associated personnel of UNOCI, and the French forces which support it throughout the territory. The Council also affirmed that any obstacle to their freedom of movement or to the full implementation of their mandates would not be tolerated.

On 15 December 2005, the Security Council adopted resolution 1643 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided that any serious obstacle to the freedom of movement of UNOCI and of the French forces which support it, or any attack or obstruction to the action of UNOCI, the French forces, the High Representative for the elections and the International Working Group would constitute a threat to the peace and national reconciliation process.

k. Haiti


In resolution 1608 (2005), the Security Council supported the recommendations of the Secretary-General, to temporarily increase, during the electoral period and subsequent political transition, the number of MINUSTAH military personnel in order to create a rapid reaction force in Haiti providing increased security. It also decided to temporarily increase, during this electoral period and subsequent political transition, the number of personnel of the MINUSTAH civilian police component.

1. Burundi


In resolution 1650 (2005), the Security Council authorized, subject to certain conditions, the temporary redeployment of military and civilian police personnel among ONUB and MONUC.

(iii) Other ongoing peacekeeping missions or operations in 2005

During 2005, there were a number of other ongoing peacekeeping operations or missions, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948) of 29 May 1948; the United Nations Military Observer Group (UNMOGIP) in India and Pakistan, established by Security Council resolution 91 (1951) of 30 March 1951; and the United Nations Interim Mission in Kosovo (UNMIK), established by Security Council resolution 1244 (1999) of 12 June 1999.

(iv) Peacekeeping missions or operations concluded in 2005

a. Sierra Leone

The United Nations Mission in Sierra Leone (UNAMSIL) which had been established on 22 October 1999 by the Security Council in its resolution 1270 (1999), successfully completed its mandate on 31 December 2005.

b. Timor-Leste

The United Nations Mission of Support in Timor-Leste (UNMISET) was established by the Security Council in its resolution 1410 (2002) of 17 May 2002. The Council, by resolution 1573 (2004), decided to extend the mandate of UNMISET for a final period of six months until 20 May 2005, at which date it successfully completed its mandate.

(b) Political and peacebuilding missions

(i) Political and peacebuilding missions established in 2005

Timor-Leste

On 28 April 2005, the Security Council adopted resolution 1599 (2005) and decided to establish the United Nations Office in Timor-Leste (UNOTIL), a one-year follow-on special political mission in Timor-Leste which would remain until 20 May 2006. The Council further decided that UNOTIL should support, through the provision of advisers, the development of critical State institutions, the further development of the police, and the development of the Border Patrol Unit. It should also provide training in the observance of democratic governance and human rights, and monitor and review progress in those areas.

(ii) Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2005

a. Somalia

The United Nations Political Office in Somalia (UNPOS) was established by the Secretary-General on 15 April 1995. On 18 February 2005, in his report on the situation on

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Somalia, the Secretary-General proposed an expanded role for the United Nations, which would include assisting in the continuous dialogue among Somali parties for reconciliation, assisting in the effort to address the issue of Somaliland, coordinating support for the peace process with Somalia’s neighbours and other international partners, chairing the Coordination and Monitoring Committee, as well as playing a leading political role in peacebuilding activities in Somalia. The Secretary-General also stated that UNPOS staff had to be augmented in key areas, such as political and military liaison, information, civil police, disarmament, demobilization and reintegration and human rights.

On 16 November 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed of his intention to continue the activities of UNPOS during the biennium 2006–2007. The Council took note of the Secretary-General’s intention.

b. Great Lakes region

The Office of the Special Representative of the Secretary-General for the Great Lakes region was established by the Secretary-General on 19 December 1997. On 23 December 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to extend the mandate of his Special Representative until 31 March 2006. The Council took note of the Secretary-General’s intention.

c. Guinea-Bissau

The United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) was established in March 1999 by the Secretary-General with the support of the Security Council. On 12 September 2005, in his report on developments in Guinea-Bissau and on the activities of UNOGBIS, the Secretary-General proposed a revision of the mandate to allow UNOGBIS to support efforts to consolidate constitutional rule, to enhance political dialogue and to promote national reconciliation and respect for the rule of law and human rights, and to assist in strengthening the capacity of national institutions to maintain constitutional order. The Office should also, inter alia, prevent and manage conflict, as well as consolidate peace and democracy, encourage and support national efforts to reform the security sector by developing stable civil-military relations in the framework of public sector reform, and help mobilize international support in this regard.

On 2 December 2005, in a letter addressed to the President of the Security Council, the Secretary-General referred to his proposal contained in his report of 12 September

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13 S/2005/89.
14 See the exchange of letters between the Secretary-General and the President of the Security Council dated 16 and 21 November 2005 (S/2005/729 and S/2005/730).
15 See the exchange of letters between the Secretary-General and the President of the Security Council dated 12 and 19 December 1997 (S/1997/994 and S/1997/995).
16 See the exchange of letters between the Secretary-General and the President of the Security Council dated 23 and 30 December 2005 (S/2005/849 and S/2005/850).
17 See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 February 1999 and 3 March 1999 (S/1999/232 and S/1999/233).
18 S/2005/575.
2005, and recommended that the mandate of UNOGBIS be extended until 31 December 2006. The Council took note of the Secretary-General’s proposal and recommendation.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council dated 2 and 15 December 2005 (S/2005/795 and S/2005/796).}

\textbf{d. Central African Republic}

The United Nations Peacebuilding Office in the Central African Republic (BONUCA) was established by the Secretary-General on 15 February 2000.\footnote{Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic (S/2000/24) and Statement by the President of the Security Council dated 10 February 2000 (S/PRST/2000/5).} On 30 November 2005, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of BONUCA be extended from 1 January to 31 December 2006. The Council took note of the Secretary-General’s recommendation.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council dated 30 November 2005 and 2 December 2005 (S/2005/758 and S/2005/759).}

\textbf{e. Tajikistan}

The United Nations Tajikistan Office of Peacebuilding (UNTOP) was established by the Secretary-General on 1 June 2000.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council dated 26 and 29 November 2001 (S/2001/1128 and S/2001/1129).} On 10 May 2005, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to continue the activities of UNTOP for a further period of one year, until 1 June 2006. The Council took note of the Secretary-General’s intention.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council, dated 10 and 18 May 2005 (S/2005/323 and S/2005/324).}

\textbf{f. West Africa}

The United Nations Office for West Africa (UNOWA) was established by the Secretary-General for a period of three years, starting from January 2002.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council dated 14 December 2004 and 11 January 2005 (S/2005/16 and S/2005/17).} On 14 December 2004, in a letter addressed to the President of the Security Council, the Secretary-General informed the Council of his intention to extend the mandate of UNOWA for a period of three years, from 1 January 2005 to 31 December 2007, and to strengthen it. On 11 January 2005, the President of the Security Council informed the Secretary-General that the Council had taken note of his intentions regarding the mandate, functions and activities of UNOWA.\footnote{See the exchange of letters between the Secretary-General and the President of the Security Council, dated 26 and 29 November 2001 (S/2001/1128 and S/2001/1129).} The revised mandate included, \textit{inter alia}, the enhancement of linkages in the work of the United Nations and other partners in the subregion, the liaison with and provision of assistance to ECOWAS and the Mano River Union, in consultation with other subregional organizations and international partners, as well as good offices roles on behalf of the Secretary-General.
The activities of UNOWA would also comprise, *inter alia*, the enhancement of harmonization of activities of the various United Nations missions and other regional entities in West Africa; the strengthening of cooperation with the ECOWAS Secretariat in the promotion of peace, stability, good governance and development; the enhancement of cooperation with ECOWAS member States and their representatives in Abuja; the strengthening of cooperation with key regional and international partners, including the Mano River Union, the International Contact Group for the Mano River Basin, the European Union and the Bretton Woods institutions, as well as civil society organizations and the private sector. The mandate of UNOWA also comprised the development of better knowledge and awareness about cross-border and subregional problems confronting West Africa, as well as the facilitation by the Special Representative of the Secretary-General, in his capacity of chairman of the Cameroon-Nigeria Mixed Commission, of the implementation of the work plan approved by Cameroon and Nigeria towards the implementation of the 10 October 2002 ruling of the International Court of Justice on the land and maritime boundary dispute between the two countries.\(^26\) The Special Representative should also assist in the demarcation process.

g. Afghanistan

The United Nations Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 24 March 2005, the Security Council, in resolution 1589 (2005), decided to extend the mandate of UNAMA for an additional period of twelve months.\(^27\)

h. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. On 11 August 2005, the Security Council, by its resolution 1619 (2005), decided to extend the mandate of UNAMI for another period of twelve months.\(^28\)

i. The Sudan


\(^{27}\) See also the report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security (A/59/744-S/2005/183) in which the Secretary-General recommended that the mandate be extended for twelve months.

\(^{28}\) See also the letter from the Secretary-General addressed to the President of the Security Council dated 3 August 2005 (S/2005/509).
j. Lebanon

On 14 November 2005, in his letter to the President of the Security Council, the Secretary-General informed the Council that he had decided to expand the mandate of his Personal Representative for southern Lebanon to include coordination of United Nations political activities for the whole of Lebanon, and that the title of the post would be accordingly changed to Personal Representative of the Secretary-General for Lebanon.²⁹

(iii) Other ongoing political and peacebuilding missions and offices in 2005

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,³⁰ continued operating through 2005.

(iv) Political and peacebuilding missions concluded in 2005

a. Bougainville (Papua New Guinea)

The United Nations Observer Mission in Bougainville (UNOMB), Papua New Guinea, was established on 1 January 2004 by the Secretary-General,³¹ and completed its mandate on 30 June 2005.³²

b. The Sudan


(c) Other peacekeeping matters

(i) Establishment of the Peacebuilding Commission

On 20 December 2005, the Security Council and the General Assembly, acting concurrently, in accordance with Articles 7, 22 and 29 of the Charter of the United Nations, adopted resolutions 1645 (2005) and 60/180, respectively, and established a Peacebuilding Commission.³³ The Council and the Assembly decided that the main purposes of the Com-

²⁹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 14 and 17 November 2005 (S/2005/725 and S/2005/726).
³⁰ See the exchange of letters between the Secretary-General and the President of the Security Council dated 10 and 16 September 1999 (S/1999/983 and S/1999/984).
³¹ See the exchange of letters between the Secretary-General and the President of the Security Council dated 19 and 23 December 2003 (S/2003/1198 and S/2003/1199).
³² On 28 March 2005, the Secretary-General informed the Security Council that UNOMB would complete its mandate and formally close down its activities on 30 June 2005 (S/2005/204).
³³ See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.
mission were to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery, as well as to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development. The Commission should also provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help to ensure predictable financing for early recovery activities and extend the period of attention given by the international community to post-conflict recovery.

Furthermore, the Commission should meet in various configurations and have a standing Organizational Committee, responsible for developing its own rules of procedure and working methods. The Organizational Committee should include seven elected members of the Security Council, including permanent members; seven elected members of the Economic and Social Council, giving due consideration to those countries that have experienced post-conflict recovery; five top providers of assessed contributions to United Nations budgets and of voluntary contributions to United Nations funds, programmes and agencies, including a standing peacebuilding fund, selected by and from among the ten top providers; and five top providers of military personnel and civilian police to United Nations missions. Additionally, giving due consideration to representation from all regional groups in the overall composition of the Committee and to representation from countries that have experienced post-conflict recovery, seven members should be elected according to rules and procedures decided by the General Assembly. It was emphasized that a Member State can only be selected to serve in the Organizational Committee from one category at any one time.

The Council and Assembly also decided that country-specific meetings of the Commission, upon invitation of the Organizational Committee should include representatives from the country under consideration, countries in the region engaged in the post-conflict process and other countries that are involved in relief efforts and/or political dialogue, as well as relevant regional and subregional organizations. The major financial, troop and civilian police contributors involved in the recovery effort, the senior United Nations representative in the field and other relevant United Nations representatives, as well as such regional and international financial institutions as may be relevant, should also attend.

It was further decided that a representative of the Secretary-General should be invited to participate in all meetings of the Commission and that representatives from the World Bank, the International Monetary Fund and other institutional donors should be invited to participate in all meetings of the Commission in a manner suitable to their governing arrangements.

The Organizational Committee should establish the agenda of the Commission based on requests for advice from the Security Council and from the Secretary-General. Requests for advice from the Economic and Social Council, the General Assembly or concerned Member States are also possible under certain circumstances.

Finally, the Council and the Assembly decided that the Commission should make the outcome of its discussions and recommendations publicly available as United Nations documents to all relevant bodies and actors, including the international financial institutions, and that it should act in all matters on the basis of consensus.
(ii) Question of sexual exploitation and abuse in peacekeeping operations

a. General Assembly

In his letter to the President of the General Assembly dated 24 March 2005, the Secretary-General submitted the report of the Special Adviser to the Secretary General on Sexual Exploitation and Abuse.\(^{34}\) In this report, the Special Adviser recommended that the General Assembly reiterate its approval of the standards set out in the Secretary-General’s bulletin on special measures for protection from sexual exploitation and sexual abuse,\(^{35}\) which is mandatory for all United Nations staff, irrespective of their type of appointment, and that the Assembly request the Secretary-General to ensure that all civilian personnel are bound by them.

The Special Adviser further recommended, \textit{inter alia}, that the Assembly authorize the establishment of a professional investigative capacity to investigate allegations of sexual exploitation, abuse and misconduct of a similar grave nature against all categories of peacekeeping personnel. This investigative body should be independent of the missions and could be regionally based. He also proposed that personnel violating the said standards be subjected to disciplinary action and that the General Assembly characterize such breaches as "serious misconduct" under the Staff Regulations. Any staff members, civilian police or military observers found to have committed acts of sexual exploitation and abuse should have their appointments terminated. Finally, he also suggested that if acts of sexual exploitation and abuse by military members of peacekeeping missions constituted crimes, they should result in prosecution under the laws of the troop-contributing country.

In April 2005, the Special Committee on Peacekeeping Operations and its Working Group released its report,\(^{36}\) in which it recognized the shared responsibility of the Secretariat and Member States to take every measure within their purview to prevent sexual exploitation and abuse, by all categories of personnel in United Nations peacekeeping missions, and to enforce United Nations standards of conduct in that regard. The Special Committee also recommended, \textit{inter alia}, the establishment of a professional and independent investigative capacity, with the necessary expertise, within the administrative authority of the United Nations, to investigate such allegations of misconduct where complex investigative techniques were needed. Furthermore, the Special Committee recommended amending the Staff Regulations and contracts with United Nations Volunteers, consultants and individual contractors to specifically include provisions stating that acts of sexual exploitation and abuse constitute serious misconduct.

On 22 June 2005, the General Assembly adopted resolution 59/300 entitled “Comprehensive review of a strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations” and affirmed the need for the Organization to adopt without delay a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations, as recommended by the Special Committee and the Special Adviser to the Secretary-General. The Assembly also welcomed the report of the Special Adviser and endorsed the proposals, recommendations and conclusions of the Special Committee in chapter II of its report.

\(^{34}\) A/59/710.
\(^{36}\) A/59/19/Add.1 (advance version).
b. Security Council

On 24 March 2005, the Security Council adopted resolution 1590 (2005) and requested the Secretary-General to take the necessary measures to achieve actual compliance with the United Nations zero tolerance policy on sexual exploitation and abuse, including the development of strategies and appropriate mechanisms to prevent, identify and respond to all forms of misconduct, including sexual exploitation and abuse, as well as the enhancement of training for personnel to prevent misconduct and ensure full compliance with the United Nations code of conduct. The Council also requested the Secretary-General to take all necessary action, in accordance with the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse. The Council further urged troop-contributing countries to take appropriate preventive action, including pre-deployment awareness training, and to take disciplinary action and other action to ensure full accountability in cases of such misconduct involving their personnel.

Furthermore, the Security Council, in a Statement by the President of the Security Council dated 31 May 2005, condemned in the strongest terms, all acts of sexual abuse and exploitation committed by United Nations peacekeeping personnel. It confirmed that the conduct and discipline of troops was primarily the responsibility of troop-contributing countries, but also recognized the shared responsibility of the Secretary-General and all Member States to take every measure within their purview to prevent sexual exploitation and abuse by all categories of personnel in United Nations peacekeeping missions, and to enforce United Nations standards of conduct in that regard. Finally, the Council stated that it would consider including relevant provisions for prevention, monitoring, investigation and reporting of misconduct cases in its resolutions establishing new mandates or renewing existing mandates.

In this regard, the Security Council welcomed in several subsequent resolutions the efforts undertaken by the different United Nations mandated peacekeeping operations to implement the Secretary-General’s zero tolerance policy on sexual exploitation and abuse and to ensure full compliance of its personnel with the United Nations code of conduct. In these resolutions, the Council also urged troop-contributing countries to take preventive and disciplinary action to ensure that such acts involving their personnel were properly investigated and punished.

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37 See also resolution 1592 (2005) of 30 March 2005 on the situation concerning the Democratic Republic of the Congo, in which the Council, inter alia, reaffirmed its concern regarding acts of sexual exploitation and abuse committed by United Nations personnel against the local population.


Comprehensive review of the whole question of peacekeeping operations in all their aspects

On 29 March 2005, the General Assembly adopted, on the recommendation of the Fourth Committee, resolution 59/281 entitled “Comprehensive review of the whole question of peacekeeping operations in all their aspects”. In this resolution, the Assembly welcomed the report of the Special Committee on Peacekeeping Operations and endorsed the proposals, recommendations and conclusions contained therein. In addition, the Assembly decided that the Special Committee should continue its efforts for a comprehensive review of the whole question of peacekeeping operations in all their aspects, review the implementation of its previous proposals, and consider any new proposals so as to enhance the Organization’s capacity to fulfil its responsibilities in this area.

Action of Member States authorized by the Security Council

Action of Member States authorized in 2005

Bosnia and Herzegovina

On 21 November 2005, the Security Council adopted resolution 1639 (2005) and, acting under Chapter VII of the Charter of the United Nations, authorized the Member States acting through or in cooperation with the European Union (EU) to establish for a further period of twelve months, a multinational stabilization force (EUFOR) as the legal successor of the Stabilization Force in Bosnia and Herzegovina (SFOR) under unified command and control. It decided that EUFOR would fulfil its missions in relation to the implementation of the Peace Agreement in cooperation with the North Atlantic Treaty Organization (NATO) presence in accordance with the arrangements agreed between NATO and EU as communicated to the Security Council in their respective letters of 19 November 2004.

The Council further authorized the Member States acting through or in cooperation with the EU or NATO to take all necessary measures to effect the implementation of and ensure compliance with the Peace Agreement, and to take all necessary measures, at the request of either EUFOR or NATO Headquarters, in defense of the EUFOR or NATO presence, respectively, and to assist both organizations in carrying out their missions. In relation to this particular authorization, the Council also recognized the right of both EUFOR and the NATO presence to take all necessary measures to defend themselves from attack or threat of attack.

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(ii) Changes in authorization and/or extension of time limits in 2005

a. Côte d’Ivoire


On 1 February 2005, the Security Council adopted resolution 1584 (2005) and, acting under Chapter VII of the Charter of the United Nations, requested the French forces which support UNOCI, in addition to their mandate set out in resolution 1528 (2004), to provide security assistance to UNOCI in carrying out its tasks. The Council also authorized the French forces to monitor the implementation of the measures imposed by resolution 1572 (2004), in cooperation with the Group of Experts created under the same resolution, and with the United Nations Mission in Liberia, the United Nations Mission in Sierra Leone and the Governments concerned.

In resolution 1609 (2005), the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the French forces supporting UNOCI to use all necessary means to support UNOCI in accordance with the agreement reached between UNOCI and the French authorities, and in particular to: (i) contribute to the general security of the area of activity of the international forces; (ii) intervene at the request of UNOCI in support of its elements whose security may be threatened; and (iii) intervene, in consultation with UNOCI against belligerent actions, if the security conditions so require, outside the UNOCI areas of deployment. The French forces were also authorized to help to protect civilians in the deployment areas of their units and to contribute to monitoring the arms embargo established by resolution 1572 (2004).

b. Afghanistan


43 See subsection j. on Côte d’Ivoire under section 3 (a) (ii) above on "Peacekeeping missions and operations".
(e) Sanctions imposed under Chapter VII of the Charter of the United Nations\textsuperscript{44}

(i) Measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them\textsuperscript{45}

On 29 July 2005, the Security Council adopted resolution 1617 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided that all States should take the measures as previously imposed by resolution 1267 (1999),\textsuperscript{46} resolution 1333 (2000),\textsuperscript{47} and resolution 1390 (2002)\textsuperscript{48} with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolution 1267 (1999) (the Consolidated List).

In accordance with the said measures, the States should freeze without delay the funds and other economic resources of these individuals and groups, including funds derived from property owned or controlled by them or by persons acting on their behalf, and ensure that neither these funds nor economic resources were made available for such persons’ benefit. They should also prevent the entry into or the transit through their territories of these individuals. It was nevertheless specified that nothing in the resolution should oblige any State to deny entry or require the departure from its territories of its own nationals, or apply where the entry or transit was necessary for the fulfilment of a judicial process, or when the Committee established pursuant to resolution 1267 (1999) (the 1267 Committee) determined on a case-by-case basis that entry or transit was justified. Further, States should prevent the supply, sale or transfer, to these individuals and groups, of arms and related matériel, as well as technical advice, assistance, or training related to military activities.

In addition, the Council decided that, when proposing names for the Consolidated List, States should act in accordance with resolution 1526 (2004) and henceforth provide to the 1267 Committee a statement of case describing the basis of the proposal. The Council also decided that this statement might be used by the 1267 Committee in responding to queries from Member States whose nationals, residents or entities have thus been included, and that it might decide on a case-by-case basis to release the information to other parties, with the prior consent of the designating State. Finally, the Council decided that States may

\textsuperscript{44} See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

\textsuperscript{45} See also subsection b. on Al-Qaida and Taliban Sanctions Committee under section 3 (f) (ii) below on “Terrorism”.

\textsuperscript{46} In paragraph 4 of resolution 1267 (1999), the Council obligated all States to deny permission for any aircraft owned, leased or operated by or on behalf of the Taliban from taking off or landing in their territory. The Council also froze those funds derived or generated from property owned or controlled by the Taliban.

\textsuperscript{47} In paragraph 8 of resolution 1333 (2000), the Council imposed financial sanctions on Usama bin Laden and individuals and entities associated with him, as designated by the Committee established by resolution 1267 (1999).

\textsuperscript{48} In paragraph 2 of resolution 1390 (2002), the Council imposed financial sanctions, a travel ban and an arms embargo on Usama bin Laden, members of the Al-Qaida organization and the Taliban, and other individuals or groups associated with them.
continue to provide additional information which should be kept on a confidential basis within the 1267 Committee unless the submitting State agreed to its dissemination.

(ii) The Sudan

On 29 March 2005, the Security Council adopted resolution 1591 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, in light of the failure of all parties to the conflict in Darfur to fulfil their commitments, to establish a Committee of the Security Council (the 1591 Committee) that would, *inter alia*, monitor the implementation of certain measures referred to in the resolution (see below: freezing of funds and travel restrictions) and in resolution 1556 (2004). It would also designate the individuals subject to such measures and consider requests for exemptions; establish guidelines to facilitate the implementation of the said measures; consider requests from and provide prior approval to the Government of the Sudan for the movement of military equipment and supplies into the Darfur region; and encourage a dialogue between the 1591 Committee and interested Member States.

In addition, the Council also requested the Secretary-General to appoint for six months a Panel of Experts comprised of four members, which should be based in Addis Ababa, Ethiopia. The Panel should travel regularly to El-Fasher and other locations in the Sudan, and operate under the direction of the 1591 Committee.

The Council further decided that the individuals, as designated by the 1591 Committee, who impeded the peace process, constituted a threat to stability in Darfur and the region, committed violations of international humanitarian or human rights law or other atrocities, violated the measures implemented by Member States in accordance with resolution 1556 (2004) and resolution 1591 (2005), or were responsible for offensive military overflights, should be subject to the measures identified in resolution 1591 (2005).

As regards the measures set forth in resolution 1591 (2005) and referred to above, the Council decided that all States should take the necessary measures to prevent entry into or transit through their territories of all persons as designated by the 1591 Committee. It was nevertheless specified that nothing in the resolution should obligate a State to refuse entry into its territory to its own nationals. It was also clarified that these measures should not apply where the 1591 Committee had determined that such travel was justified on the ground of humanitarian need, including religious obligation, or where it concluded that an exemption would otherwise further the objectives of the Council’s resolutions for the creation of peace and stability in the Sudan and the region.

The Council similarly decided that all States should freeze all funds and economic resources on their territories that were owned or controlled by the persons designated by the 1591 Committee, and ensure that no funds or economic resources were made available by their nationals or by any persons within their territories, to or for the benefit of such individuals.

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49 Paragraph 7 of resolution 1556 (2004) imposed an arms embargo on all non-governmental entities and individuals operating in the states of North Darfur, South Darfur and West Darfur. Paragraph 8 obliged States to take all necessary measures to prevent any provision to all non-governmental entities and individuals operating in North Darfur, South Darfur and West Darfur by their nationals or from their territories of technical training or technical assistance related to the materials prohibited by the arms embargo.
persons or entities. Such measures did not apply to funds that had been determined by relevant States to be necessary for basic or extraordinary expenses, or to be the subject of a judicial, administrative or arbitral lien or judgment.

(iii) The Democratic Republic of the Congo

On 18 April 2005, the Security Council adopted resolution 1596 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that the measures established by paragraph 20 of resolution 1493 (2003) that had been applicable to certain groups only,\(^50\) should from then on apply to any recipient in the territory of the Democratic Republic of the Congo.

The Council further decided that these measures should not apply to supplies of arms and related matériel or technical training and assistance intended solely for support by units of the army and police of the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), or for humanitarian or protective use. All future authorized shipments of arms and related matériel, consistent with such exemptions, should only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, with advanced notification to the Committee of the Security Council established by resolution 1533 (2004) (the 1533 Committee).

The Council also decided that the Government of the Democratic Republic of the Congo on the one hand, and the Governments of States bordering Ituri and the Kivus on the other hand, should take all necessary measures to strengthen customs controls on the borders between Ituri or the Kivus and the neighbouring States, and to ensure that all means of transport on their respective territories would not be used in violation of the measures taken by Member States.

Furthermore, the Council decided that all States should immediately freeze the funds, which were owned by persons designated by the 1533 Committee or that were held by entities owned by any persons acting on their behalf, on their territories from the date of adoption of resolution 1596 (2005) and ensure that no funds were made available by their nationals or by any persons within their territories, to or for the benefit of such persons or entities. These provisions did not apply to funds that had been determined by relevant States to be necessary for basic expenses, for extraordinary expenses, or to be the subject of a judicial, administrative or arbitration lien or judgment.

Finally, also by resolution 1596 (2005), the Council decided that the 1533 Committee should designate persons and entities with respect to the measures set forth in the resolution, including aircraft and airlines, and regularly update its list, and seek from all States

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\(^{50}\) Paragraph 20 of resolution 1493 (2003) reads as follows: "Decides that all States, including the Democratic Republic of the Congo, shall, for an initial period of 12 months from the adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related matériel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo".
concerned information regarding the actions taken by them to enforce the measures, and any further information it might consider useful. The 1533 Committee should also call upon all States concerned to provide it with information regarding the actions taken by them to investigate and prosecute, as appropriate, individuals designated by the 1533 Committee; and promulgate guidelines as may be necessary to facilitate the implementation of the resolution.


On 21 December 2005, the Security Council adopted resolution 1649 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, inter alia, to extend, for a period expiring on 31 July 2006, certain provisions of resolution 1596 (2005) to the following individuals, as designated by the 1533 Committee: (i) political and military leaders of foreign armed groups operating in the Democratic Republic of the Congo who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups; and (ii) political and military leaders of Congolese militias receiving support from outside the Democratic Republic of the Congo and, in particular those operating in Ituri, who impede the participation of their combatants in the disarmament, demobilization and reintegration processes.

The Council further decided that the measures imposed under resolution 1649 (2005), as well as under resolution 1596 (2005), should not apply where the 1533 Committee had authorized, in advance and on a case-by-case basis, the transit of individuals returning to the territory of the State of their nationality or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law.

Finally, the Council demanded that the Governments of Uganda, Rwanda, the Democratic Republic of the Congo and Burundi take measures to prevent the use of their respective territories in support of violations of the arms embargo imposed by resolutions 1493 (2003) and 1596 (2005), and renewed by resolution 1616 (2005), or in support of activities of armed groups present in the region. The Council further demanded that all States neighbouring the Democratic Republic of the Congo, as well as the Government of National Unity and Transition, impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories.

(iv) Liberia

On 21 June 2005, the Security Council adopted resolution 1607 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, inter alia, to renew the measures on diamonds imposed by resolution 1521 (2003) for a further period of six months.\footnote{In paragraph 6 of resolution 1521 (2003), the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia to their territory, whether or not such diamonds originated in Liberia.}
The Council also decided to re-establish the Panel of Experts appointed pursuant to resolution 1579 (2004) for a further period until 21 December 2005, for a follow-up assessment mission to Liberia and neighbouring States in order to investigate and compile a report on the implementation, and any violations, of the measures imposed by resolution 1521 (2003), including any information relevant to the designation by the Committee established by resolution 1521 (2003) of the individuals described in resolutions 1521 (2003) and 1532 (2004).

The Panel of Experts should also assess the impact and effectiveness of the measures imposed by resolution 1532 (2004), the progress made towards meeting the conditions for lifting the measures imposed by resolution 1521 (2003) and the humanitarian and socio-economic impact of the said measures.

On 20 December 2005, the Security Council adopted resolution 1647 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided to renew the measures on arms and travel imposed by resolution 1521 (2003) for a further period of twelve months, and to renew the measures on diamonds and timber imposed by resolution 1521 (2003) for a further period of six months.

(v) Lebanon

On 31 October 2005, the Security Council adopted resolution 1636 (2005) upon having examined the report of the United Nations International Independent Investigation Commission concerning its investigation into the 14 February 2005 terrorist bombing in Beirut that killed former Lebanese Prime Minister Rafiq Hariri and 22 other persons, and caused injury to dozens of people. The Council, acting under Chapter VII of the Charter of the United Nations, decided, as a step in assisting in the investigation of the crime, without prejudice to the ultimate judicial determination of guilt or innocence of any individual, that all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act, should be subject to certain measures. Among these, it was decided that all States should take the measures necessary to prevent entry into or transit through their territories of such individuals, or, if such individuals were found within their territory, ensure, in accordance with applicable law, that they would be available for interview by

52 In paragraph 4 (a) of resolution 1521 (2003), the Council imposed a travel ban on all individuals, as designated by the Committee, who constituted a threat to the Liberian peace process or who were engaged in activities aimed at undermining peace and stability in Liberia and the subregion.

53 In paragraph 1 of resolution 1532 (2004), the Council imposed financial sanctions on former Liberian President Charles Taylor, his immediate family members or other close allies as, designated by the Committee.

54 In paragraphs 6 and 10 of resolution 1521 (2003), the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamond from Liberia to their territory, and the import into their territories of all round logs and timber products originating in Liberia.

55 Report of the International Independent Investigation Commission established pursuant to Security Council 1595 (2005), annexed to the letter dated 20 October 2005 from the Secretary-General to the President of the Security Council (S/2005/662). See also the subsection on Lebanon below, under section 3 (f) (i) of this chapter, “Terrorism”.
the Commission if it was so requested. It was also decided that all States should: freeze all funds on their territories owned or controlled by such individuals, or by persons acting on their behalf; ensure that no funds were made available for the benefit of such individuals or entities; and cooperate fully, in accordance with applicable law, with any international investigation related to the assets or financial transactions of such individuals or entities, or persons acting on their behalf, including through sharing of financial information.

The Security Council further decided to establish a Committee of the Security Council to undertake the tasks described in resolution 1636 (2005), and that this Committee and any adopted measures would terminate when the Committee would have reported to the Security Council that all investigative and judicial proceedings relating to this terrorist attack had been completed, unless otherwise decided by the Security Council.

(vi) Côte d’Ivoire

On 15 December 2005, the Security Council adopted resolution 1643 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided to renew until 15 December 2006 certain provisions of resolution 1572 (2004).56 It further decided that any serious obstacle to the freedom of movement of the United Nations Operation in Côte d’Ivoire (UNOCI) and of the French forces supporting it, or any attack or obstruction to the action of UNOCI, of the French forces, of the High Representative for the elections and of the International Working Group57 would constitute a threat to the peace and the national reconciliation process for purposes of the said resolution.

Furthermore, the Council requested the Secretary-General to re-establish for a period of six months, in consultation with the Committee established by Security Council resolution 1572 (2004), a Group of Experts consisting of no more than five experts on arms, diamonds, finance, customs, civil aviation and any other relevant area of expertise with the task, inter alia, of exchanging information with UNOCI and the French forces in the context of their monitoring mandate set out in resolution 1609 (2005).58 The Group of Experts should also gather and analyze all relevant information in Côte d’Ivoire and elsewhere on flows of arms and related matériel, on provision of assistance, advice or training related to military activities, on networks operating in violation of the measures imposed by resolution 1572 (2004), and on the sources of financing, including from the exploitation of natural resources in Côte d’Ivoire, for purchases of arms and related matériel and activities. Further, it should: consider and recommend ways of improving the capabilities of States to ensure the effective implementation of the measures imposed by resolutions 1572 (2004) and 1643 (2005); report to the Security Council on the implementation of the measures.

56 In paragraphs 7 to 12 of resolution 1572 (2004), the Council imposed an arms embargo on Côte d’Ivoire and prohibited the provision of assistance related to military activities to Côte d’Ivoire. The Council also imposed a travel ban and financial sanctions on all persons who constituted a threat to the peace and the national reconciliation process in Côte d’Ivoire.

57 The International Working Group was established on 6 October 2005 by the African Union to evaluate, monitor and follow up the peace process in Côte d’Ivoire (see S/2005/639).

58 In resolution 1609 (2005), the Council authorized UNOCI to monitor the cessation of hostilities and movements of armed groups and to monitor the arms embargo. The Council also authorized the French forces supporting UNOCI to contribute to the monitoring of the arms embargo. See also subsection (j) on Côte d’Ivoire under section 3 (a) (ii) above on “Peacekeeping missions and operations”.

imposed by the said resolutions, with recommendations in this regard; and monitor the implementation of individual measures set out in resolution 1572 (2004).59

Finally, the Council decided that all States should take the necessary measures to prevent the import of all rough diamonds from Côte d’Ivoire to their territory.

(f) Terrorism60

On 14 September 2005, the Security Council adopted resolution 1624 (2005) and called upon all States to adopt such measures as may be necessary and appropriate, in accordance with their obligations under international law, to prohibit, by law, incitement to commit a terrorist act, prevent such conduct, and deny safe haven to any persons with respect to whom there was credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.

The Council further called upon all States to report to the Counter-Terrorism Committee (CTC), established by Security Council resolution 1373 (2001), on the steps they have taken to implement this resolution and directed the CTC to include in its dialogue with Member States their implementation efforts, work with Member States to help build capacity, and report back to the Council in twelve months on the implementation of the resolution.

(i) Security Council Committees established in 2005

Lebanon61

On 7 April 2005, the Security Council adopted resolution 1595 (2005) and reaffirmed its unequivocal condemnation of the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and others, and caused injury to dozens of people. In the resolution, the Council decided to establish an international independent investigation commission (the Commission), based in Lebanon, to assist the Lebanese authorities in their investigation of all aspects of that terrorist act, including helping to identify its perpetrators, sponsors, organizers and accomplices.

The Council further decided that, to ensure the Commission’s effectiveness in the discharge of its duties, it should enjoy the full cooperation of the Lebanese authorities, including full access to all documentary, testimonial and physical information and evidence; have the authority to collect any additional information and evidence pertaining to this terrorist act, as well as to interview all officials and other persons in Lebanon; enjoy freedom of movement throughout the Lebanese territory, including access to all sites and facilities; and be provided with the facilities necessary to perform its functions. It should be granted, as well as its premises, staff and equipment, the privileges and immunities to

59 In paragraphs 9 and 11 of resolution 1572 (2004), the Council imposed a travel ban and financial sanctions on all persons designated by the Committee as constituting a threat to the peace and national reconciliation process in Côte d’Ivoire.

60 See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

61 See also the subsection on Lebanon under section 3 (e) (v) above on “Sanctions imposed under Chapter VII of the Charter of the United Nations”.
which they are entitled under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.62

Although the Council requested the Commission to complete its work within three months, the Council authorized the Secretary-General to extend the Commission's operations for a further period not exceeding three months, if he deemed it necessary to enable the Commission to complete its investigation.

On 31 October 2005, the Security Council adopted resolution 1636 (2005), in which it welcomed the extension of the mandate of the Commission until 15 December 2005, and decided to extend it further, if recommended by the Commission and requested by the Lebanese Government. The Council also endorsed the Commission's conclusion that it was incumbent upon the Syrian authorities to clarify a considerable part of the questions which remained unsolved and decided, in that context, that the Commission should have vis-à-vis Syria the same rights and authorities as mentioned in resolution 1595 (2005) and that Syria must cooperate with the Commission fully and unconditionally on that basis.

By the same resolution 1636 (2005), the Council also decided to establish a Committee of the Security Council consisting of all its members as a step to assist in the investigation. The Committee was given the function, inter alia, to register as subject to the measures63 set forth in the resolution all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act. The Committee would also have to approve exceptions to the measures established on a case-by-case basis, to register the removal of an individual from the scope of these measures, and to inform all Member States as to which individuals were subject to the said measures.

On 15 December 2005, the Council adopted resolution 1644 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, as recommended by the Commission and requested by the Lebanese Government, to extend the mandate of the Commission, initially until 15 June 2006. The Council further authorized the Commission, following the request of the Lebanese Government, to extend its technical assistance to the Lebanese authorities with regard to their investigations on terrorist attacks perpetrated in Lebanon since 1 October 2004, and requested the Secretary-General to present, in consultations with the Commission and the Lebanese Government, recommendations to expand the mandate of the Commission to include investigations of those other attacks.

(ii) Other ongoing Security Council Committees in 2005

a. Counter-Terrorism Committee

On 14 September 2005, the Security Council adopted resolution 1624 (2005) and directed the Counter-Terrorism Committee to include in its dialogue with Member States

63 For those measures, see the subsection on Lebanon under section 3 (e) (v) above on “Sanctions imposed under Chapter VII of the Charter of the United Nations”.
their efforts to implement this resolution, work with Member States to help build capacity, including through spreading best legal practice and promoting exchange of information in this regard, and report back to the Council in twelve months on the implementation of the resolution.

b. Al-Qaida and Taliban Sanctions Committee

On 29 July 2005, the Security Council adopted resolution 1617 (2005) and, acting under Chapter VII of the Charter of the United Nations, decided, inter alia, that when proposing names for the list created by resolution 1267 (1999) of individuals subject to the related sanctions measures (the Consolidated List), States should act in accordance with paragraph 17 of resolution 1526 (2004) and henceforth also provide the Committee with a statement of case describing the basis of the proposal. Furthermore, Member States were called upon to use a checklist provided for in annex II of the resolution to report to the Committee on specific actions that they had taken to implement the measures outlined in the resolution with regard to individuals and entities added to the Consolidated List. The Council further decided that the statement of case submitted by the designating State might be used by the Committee in responding to queries from Member States, whose nationals, residents or entities had been included on the Consolidated List. It also decided that the Committee may decide, on a case-by-case basis, to release the information to other parties, with the prior consent of the designating State and that States may continue to provide additional information, which should be kept on a confidential basis within the Committee, unless the submitting State agreed to the dissemination of such information.

Furthermore, the Council decided to extend the mandate of the New York-based Monitoring Team for a period of 17 months, under the direction of the Committee, with the responsibility to collate, assess, monitor, report on and make recommendations regarding implementation of the sanctions measures. Its tasks also included, inter alia, to pursue case studies and to submit three comprehensive and independent reports on implementation by States of the measures referred to in this resolution. Further, the Monitoring Team should report on listing, de-listing, and exemptions granted pursuant to resolution 1452 (2002), and analyze reports submitted pursuant to resolution 1455 (2003), the checklists submitted pursuant to this resolution, and other information submitted by Member States to the Committee as instructed by the Committee. Finally, it should work closely and share information with the CTC Counter-Terrorism Executive Directorate and the 1540 Com-

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64 In resolution 1624 (2005), the Council called upon States to adopt measures to prohibit by law incitement to commit terrorist acts, to prevent such conduct and deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct, among others. See also section 3 (f) above on “Terrorism”.

65 See also subsection (i) on “Measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them” under section 3 (e) above on “Sanctions imposed under Chapter VII of the Charter of the United Nations”.

66 Paragraph 17 of resolution 1526 (2004) reads as follows: “[The Security Council] [c]alls upon all States, when submitting new names to the Committee’s list, to include identifying information and background information, to the greatest extent possible, that demonstrates the individual(s)’ and/or entity(ies)’ association with Usama bin Laden or with members of the Al-Qaida organization and/or the Taliban, in line with the Committee’s guidelines”.

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mittee’s Group of Experts\textsuperscript{67} in order to identify areas of convergence and to help facilitate concrete coordination among the three Committees.

Finally, the Security Council decided that the Monitoring Team should develop a plan to assist the Committee in addressing non-compliance with the measures referred to in this resolution, consult with Member States in advance of travel to selected Member States, encourage Member States to submit names and additional identifying information for inclusion on the Consolidated List, and study and report to the Committee on the changing nature of the threat of Al-Qaida and the Taliban and the best measures to confront it.

c. 1540 Committee (non-proliferation of weapons of mass destruction)

Between June and July 2005, the Committee established under Security Council resolution 1540 (2004) entered its substantive stage of work. Eight experts were recruited to assist in the examination of national reports dealing, \textit{inter alia}, with the implementation of States’ obligations to take and enforce effective measures to establish domestic control to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery.\textsuperscript{68}

4. Disarmament and related matters\textsuperscript{69}

\textit{(a)} Nuclear disarmament and non-proliferation issues

In 2005, as in previous years, the Conference on Disarmament\textsuperscript{70} could not adopt a programme of work and therefore did not establish any subsidiary body to deal with the issue of nuclear disarmament, which was only addressed during the plenary meetings.\textsuperscript{71}

The seventh session of the Review Conference of the Non-Proliferation of Nuclear Weapons Treaty took place in New York from 2 to 27 May 2005 and was attended by 153 States parties, various specialized agencies and other intergovernmental organizations, as well as a number of non-governmental organizations. The late adoption of the agenda of the Conference and some continuous disagreements among States concerning procedural aspects of the Conference delayed the review process of the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).\textsuperscript{72} Nevertheless, agree-

\begin{itemize}
  \item \textsuperscript{67} The 1540 Committee (non-proliferation of weapons of mass destruction) was established by Security Council resolution 1540 (2004) of 28 April 2004 to report to the Council on the implementation of that resolution by Member States.
  \item \textsuperscript{68} For information on the activities undertaken and results achieved by the 1540 Committee during the period 1 January to 16 December 2005, see Report to the Security Council by the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) (S/2005/799).
  \item \textsuperscript{69} For detailed information, see \textit{The United Nations Disarmament Yearbook}, vol. 30:2005 (United Nations publication, Sales No. E.06.IX.1).
  \item \textsuperscript{70} The Conference on Disarmament was established in 1979, as a result of the First Special Session on Disarmament of the General Assembly in 1978, as the single multilateral disarmament negotiating forum of the international community.
  \item \textsuperscript{71} Report of the Conference on Disarmament to the General Assembly of the United Nations (CD/1761).
  \item \textsuperscript{72} United Nations, \textit{Treaty Series}, vol. 729, p. 161.
\end{itemize}
ment was reached on the mandates and the time allocated to the Conference’s three main committees and their subsidiary bodies. In addition to considering the items allocated to each main committee during the 2000 Review Conference (implementation of the provisions of the Treaty relating to the non-proliferation of nuclear weapons, disarmament and international peace and security; safeguards and nuclear-weapon-free zones; and the implementation of the provisions of the Treaty relating to the inalienable right of all parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes, without discrimination), it was decided that Main Committee I would consider non-proliferation and disarmament education, and Main Committee II would address institutional issues, including proposals for institutionally strengthening accountability, compliance and implementation powers. Special attention was given by Subsidiary Body III to the question of withdrawal from the NPT, especially in view of the experience of the Democratic People’s Republic of Korea’s withdrawal in 2003. The Final Document of the Review Conference outlined only its procedural arrangements and proceedings because of the persistent divergence of views among States over various nuclear non-proliferation and disarmament related issues.

In 2005, the International Atomic Energy Agency (IAEA), in connection with its verification activities, continued to follow-up on information pertaining to Iran’s nuclear programme and activities. In its report dated 2 September 2005, IAEA stated that all the declared nuclear material in Iran had been accounted for, and therefore such material was not diverted to prohibited activities. However, IAEA also observed that it was still not in a position to conclude that there were no undeclared materials or activities in Iran. On 8 August 2005, after having informed IAEA accordingly, Iran resumed some uranium conversion activities under the Agency’s safeguards. On 11 August 2005, in its resolution GOV/2005/64, the Board of Governors, inter alia, expressed serious concern that Iran had decided to resume such activities.

On 24 September 2005, the Board of Governors adopted resolution GOV/2005/77, in which it, inter alia, noted that IAEA was still unable to conclude that there were no undeclared nuclear materials or activities in Iran. It found that Iran’s failure and breaches of obligations to comply with its NPT Safeguards Agreement constituted non-compliance in the context of article XII.C of the Agency’s Statute. Moreover, it also found that the history of concealment of its nuclear activities and their nature, issues brought to light during the verification activities performed by IAEA, and the resulting absence of confidence that its nuclear programme was exclusively for peaceful purposes, had given rise to questions that were within the competence of the Security Council.

Regarding other safeguards activities, during 2005, IAEA continued to hold discussions with the States of the Middle East region on the application of comprehensive safeguards to all nuclear activities in that region, as well as on the development of model agreements as a step towards the creation of a nuclear-weapon-free zone in the Middle East.

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73 NPT/CONF.2005/DEC1. See also NPT/CONF.2000/1, annex VIII, of the Final report of the Preparatory Committee for the 2000 Review Conference of Parties to the Treaty on the Non-Proliferation of Nuclear Weapons for a description of the issues considered by the three Main Committees of the Review Conference.

74 NPT/CONF.2005/57 (Part I).

75 GOV/2005/67.
Furthermore, the third Review Meeting of the Contracting Parties to the Convention on Nuclear Safety was held in Vienna, Austria, from 11 to 22 April 2005.76

On the subject of the Convention on Physical Protection of Nuclear Material,77 in January 2005, the Director General of IAEA had received requests from 55 States parties to the Convention to convene a conference to consider proposed amendments thereto, the text of which had been circulated on 5 July 2004. The Conference met in Vienna, Austria, from 4 to 8 July 2005. On 8 July, the Conference to Consider Proposed Amendments to the Convention on the Physical Protection of Nuclear Material adopted by consensus an Amendment to the Convention.78

Regarding the Comprehensive Nuclear-Test-Ban Treaty (CTBT),79 the Secretary-General of the United Nations, in his capacity as its Depositary, convened the fourth Conference on Facilitating the Entry into Force of the CTBT, following a request by a majority of States that had ratified the Treaty. The Conference was held in New York, from 21 to 23 September 2005. The Conference offered States an opportunity to review overall progress since the Treaty’s adoption in 1996 and focus on developments since the previous Conference held in September 2003. On its last day, the Conference adopted a Final Declaration and Measures to Promote the Entry into Force of the CTBT,80 in which it, inter alia, reaffirmed the “firm determination to end nuclear test explosions or any other nuclear explosions” and called upon all States “to refrain from acts which would defeat the object and purpose of the Treaty pending its entry into force.” It was also recommended that States consider establishing a trust fund, financed by voluntary contributions, to support activities aimed at promoting the Treaty.

In the area of ballistic missile proliferation, the fourth regular meeting of the subscribing States to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC) was held in Vienna, Austria, from 2 to 3 June 2005. By the end of 2005, the HCOC had 123 subscribing States, which agreed on a text for a draft resolution to be presented to the General Assembly during its sixtieth session (see General Assembly resolution 60/62 of 8 December 2005).

76 See the Summary Report of the Third Review Meeting CNS-RM-2005/08 FINAL. For more details on the Meeting, see subsection (d) (ii) on the Convention on Nuclear Safety under chapter III B 8 "International Atomic Energy Agency”.
78 For the Final Act of the Conference and the text of the Amendment, see GOV/INF/2005/10-GC(49)/INF/6, attachment. For more detailed information, see also in chapter III B 8, subsection (d) (i) on the Convention on Physical Protection of Nuclear Material.
79 A/50/1027.
General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, 12 resolutions and 2 decisions concerning nuclear weapons and non-proliferation issues, of which five are highlighted below.

In resolution 60/53, entitled “Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons”, the Assembly recommended that endeavours be made to achieve a legally binding instrument encompassing a common approach.

In its resolution 60/65, entitled “Renewed determination towards the total elimination of nuclear weapons”, the General Assembly called upon States to join and implement the NPT unconditionally and immediately. It also emphasized the importance of starting negotiations on a fissile material cut-off treaty and its early conclusion and that in the meantime, a moratorium on the production of fissile material for any nuclear weapons should be declared.

The General Assembly also adopted resolution 60/70 entitled “Nuclear disarmament”, in which it urged the nuclear-weapon States to immediately stop the qualitative improvement, development, production and stockpiling of nuclear warheads and their delivery systems, and, as an interim measure, to immediately de-alert and deactivate their nuclear weapons and to take concrete measures to further reduce the operational status of their nuclear-weapon systems. The Assembly also called for the convening of an international conference on nuclear disarmament in all its aspects at an early date to identify and deal with concrete measures of disarmament.

In its resolution 60/76, entitled “Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”, the General Assembly called upon all States to immediately fulfil the obligation under the Advisory Opinion by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.

Finally, the General Assembly, in its resolution 60/95 on the “Comprehensive Nuclear-Test-Ban Treaty”, firmly encouraged Member States to maintain their moratoriums on nuclear-weapons test explosions or any other explosions and to refrain from acts that would defeat the object and purpose of the Treaty.

(b) Biological and chemical weapons issues

The year 2005 celebrated the 30th anniversary of the entry into force of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological
(Biological) and Toxin Weapons and on Their Destruction, 1972\textsuperscript{84} (BWC). In this context, the third Meeting of Experts from States parties to the BWC\textsuperscript{85} and the third Meeting of States parties to the same convention, which were both the last set of meetings of a three-year long process aimed at strengthening the implementation and effectiveness of the BWC leading up to the sixth Review Conference, were held in Geneva, Switzerland, in June and December 2005, respectively. The Meeting of the States parties adopted a series of procedural decisions regarding the sixth Review Conference and its preparatory committee, to be held in 2006.\textsuperscript{86}

Also in 2005, the tenth session of the Conference of States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction was held in November, in The Hague, the Netherlands, where the objectives of the 2003 Action Plan on National Implementation and Universality of the Convention were reaffirmed.\textsuperscript{87}

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), which was established by Security Council resolution 1284 (1999) to verify Iraq’s compliance with its obligation to be rid of its weapons of mass destruction and to operate a system of ongoing monitoring and verification to ascertain that Iraq does not reacquire the same weapons prohibited by the Security Council, has been inactive in the field since March 2003. Nevertheless, UNMOVIC continued to carry out its activities which could be implemented outside of Iraq.\textsuperscript{88}

\textit{General Assembly}\textsuperscript{89}

On 8 December 2005, the General Assembly adopted resolution 60/67 entitled “Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction” and resolution 60/96 entitled “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction”, in which the Assembly called upon States to fulfil their obligations under the respective Conventions.

\textit{(c) Conventional weapons issues}

On 3 July 2005, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunitions (Firearms Protocol), supplementing the United Nations Convention against Transnational Organized Crime, entered into force.\textsuperscript{90}

\textsuperscript{84} United Nations, \textit{Treaty Series}, vol. 1015, p. 163.
\textsuperscript{85} For the report of the Meeting of Experts, see BWC/MSP/2005/MX/3.
\textsuperscript{86} For the report of the Meeting of States parties, see BWC/MSP/2005/3.
\textsuperscript{87} For the report of the Conference of States parties, see C-10/5.
\textsuperscript{89} See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.
\textsuperscript{90} United Nations, \textit{Treaty Series}, vol. 2326, p. 211.
Regarding the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects (CCW), the Group of Governmental Experts to the CCW held its tenth, eleventh and twelfth sessions in March, August and November 2005, respectively, in Geneva, Switzerland. The Group conducted the majority of its work in the framework of two working groups: the Working Group on Explosive Remnants of War and the Working Group on Mines Other Than Anti-Personnel Mines. The Working Groups were requested to report on the work undertaken, including on recommendations made, at the following Meeting of the States Parties to the Convention, which was held from 24 to 25 November 2005, in Geneva, Switzerland. The main function of the Meeting of the States Parties was to consider the report from the Group of Governmental Experts, including the recommendations relating to the future mandates of the two Working Groups contained therein. In this regard, it adopted several decisions, including on the future work of the Working Groups, as well as on the meeting of the third Review Conference of CCW, which was to meet from 7 to 17 November 2006.

Furthermore, the seventh annual Conference of the States Parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 annexed to the CCW (Protocol II as amended) was held on 23 November 2005, in Geneva, Switzerland. In the report of the Conference, the High Contracting Parties made an appeal for the universality of the Protocol.

In the area of anti-personnel mines, the sixth Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction was held from 28 November to 2 December 2005, in Croatia. The discussions of the Meeting were organized in accordance with the main themes established in the Nairobi Action Plan (universalizing the Convention, destroying stockpiled anti-personnel mines, clearing mined areas, assisting the victims, and other matters essential for achieving the Convention’s aims). The Meeting, inter alia, reviewed the status and operation of the Convention and considered requests made in accordance with its articles 5 and 8. At the final meeting, the Meeting of the States Parties adopted the Zagreb Declaration in which they reaffirmed the commitments made during the first Review Conference of the States Parties to the Convention.

Regarding the topic small arms and light weapons (SALW), the second Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its

92 For the reports of the tenth, eleventh and twelfth sessions of the Group of Governmental Experts, see docs. CCW/GGE/X/5, CCW/GGE/XI/4 and CCW/GGE/XII/4, respectively.
93 For the report of the Meeting of the States Parties, see CCW/MSP/2005/2.
94 For the report of the Conference, see CCW/AP.II/CONF.7/2. The text of the appeal is reproduced in appendix IV.
95 For the report of the Meeting of States Parties, see APLC/MSP.6/2005/5.
96 For the Nairobi Action Plan, see APLC/CONF/2004/5. The themes are detailed in Part III.
97 For the text of the Convention, see United Nations, Treaty Series, vol. 2056, p. 211.
98 APLC/MSP.6/2005/5, appendix V.
Aspects was held from 11 to 15 July 2005, in New York, to consider the implementation of the Programme of Action, including international cooperation and assistance.\(^9^9\)

In addition, the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons held its second and third sessions, from 24 January to 4 February, and from 6 to 17 June 2005, respectively.\(^1^0^0\) During these sessions, the Open-ended Working Group discussed a draft text of an instrument relating to, \textit{inter alia}, the requirements for marking SALW, record-keeping and cooperation in tracing. However, divergent views were expressed as to the scope of the instrument and whether or not it should be legally binding. At its third session, the Open-ended Working Group reached consensus and recommended that the General Assembly adopt a draft instrument of a political character, designed to create an efficient weapons tracing system. Nevertheless, consensus could not be reached with regard to the questions relating to the inclusion of SALW ammunition in the instrument, or on the applicability of its provisions to peacekeeping operations mandated by the Security Council or regional organizations. The Open-ended Working Group thus recommended that the two questions be considered in a separate process. On 8 December 2005, the General Assembly, in its decision 60/519, adopted the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small and Light Weapons.

\begin{enumerate}
\item \textit{General Assembly}
\end{enumerate}

On 8 December 2005, the General Assembly, on the recommendation of the First Committee, adopted ten resolutions and two decisions\(^1^0^1\) relating to conventional weapons, of which three are highlighted below.

In resolution 60/68, entitled “Addressing the negative humanitarian and development impact of the illicit manufacture, transfer and circulation of small arms and light weapons and their excessive accumulation”, which was a one-time-only resolution on a topical subject, the General Assembly called upon States to explore ways to address in a more efficient way the humanitarian and development impact of illicit SALW and their accumulation, particularly in conflict or post-conflict situations.

The General Assembly also adopted resolution 60/81, “The illicit trade in small arms and light weapons in all its aspects”, in which the Assembly, among other things, called upon States to implement the International Instrument to Enable States to Identify and Trace, in a Timely and reliable Manner, Illicit Small and Light Weapons adopted by the Assembly in its decision 60/519.

Further, in resolution 60/74, entitled “Problems arising from the accumulation of conventional ammunition stockpiles in surplus”, the Assembly encouraged all interested States to assess, on a voluntary basis and in conformity with their legitimate security

\(^9^9\) For the report of the second Biennial Meeting, see A/CONF.192/BMS/ 2005/1
\(^1^0^0\) For the report of the Open-ended Working Group, see A/60/88, annex.
\(^1^0^1\) See General Assembly resolutions 60/44, 60/68, 60/69, 60/71, 60/74, 60/77, 60/80, 60/81, 60/82 and 60/93 and decisions 60/226 and 60/519.
needs, whether parts of their stockpiles of conventional ammunition should be considered to be in surplus.

(ii) Security Council

Following a request made in 2004 by the Security Council, on 7 February 2005, the Secretary-General submitted a report to the Council on ways and means in which it could contribute to dealing with the question of illicit trade in SALW in situations under its consideration.102 On 17 February 2005, the Security Council considered the report of the Secretary-General and held an open debate on small arms where the progress made in key areas to trace illicit SALW was highlighted. On the same day, the President of the Council also made a Statement on this matter.103

On 25 February 2005, the Security Council considered the report of the Secretary-General on ways to combat subregional and cross-border problems in West Africa.104 At the end of the open debate on this item, a Presidential Statement was made on behalf of the Council105 in which it expressed concern about the involvement of security and armed forces in illicit activities, such as the smuggling of arms, drugs and natural resources. It also emphasized the need to pursue security sector reforms with a view to improving civil-military relations in countries emerging from conflict situations.

(d) Regional disarmament activities of the United Nations

(i) Africa

In 2005, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) undertook several tasks in the implementation of international instruments relating to disarmament and non-proliferation, in particular the Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects through regional and subregional frameworks. In this regard, the Centre’s activities focused on the support for peace processes and peace initiatives in Africa, disarmament and arms control, information, research and publications and advocacy and resource mobilization.

UNREC continued to implement the Small Arms Transparency and Control Regime in Africa project, with the participation of ten countries,106 who agreed on an operational definition of the concept of transparency in regard to the transfers of SALW. Furthermore, UNREC undertook an inventory of the national capacities for the production of SALW in the ten participating States. It also provided technical assistance to the National Commissions and Focal Points for the Control of SALW.

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102 S/2005/69.
103 S/PRST/2005/7.
104 S/2005/86.
106 Burkina Faso, Cameroon, Djibouti, Gabon, Kenya, Mali, Mozambique, Nigeria, South Africa and Togo.
(ii) Latin America and the Caribbean

During the year 2005, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLiREC) provided assistance to States in the region in a variety of areas, including through the preparation of studies related to conventional weapons, supporting the implementation of and universal participation in multilateral instruments dealing with weapons of mass destruction, and through the organization of seminars on public security and firearms legislation. It further provided support to the Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive-Nuclear-Test-Ban Treaty Organization in promoting adherence to the Treaty and developed, in cooperation with the Organization for the Prohibition of Chemical Weapons and the Government of Peru’s National Council for the Prohibition of Chemical Weapons, the Chemical Weapons Regional Assistance and Protection Network (CW-RAPN).

(iii) Asia-Pacific

In 2005, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific carried out activities in relation to a wide variety of issues, including non-proliferation of weapons of mass destruction, nuclear-weapon-free zone and SALW. It organized a number of regional and subregional conferences, seminars and workshops, including on nuclear and conventional arms, SALW, disarmament and non-proliferation education issues.

The Regional Centre also organized a meeting of the five Central Asian States from 7 to 9 February 2005, in Tashkent, Uzbekistan, to facilitate the negotiations and conclusion of the draft Central Asian Nuclear-Weapon-Free Zone Treaty.

(iv) General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, ten resolutions and one decision relating to the issue of regional disarmament, of which two are highlighted below.

In its resolution 60/52, entitled “Establishment of a nuclear-weapon-free zone in the region of the Middle-East”, the Assembly urged all parties concerned to consider taking the practical and urgent steps required to implement the proposal to establish a nuclear-weapon-free zone in the Middle-East. Furthermore, the Assembly invited the countries of that region, pending the establishment of such a zone, not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories of nuclear weapons or nuclear explosive devices. It also requested the Secretary-General to continue consultations with the States of the region and other concerned States, and to seek their

\[^{107}\] Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

\[^{108}\] See General Assembly resolutions 60/48, 60/49, 60/50, 60/52, 60/58, 60/63, 60/64, 60/75, 60/87 and 60/94 and decision 60/516.
views on the measures outlined in the study annexed to his report of 10 October 1990\textsuperscript{109} in order to move towards the establishment of such a zone.

In resolution 60/75, entitled “Conventional arms control at the regional and subregional levels”, the General Assembly, \textit{inter alia}, requested the Conference on Disarmament to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control and to report on the subject.

\section*{(e) Other issues}

\section*{(i) Terrorism and disarmament}

\textbf{General Assembly}

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/73 entitled “Preventing the risk of radiological terrorism”, in which it called upon Member States to support international efforts to prevent the acquisition and use by terrorists of radioactive materials and sources by urging them to take and strengthen national prevention measures. It also invited Member States to support and endorse efforts of IAEA to enhance the safety and security of radioactive sources.

On the same day, the General Assembly also adopted, on the recommendation of the First Committee, resolution 60/78 entitled “Measures to prevent terrorists from acquiring weapons of mass destruction”, in which the Assembly underlined the urgent need to address the threat of weapons of mass destruction falling into the hands of terrorists. It called upon all Member States to support international efforts to prevent terrorists from acquiring such weapons and their means of delivery, and invited the Member States to sign and ratify the International Convention for the Suppression of Acts of Nuclear Terrorism, in order to bring about its early entry into force.

\section*{(ii) Outer space}

Since the Conference on Disarmament did not reach an agreement on its programme of work, no subsidiary body was established to address the issue of the prevention of an arms race in outer space. Nevertheless, the Conference addressed matters related to this topic at its 988th plenary meeting on 30 June 2005.\textsuperscript{110}

\textbf{General Assembly}

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/54 entitled “Prevention of an arms race in outer space”, in which it recalled that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in that environment. It reiterated that the Conference\textsuperscript{109} A/45/435, annex (Study on effective and verifiable measures which would facilitate the establishment of a nuclear-weapon-free zone in the Middle East).

\textsuperscript{110} For the Final Record of the 988th Plenary Meeting of the Conference on Disarmament, see CD/PV.988.
on Disarmament had the primary role in the negotiation of multilateral agreements on such prevention.

On the same date, the Assembly also adopted, on the recommendation of the First Committee, resolution 60/66 entitled “Transparency and confidence-building measures in outer-space activities”, in which it invited all Member States to inform the Secretary-General prior to the sixty-first session of the General Assembly of their views on the advisability of further developing international outer space transparency and confidence-building measures.

(iii) Human rights, human security and disarmament

At its fifty-seventh session, the Geneva-based Subcommission on the Promotion and Protection of Human Rights111 contemplated a set of draft principles on the prevention of human rights violations committed with small arms and light weapons. The principles contained obligations both in relation to the regulation over the use of SALW by Governments and State officials, and with regard to measures to prevent human rights abuses by private actors using such weapons. The Subcommission decided to request the Special Rapporteur, having prepared the draft principles, to submit her final report for consideration at its fifty-eighth session.112

(iv) Role of science and technology in the context of international security and disarmament

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/51 entitled “Role of science and technology in the context of international security and disarmament”, in which it invited States to undertake additional efforts to apply science and technologies for disarmament-related purposes and to make disarmament-related technologies available to interested States. The Assembly also urged States to undertake multilateral negotiations aiming to establish universally acceptable guidelines for international transfers of dual-use goods and technologies, as well as high technology with military applications.

111 The United Nations Subcommission on the Promotion and Protection of Human Rights is the main subsidiary body of the Commission on Human Rights. It was established in 1947 as the “Subcommission on Prevention of Discrimination and Protection of Minorities”, and got its current name in 1999. The Subcommission meets annually and is composed of 26 experts who serve in their personal capacity.

(v) **Multilateralism and disarmament**

**General Assembly**

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/59 entitled “Promotion of multilateralism in the area of disarmament and non-proliferation”, in which it reaffirmed multilateralism as the core principle in disarmament and non-proliferation negotiations and once again called upon all Member States to renew and fulfil their individual and collective commitments to multilateral cooperation as an important means of pursuing and achieving their common disarmament and non-proliferation objectives.

(vi) **Environmental norms and disarmament agreements**

**General Assembly**

Also on 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, resolution 60/60 entitled “Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control”. In the said resolution, the Assembly reaffirmed that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. It further called upon States to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to sustainable development.

5. **Legal aspects of peaceful uses of outer space**

The Legal Subcommittee on the Peaceful Uses of Outer Space held its forty-fourth session in Vienna from 4 to 15 April 2005.\(^{113}\)

During the session, in the context of its consideration of the item on the status and application of the five United Nations treaties on outer space,\(^{114}\) the Subcommittee took note of their status and agreed that it would be premature for the related Working Group to meet during the session as more time was needed for States and organizations to respond to the letters that were sent pursuant to General Assembly resolution 59/116 concerning participation in those treaties, as well as to the recommendation for voluntary submission of information on their current practices regarding on-orbit transfer of ownership of space objects (resolution 59/115). The Subcommittee also agreed that it would reconvene the

\(^{113}\) For the report of the Legal Subcommittee, see A/AC.105/850.

Working Group at its forty-fifth session in 2006, and that it would, at that time, review the need to extend the mandate of the Working Group beyond that session.

Under the agenda item concerning information on the activities of international organizations relating to space law, the Subcommittee, *inter alia*, commended the work of the United Nations Office for Outer Space Affairs in compiling the document “Education opportunities in space law: a directory”,115 its electronic publication “Space Law Update”116 and the organization of workshops on space law.

In connection with the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,117 the Subcommittee had before it, among other things, a note by the Secretariat entitled “Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States”118 and an analytical summary of the replies received.119 The Subcommittee reconvened the Working Group on this item to consider only matters relating to the definition and delimitation of outer space, in accordance with the agreement reached at its thirty-ninth session. It subsequently endorsed the Working Group’s report.120

Regarding the agenda item entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)” the Legal Subcommittee considered two sub-items: “(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the future protocol” and “Considerations relating to the relationship between the terms of the future protocol and the rights and obligations of States under the legal regime applicable to outer space.” It had before it for consideration, *inter alia*, a report of the open-ended ad hoc working group on the question of the appropriateness of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets,121 results of the preliminary exchange of views on the said report,122 as well as a note by the Secretariat: report of the Unidroit secretariat on the second session of the Unidroit committee of governmental experts for the preparation of a draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets.123 The Subcommittee reconvened the Working Group on this item and endorsed its report.124 It also agreed to

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117 The full title reads: “Matters relating to the definition and delimitation of outer space and 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”.
120 A/AC.105/850, annex I.
121 A/AC.105/C.2/L.256.
122 A/AC.105/C.2/2005/CRP.7. See also the report on the question of the United Nations serving as the supervisory authority under the future protocol on matters specific to space assets (A/AC.105/C.2/2005/CRP.7/Rev.1 and 2).
124 A/AC.105/850, annex II.
rename the item as follows: “Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment”, and decided that the item, as renamed, should remain on the agenda of the Subcommittee at its forty-fifth session.

In its resolution 59/116, the General Assembly had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should consider the practice of States and international organizations in registering space objects. In this context, the Subcommittee had before it a background paper prepared by the Secretariat on the practice of States and international organizations in registering space objects and received information on State practice, including bilateral agreements and legislation, aimed at implementing the Convention on Registration of Objects Launched into Outer Space, 1975. The Subcommittee reconvened the Working Group on this item, which, inter alia, agreed that, during the forty-fifth session of the Subcommittee, it could focus on the following four areas: (a) harmonization of practices (administrative and practical); (b) non-registration of space objects; (c) practice with regard to transfer of ownership of space objects in orbit; and (d) practice with regard to registration/non-registration of foreign space objects. The Subcommittee endorsed the Working Group’s report.

The Committee on the Peaceful Uses of Outer Space held its forty-eighth session in Vienna from 8 to 17 June 2005. The Committee took note of the Legal Subcommittee’s report and a number of views were expressed concerning the work of the Subcommittee.

General Assembly

On 8 December 2005, the General Assembly adopted, on the recommendation of the First Committee, two resolutions relating to the legal uses of outer space, resolution 60/54 entitled “Prevention of an arms race in outer space,” and resolution 60/66 entitled “Transparency and confidence-building measures in outer space activities”. In the former resolution, the Assembly reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space, that the regime played a significant role in the prevention of an arms race in that environment, that there was a need to consolidate and reinforce that regime and enhance its effectiveness and that it was important to comply strictly with existing agreements, both bilateral and multilateral.

Furthermore, on the same day, on the recommendation of the Fourth Committee, the Assembly adopted resolution 60/99 entitled “International cooperation in the peaceful uses of outer space”, in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space.

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126 A/AC.105/850, annex III.
6. **Human rights**

(a) Sessions of the United Nations human rights bodies and treaty bodies

(i) **Commission on Human Rights**

The United Nations Commission on Human Rights was established in 1946 by the Economic and Social Council during its first session to submit proposals, recommendations and reports to the Council regarding certain defined human rights areas, including an international bill of rights, the status of women, the freedom of information, the protection of minorities and the prevention of discrimination on grounds of race, sex, language or religion. At its second session the mandate of the Commission was expanded to include any other matter concerning human rights not covered in the previous resolution. Its mandate expanded further over time allowing the Commission to respond to the whole range of human rights problems and to set standards governing the conduct of States. The Commission held its sixty-first session from 14 March to 22 April 2005 in Geneva.

(ii) **Human Rights Council**

In 2005, during the World Summit held in September, the Heads of State and Government decided to establish a Human Rights Council that would replace the Commission on Human Rights. This decision was the outcome of negotiations on the proposal made on

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128 This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. Other legal developments in human rights may be found under the sections in the present chapter entitled “Peace and security” and “Women”. The present section does not cover resolutions addressing human rights issues arising in particular States, nor does it cover in detail the legal activities of the Commission on Human Rights, the Subcommission for the Promotion and Protection of Human Rights, or the treaty bodies (namely, the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture, Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at http://www.ohchr.org, as well as in the reports of the respective bodies. For complete lists of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. IV.

129 Economic and Social Council resolution adopted on 16 February 1946 (E/20).

130 Economic and Social Council resolution adopted on 21 June 1946 (E/56/Rev.1 and E/84, para. 4).


132 General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome”. See also section 2 of the present chapter.
the matter by the Secretary-General in March 2005, following the report of the High-level Panel on Threats, Challenges and Change.

(iii) **Subcommission for the Promotion and Protection of Human Rights**

The Subcommission for the Promotion and Protection of Human Rights was established by the Commission on Human Rights as its main subsidiary body during the first session of the Commission in 1947, and under the authority of the Economic and Social Council. The Subcommission held its fifty-seventh session from 25 July to 12 August 2005 in Geneva.

(iv) **Human Rights Committee**

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966, to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2005, the Committee held its eighty-third session from 14 March to 1 April in New York, and its eighty-fourth and eighty-fifth sessions from 11 to 29 July and from 17 October to 3 November, respectively, in Geneva.

(v) **Committee on Economic, Social and Cultural Rights**

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council in 1985 to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966, by its States parties. In 2005, the Committee held its thirty-fourth and thirty-fifth sessions from 25 April to 13 May and from 7 to 25 November, respectively, in Geneva.

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133 In larger freedom: towards development, security and human rights for all, report of the Secretary-General (A/59/2005 and Add.1 (The addendum consists of an explanatory note by the Secretary-General on the establishment of the Human Rights Council)).


135 Economic and Social Council resolution 46 (IV) of 28 March 1947 (E/325).


141 The reports of the thirty-fourth and thirty-fifth sessions can be found in _Official Records of the Economic and Social Council, 2006, Supplement No. 2_ (E/2006/22-E/C.12/2005/12).
(vi) **Committee on the Elimination of Racial Discrimination**

The Committee on the Elimination of Racial Discrimination was established under the Convention on the Elimination of All Forms of Racial Discrimination, 1966, to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its sixty-sixth and sixty-seventh sessions from 21 February to 11 March and from 2 to 19 August, respectively, in Geneva.

(vii) **Committee on the Elimination of Discrimination against Women**

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women, 1979, to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-second and thirty-third sessions from 10 to 28 January and from 5 to 22 July, respectively, in New York.

(viii) **Committee against Torture**

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-fourth and thirty-fifth sessions from 2 to 20 May and from 7 to 25 November, respectively, in Geneva.

(ix) **Committee on the Rights of the Child**

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child, 1989, to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its thirty-eighth, thirty-ninth, and fortieth sessions in Geneva, from 10 to 28 January, from 17 May to 3 June and from 12 to 30 September, respectively.

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143 The reports of the sixty-sixth and sixty-seventh sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18).
144 All matters relating to human rights and women and the advancement of women are dealt with in section 7 entitled “Women” of the present chapter.
146 The reports of the thirty-second and thirty-third sessions can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 38* (A/60/38).
148 The reports of the thirty-fourth and thirty-fifth session can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44* (A/60/44) and *ibid.*, *Sixty-first Session, Supplement No. 44* (A/61/44), respectively.
150 The reports of the thirty-eighth, thirty-ninth, and fortieth sessions can be found in documents CRC/C/146, CRC/C/150 and CRC/C/153, respectively.
(x) Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,\textsuperscript{151} to monitor the implementation of this Convention by its States parties. In 2005, the Committee held its second and third sessions from 25 to 29 April and from 12 to 16 December, respectively, in Geneva.\textsuperscript{152}

(b) Racism, racial discrimination, xenophobia and related intolerance

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/143 entitled “Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, in which it, \textit{inter alia}, expressed concern over the ongoing glorification of the Nazi movement and the increase in the number of racist incidents in several countries and the rise of skinhead groups. It stressed that such practices fuelled contemporary forms of racism, racial discrimination and xenophobia. The Assembly emphasized the need to take measures to put an end to such practices.

On the same day, also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/144 entitled “Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation and follow-up to the Durban Declaration and Programme of Action”, in which it, \textit{inter alia}, stressed that States and international organizations had a responsibility to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin, and urged all States to rescind or refrain from all forms of racial profiling. Furthermore, the Assembly emphasized that it was the responsibility of States to adopt effective measures to combat criminal acts motivated by racism, including measures to ensure that such motivations were considered as an aggravating factor in sentencing. Finally, it also condemned all acts of racism in sporting events and urged all States and sporting associations and federations to adopt firm measures for the prevention of such acts and to impose severe penalties on their perpetrators. In this regard, the Assembly invited the Fédération Internationale de Football Association (FIFA), in connection with the 2006 and 2010 World Cups of football to be held, respectively, in Germany and in South Africa, to consider introducing a visible theme promoting non-racialism in football.

\textsuperscript{151} United Nations, \textit{Treaty Series}, vol. 2220, p. 3.

\textsuperscript{152} The reports of the second and third sessions can be found in \textit{Official Records of the General Assembly, Sixtieth Session, Supplement No. 48} (A/60/48) and \textit{ibid., Sixty-first Session, Supplement No. 48} (A/61/48), respectively.
(c) Right to development

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/157 entitled “The right to development”. In the said resolution, the Assembly, inter alia, endorsed the agreed conclusions and recommendations adopted by the Working Group on the Right to Development at its sixth session, and called for their full, immediate and effective and implementation. Furthermore, the Assembly reaffirmed the primary responsibility of States to create national and international conditions favourable to the realization of the right to development and stressed the need to strive for greater acceptance, operationalization and realization of the right to development at the international and national levels. It also recognized the important link between the international economic, commercial and financial spheres and the realization of the right to development. The Assembly stressed in this regard the need for good governance and for broadening the base of decision-making at the international level on issues of development concern and the need to fill organizational gaps, strengthen the United Nations system and other multilateral institutions, as well as strengthen and broaden the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting.

(d) Economic, social and cultural rights

(i) Right to food

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/165 on “The right to food”, in which, among other things, it reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be able to fully develop and maintain their physical and mental capacities. The Assembly also stressed the importance of international development cooperation and assistance, in particular in emergency situations, such as natural and man-made disasters, diseases and pests, for the realization of the right to food and the achievement of sustainable food security, while recognizing that each country had the primary responsibility for ensuring the implementation of national programmes and strategies in this regard. Furthermore, the Assembly welcomed the adoption by the Council of the Food and Agriculture Organization of the United Nations of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, which it considered represent a practical tool to promote the realization of the right to food for all, and thus provided an additional instrument in the attainment of internationally agreed development goals, including those contained in the Millennium Declaration.

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153 See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.
(ii) Human rights and cultural diversity

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/167 on “Human rights and cultural diversity”. In the said resolution, the Assembly, among other things, affirmed the importance for all peoples and nations to hold, develop and preserve their cultural heritage and traditions in an atmosphere of mutual respect, and recognized the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. The Assembly also expressed its determination to prevent and mitigate cultural homogenization in the context of globalization, through increased intercultural exchange, and further recognized that respect for cultural diversity and the cultural rights of all enhanced cultural pluralism and advanced the application and enjoyment of universally accepted human rights throughout the world. Finally, it urged States to ensure that their political and legal systems reflected the multicultural diversity within their societies and avoided discrimination against specific sectors of society.

(e) Civil and political rights

(i) Religious intolerance

a. General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/166 entitled “Elimination of all forms of intolerance and of discrimination based on religion or belief”, in which it took note of the work and the report of the Special Rapporteur on freedom of religion or belief\(^{156}\) and recalled Commission on Human Rights resolution 2005/40 of 19 April 2005 on this item.\(^{157}\) It further urged States, inter alia, (a) to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief, including the provision of effective remedies in cases where these rights are violated; (b) to ensure that religious places, sites, shrines and religious symbols are fully respected and protected; (c) to review existing registration practices in order to ensure the right of all persons to manifest their religion or belief; (d) to ensure the right to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes and the right to write, issue and disseminate related publications in these areas; (e) to ensure that the freedom to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected; (f) to ensure that no one within their jurisdiction is, because of their religion or belief, deprived of the right to life, liberty or security of person, subjected to torture or arbitrary arrest or detention; and (g) to ensure that all public officials and civil servants respect different religions and beliefs and do not discriminate on such grounds, and that all necessary and appropriate education or training is provided.

\(^{156}\) See the report of the Special Rapporteur on Civil and Political Rights, including the Question of Religious Intolerance (E/CN.4/2005/61).

Furthermore, the Assembly urged States to step up their efforts, in conformity with international standards of human rights, to eliminate intolerance and discrimination based on religion or belief, including by taking all necessary and appropriate action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, with particular regard to religious minorities. In this regard, States were urged to devote particular attention to practices that violate the human rights of women and discriminate against women. The General Assembly also emphasized the importance of a continued and strengthened dialogue among and within religions or beliefs, including as encompassed in the dialogue among civilizations, and that equating any religion with terrorism should be avoided.

In the area of religious intolerance, the Assembly also adopted, on 3 November 2005 and without reference to a Main Committee, resolution 60/10, “Promotion of interreligious dialogue and cooperation for peace” and resolution 60/11, “Promotion of religious and cultural understanding, harmony and cooperation”, and, on 16 December 2005, on the recommendation of the Third Committee, resolution 60/150 entitled “Combating defamation of religions”.

b. Security Council

Similarly emphasizing the importance of dialogue and understanding among civilizations, the Security Council adopted resolution 1624 (2005) on 14 September 2005, in which it, inter alia, called upon all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate in accordance with their obligations under international law, to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters.

(ii) Torture and other cruel, inhuman or degrading treatment or punishment

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/148 entitled “Torture and other cruel, inhuman or degrading treatment or punishment”, in which it noted the interim report of the Special Rapporteur on this subject,158 and encouraged him to continue to include proposals in his recommendations on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations. The Assembly also urged States to ensure that any statement that was established to have been made as a result of torture should not be invoked as evidence in proceedings, and that States do not expel, return or extradite a person to another State where there were substantial grounds for believing that the person would be in danger of being tortured. The Assembly also called upon States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture. Finally, the Assembly further urged States that had not yet done so to become parties to the Convention against Torture.

158 A/60/316.
and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority and to comply strictly with their obligations thereunder.

(iii) **Enforced or involuntary disappearances**

On 25 July 2005, the Economic and Social Council adopted decision 2005/262, in which it took note of Commission on Human Rights resolution 2005/27 of 19 April 2005 entitled “Enforced involuntary disappearances”\(^\text{159}\) and approved the Commission’s request that the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance meet for a period of 10 days in one formal session before the end of 2005 with a view to the completion of its work and report to the Commission at its sixty-second session.\(^\text{160}\)

(iv) **Independence of the judiciary, administration of justice, and impunity**

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/159 entitled “Human rights in the administration of justice”, in which, among other things, it invited Governments to provide for training in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors and law enforcement workers. It further 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 promote and protect human rights.

(f) **Rights of the child**

(i) **General Assembly**

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/141 on “The girl child”, in which it, *inter alia*, urged all States to take all necessary measures and to institute legal reforms to ensure the full and equal enjoyment by the girl child of all human rights and fundamental freedoms, and to take effective action against violations of those rights and freedoms. The Assembly also urged States to enact and strictly enforce laws to ensure that marriage was entered into only with the free and full consent of the intending spouses, and recommended that laws concerning the minimum legal age of consent and for marriage be enacted and strictly enforced. It also urged all States to enact and enforce legislation to protect girls from all forms of violence and exploitation, including female infanticide and prenatal sex selection, female genital mutilation, rape and other kind of abuses. Finally, the Assembly urged all States and the interna-


\(^\text{160}\) The Intersessional Open-ended Working Group held its fourth and fifth sessions from 31 January to 11 February 2005 and from 12 to 23 September 2005, respectively, in Geneva, and transmitted the draft international convention for the protection of all persons from enforced disappearance to the Commission on Human Rights, for approval by the General Assembly (E/CN.4/2006/57). For the discussions at the fourth session, see E/CN.4/2005/66.
ational community to respect, protect and promote the rights of the child, taking into account the particular vulnerabilities of the girl child in conflict situations.

On 23 December 2005, the General Assembly adopted, also on the recommendation of the Third Committee, resolution 60/231 on the “Rights of the child”, in which it, *inter alia*, urged States that had not yet done so to become parties to the Convention on the Rights of the Child and the Optional Protocols thereto,161 and to implement them fully by putting in place effective national legislation. It also urged States to intensify their efforts to preserve the child’s identity, including nationality and family relations, to address cases of international parental child abduction and to take all necessary measures to prevent and combat illegal adoptions. Further, the Assembly urged States to end impunity for perpetrators of crimes against children, investigate and prosecute all acts of violence and impose appropriate penalties. It also called upon all States to translate into concrete action their commitment to the progressive and effective elimination of child labour that is likely to be hazardous or harmful, and to promote education. Finally, any recruitment or use of children in armed conflicts was strongly condemned.

(ii) *Security Council*

On 26 July 2005, the Security Council adopted resolution 1612 (2005), in which it strongly condemned the recruitment and use of child soldiers by parties to armed conflicts in violation of their international obligations. It requested the Secretary-General to implement without delay the action plan he presented in his report on “Children and armed conflict”162 to establish a monitoring and reporting mechanism on children and armed conflicts. It also decided to establish a working group of the Security Council to review the reports of the said mechanism, as well as the progress in the development and implementation of the action plans called for in paragraph 5 (a) of its resolution 1539 (2004).163 Finally, the Council welcomed the efforts undertaken by United Nations peacekeeping operations to implement the Secretary-General’s zero tolerance policy on sexual exploitation and abuse and decided to continue including specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including the deployment, on a case-by-case basis, of child-protection advisers.

(g) *Persons with disabilities*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/131 entitled “Implementation of the World Programme of Action concerning Disabled Persons: realizing the Millennium Development Goals for persons with disabilities”. In the said resolution, the Assembly took note of the report


163 In paragraph 5 (a), parties mentioned in the 2004 report of the Secretary-General on this item (A/58/546–S/2003/1053) were called upon to prepare concrete time-bound action plans to halt recruitment and use of children in violation of the international obligations applicable to them.
of the Secretary-General on this subject, urged Governments and intergovernmental and non-governmental organizations to promote effective measures for the prevention of disability and the provision of appropriate habilitation and rehabilitation services for persons with disabilities, in a manner respectful of the dignity and integrity of persons with disabilities. It also demanded providing special protection to persons with disabilities from marginalized sectors of society, who may be vulnerable to multiple, intersecting or aggravating forms of discrimination.

On 23 December 2005, also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/232 entitled “Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities”, in which it welcomed the reports of the said Committee on its fifth and sixth sessions, respectively. In this context, the Assembly decided that the Ad Hoc Committee should hold two sessions in 2006, from 16 January to 3 February, in order to achieve a complete reading of the draft text of a convention prepared by the Chairman of the Ad Hoc Committee, and from 7 to 18 August.

(h) Migrants workers

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/169 on the “Protection of migrants”, in which it, inter alia, called upon States to consider reviewing and revising immigration policies with a view to eliminating all discriminatory practices against migrants and their families and adopting effective action to create conditions that foster greater harmony, tolerance and respect within societies. It also requested States to promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status, especially those of women and children. The Assembly further reaffirmed the duties of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, 1963, with regard to the rights of foreign nationals, regardless of their immigration status. Finally, it called upon States to facilitate family reunification in an expeditious and effective manner, as such reunification has a positive effect on the integration of migrants. Moreover, States were encouraged to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to their country of origin.

On the same day, and also on the recommendation of the Third Committee, the General Assembly adopted resolution 60/139 on “Violence against women migrant workers”.

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165 A/AC.265/2005/2 and A/60/266.
166 See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.
168 Resolution 60/139 is highlighted in section 7 of the present chapter, dealing with “Women”.
(i) Minorities

With regard to the rights of minorities, on 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/160 entitled “Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, in which it took note of the report of the Secretary-General on the matter.169

In addition, the Assembly urged States and the international community to promote and protect the rights of persons belonging to such minorities, as set out in the Declaration.170 The measures envisaged for this purpose included the encouragement of conditions for the promotion of their identity, the provision of adequate education and the facilitation of their participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development of their country, without discrimination. The Assembly further urged States to take all necessary constitutional, legislative, administrative and other measures to promote and give effect to the Declaration, and called upon them to take all appropriate measures to protect the cultural and religious sites of national or ethnic, religious and linguistic minorities.

(j) Right to self-determination

With regard to the right to self-determination, on 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/145 entitled “Universal realization of the right of peoples to self-determination”, in which it took note of the report of the Secretary-General on this item.171 The Assembly further reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights.

In addition, the General Assembly requested the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation.

(k) Counter-terrorism and human rights

(i) General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/158 entitled “Protection of human rights and fundamental freedoms while countering terrorism”, in which it reaffirmed that States must ensure that any measure taken to combat terrorism complied with their obligations under international law, in particular international human rights, refugee and humanitarian law. It further reaffirmed the obligation of States, under article 4 of the International Covenant on

169 A/60/333.
170 General Assembly resolution 47/135, annex.
171 A/60/268.
Civil and Political Rights, to respect certain rights as non-derogable in any circumstances. It also urged States to fully respect non-refoulement obligations under international refugee and human rights law, and to review, with full respect for those obligations, the validity of a refugee status decision, if credible and relevant evidence had come to light indicating that the person had committed any criminal acts falling under the exclusion clauses of international refugee law, including terrorist acts. The Assembly further welcomed the establishment by the Commission on Human Rights of the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and took note of the report of the independent expert on the topic, as well as of the report of the Secretary-General.

(ii) Security Council

On 14 September 2005, the Security Council adopted resolution 1624 (2005), in which it stressed that States must ensure that any measures taken to prohibit by law and to prevent incitement to commit terrorist acts, to deny safe haven to persons that can be seriously considered to have committed such acts, or to implement other measures to strengthen security of their international borders, comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law.

(1) International cooperation in the field of human rights

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/156 entitled “Enhancement of international cooperation in the field of human rights”, in which it, inter alia, considered that such cooperation, in conformity with the purposes and principles set out in the Charter of the United Nations and international law, should make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms. It also reaffirmed that the promotion, protection and full realization of all human rights and fundamental freedoms should be guided by the principles of universality, non-selectivity, objectivity and transparency.

On the same day, the General Assembly also adopted, on the recommendation of the Third Committee, two resolutions relating to regional arrangements for the promotion of human rights.

(a) Resolution 60/151 on “Subregional Centre for Human Rights and Democracy in Central Africa”, in which the Assembly welcomed the Centre’s activities and requested the Secretary-General and the United Nations High Commissioner for Human Rights to provide additional funds and human resources to enable it to effectively respond to the


174 Protecting human rights and fundamental freedoms while countering terrorism, report of the Secretary-General (A/60/374).
The growing needs in the promotion and protection of human rights and in developing a culture of democracy in this subregion.

(b) Resolution 60/153 entitled “Establishment of a United Nations human rights training and documentation centre for South-West Asia and the Arab region”. In this resolution, the Assembly welcomed the initiative of the Government of Qatar to host a United Nations human rights training and documentation centre, which would be under the supervision of the Office of the High Commissioner. The Assembly further requested the Secretary-General and the Office of the High Commissioner to give their support to the establishment of such a United Nations human rights training and documentation centre, to make available the necessary resources for this purpose and to conclude a host country agreement regarding its establishment.

(m) Miscellaneous

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/147 entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, in which it adopted the said Principles and Guidelines, and recommended that States take them into account and promote their respect, in particular within their executive, legislative and judiciary bodies.

On the same date, the Assembly also adopted, on the recommendation of the Third Committee, resolutions 60/149 on the “International Covenants on Human Rights”, 60/152 on “Globalization and its impact on the full enjoyment of all human rights”, 60/154 on “National institutions for the promotion and protection of human rights”, 60/155 on “Human rights and unilateral coercive measures”, 60/161 on “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, 60/162 on “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization” and 60/163 on “Promotion of peace as a vital requirement for the full enjoyment of all human rights by all”.

175 The “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” have been adopted by the Commission on Human Rights, in its resolution 2005/35 of 19 April 2005 and by the Economic and Social Council on 25 July 2005, in its resolution 2005/30.
7. **Women**\(^{176,177}\)

\((a)\) Commission on the Status of Women

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) of 21 June 1946 as a functional to deal with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations and reports to the Council on the promotion of women’s rights in political, economic, civil, social and educational fields.

The Commission held its forty-ninth session from 28 February to 11 and 22 March 2005 in New York. In 2005, the Commission was mandated, in the multi-year programme of work, to review and appraise the implementation of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995),\(^{178}\) and the outcome of the twenty-third special session of the General Assembly (2000).\(^{179}\) In this context, the Commission considered two themes: “Review of the implementation of the Beijing Platform for Action and the outcome documents of the twenty-third special session of the General Assembly”; and “Current challenges and forward-looking strategies for the advancement and empowerment of women and girls”.\(^{180}\)

During its forty-ninth session, the Commission adopted a number of resolutions to be brought to the attention of the Economic and Social Council, of which two are highlighted below.

In resolution 49/2, entitled “Eliminating demand for trafficked women and girls or all forms of exploitation”, the Commission, *inter alia*, called upon Governments to take appropriate measures: to address the root factors, as well as external factors that encourage trafficking in women and girls, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures; to criminalize trafficking in persons, especially women and girls, in all its forms and penalize traffickers and intermediaries, while ensuring protection and assistance to the victims thereof; to adopt or strengthen and enforce legislative or other measures, including through bilateral and multilateral cooperation, to deter exploiters and eliminate the demand that fosters trafficking of women and girls for all forms of exploitation; and to conclude bilateral, subregional, regional and international agreements to address the problem of trafficking in persons, especially women and girls, to enhance law enforcement and judicial cooperation, and specific measures aimed at reducing demand.

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\(^{176}\) See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

\(^{177}\) For complete lists of signatories and States parties to the international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women in *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005* (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. IV, and vol. II, chap. XVI.

\(^{178}\) A/CONF.177/20.

\(^{179}\) General Assembly resolution S-23/2.

In resolution 49/3, entitled “Advisability of the appointment of a special rapporteur on laws that discriminate against women”, the Commission noted the concerns expressed that legislative and regulatory gaps, as well as lack of implementation and enforcement of laws and regulations, perpetuate de jure as well as de facto inequality and discrimination against women. In this context, it decided to consider at its fiftieth session the advisability of the appointment of a special rapporteur on laws that discriminate against women, and requested the Secretary-General to report to the Commission on the Status of Women on the implications of the creation of such a position.

(b) Economic and Social Council

On 21 and 26 July 2005, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, resolution 2005/8 entitled “Situation of women and girls in Afghanistan” and resolution 2005/43 on the “Situation of and assistance to Palestinian women”, respectively.

(c) General Assembly

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, five resolutions dealing with the rights of women, of which two are highlighted below.

In its resolution 60/139, entitled “Violence against women migrant workers”, the General Assembly took note of the report of the Secretary-General on violence against women and the reports of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on violence against women, its causes and consequences, with regard to violence against women migrant workers. It called upon all Governments to incorporate a gender perspective in all policies on international migration, including, inter alia, for the protection of migrant women from violence, discrimination, exploitation and abuse. Furthermore, the Assembly also urged concerned Governments, in particular those of the countries of origin and destination, to strengthen further their national efforts to protect and promote the rights and welfare of women migrant workers. In the same resolution, it further called upon concerned Governments, in particular those of the countries of origin and destination, to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and encouraged them to adopt measures or strengthen existing ones that protect the human rights of women migrant workers, regardless of their immigration status.

In its resolution 60/140, entitled “Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly”, the Assembly,

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181 General Assembly resolutions 60/136, 60/137, 60/138, 60/139 and 60/140.
inter alia, welcomed the report of the Secretary-General on this item,\textsuperscript{185} and recognized that the implementation of the Beijing Declaration and Platform for Action and the fulfilment of the obligations under the Convention on the Elimination of All Forms of Discrimination against Women\textsuperscript{186} were mutually reinforcing in achieving gender equality and the empowerment of women. Further, it reaffirmed that States had an obligation to exercise due diligence to prevent violence against women and girls, provide protection to the victims and investigate, prosecute and punish the perpetrators of violence against women and girls, and that failure to do so violated and impaired or nullified the enjoyment of their human rights and fundamental freedoms.

In addition, on 23 December 2005, also on the recommendation of the Third Committee, the Assembly adopted resolution 60/230 on the Convention on the Elimination of All Forms of Discrimination against Women. In this resolution, the Assembly decided to authorize the Committee on the Elimination of Discrimination against Women to hold three annual sessions of three weeks each, with a one-week pre-sessional working group for each session, effective from January 2006 as a temporary measure, and to continue to authorize two annual sessions of the Working Group on Communications under the Optional Protocol to the Convention, It also authorized the Committee to meet on an exceptional and temporary basis in 2006 and 2007 for up to seven days in parallel working groups during its third annual session in 2006 and its first and third annual sessions in 2007 for the purpose of considering reports of States parties submitted under article 18 of the Convention.

8. Humanitarian matters

\textit{\(a\)} Economic and Social Council

On 15 July 2005, the Economic and Social Council adopted resolution 2005/4 entitled “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, in which it took note of the report of the Secretary-General on this item.\textsuperscript{187} It also took note of the report of the Secretary-General on strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster,\textsuperscript{188} as well as of the report of the Secretary-General on the transition from relief to development.\textsuperscript{189}

In addition, the Council recommended the General Assembly to request the Secretary-General to ensure that United Nations humanitarian organizations were working with the Department of Peacekeeping Operations of the Secretariat so as to better ensure that humanitarian issues were accounted for from the earliest stages of planning and designing of United Nations multidimensional integrated peacekeeping operations, and that the mandates of such operations continued to respect the need for their humanitarian activities to be carried out in accordance with humanitarian principles.

\textsuperscript{185} A/60/170.
\textsuperscript{187} A/60/87-E/2005/78.
\textsuperscript{188} A/60/86-E/2005/77.
\textsuperscript{189} A/60/89-E/2005/79.
(b) General Assembly

On 15 December 2005, the General Assembly adopted, without reference to a Main Committee, two resolutions relating to humanitarian matters.

a In resolution 60/123, entitled “Safety and security of humanitarian personnel and protection of United Nations personnel”, the Assembly welcomed the report of the Secretary-General on this item. It also strongly urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations and associated personnel and to respect and ensure respect for the inviolability of United Nations premises, which were essential to the continuation and successful implementation of United Nations operations. Furthermore, it called upon all Governments and parties in complex humanitarian emergencies, in particular in armed conflicts and in post-conflict situations, and in countries in which humanitarian personnel were operating, to cooperate fully with the United Nations and other humanitarian personnel. Finally, the Assembly called upon all other parties involved in armed conflicts to refrain from abducting humanitarian personnel, United Nations and associated personnel, or detaining them and to release speedily without harm or requirement of concession, any abductee or detainee.

b In resolution 60/125, entitled “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”, the General Assembly took note of the reports of the Secretary-General entitled “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”, “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, “Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster”, “The transition from relief to development” and “Improvement of the Central Emergency Revolving Fund”. The Assembly also called upon States to fully implement the “Hyogo Declaration” and the “Hyogo Framework of Action 2005–2015: Building the Resilience of Nations and Communities to Disasters” in particular the commitments related to assistance for developing countries that are prone to natural disasters and for disaster-stricken States in the transition phase towards sustainable physical, social and economic recovery, for risk-reduction activities in post-disaster recovery and for rehabilitation processes.

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191 A/60/227.
192 A/60/87-E/2005/78.
195 A/60/432.
197 Ibid., resolution 2.
9. Environment

On 22 December 2005, the General Assembly adopted, on the recommendation of the Second Committee, several resolutions related to the environment, of which three are highlighted below.

(a) Resolution 60/193 entitled “Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development”. In this resolution, the General Assembly noted that the Commission on Sustainable Development at its thirteenth session adopted policy decisions on options and practical measures aimed at accelerating progress in implementation in the areas of water, sanitation and human settlements. In addition, the Assembly called for the effective realisation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development and for the fulfilment of the provisions relating to such means, as contained in the Johannesburg Plan of Implementation. Furthermore, it also took note of the report of the Secretary-General on the activities undertaken in the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development.

(b) Resolution 60/194 entitled “Follow-up to and Implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States”. In this resolution, the Assembly took note of the Secretary-General's report on the matter, and urged Governments and all relevant international and regional organizations, United Nations funds, programmes, specialized agencies and regional commissions, international financial institutions and the Global Environmental Facility, to take timely action for the implementation of and follow-up to the Mauritius Declaration and the Mauritius Strategy for Implementation.

(c) Resolution 60/201 entitled “Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.” In this resolution, the Assembly, inter alia, took note of the report of the Secretary-General on the implementation of the said Convention. It further expressed its resolution to address causes of desertification and land degradation,

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198 See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.
203 A/60/401.
205 Ibid., annex II.
206 A/60/171, sect. II.
as well as poverty resulting from land degradation, through, *inter alia*, the mobilization of adequate and predictable financial resources, the transfer of technology and capacity-building at all levels.

On the same date, the General Assembly also adopted on the recommendation of the Second Committee, among others, resolution 60/190 on “Global Code of Ethics for Tourism”, resolution 60/197 on “Protection of global climate for present and future generations of mankind”, resolution 60/198 on “Sustainable Mountain Development”, resolution 60/199 on “Promotion of new and renewable sources of energy, including the implementation of the World Solar Programme”, and resolution 60/202 on the “Convention on Biological Diversity”.

**10. Law of the Sea**

*(a) Reports of the Secretary-General*²⁰⁷

The Secretary-General, in his reports to the General Assembly at its sixtieth and sixty-first sessions under the agenda item entitled “Oceans and the Law of the Sea”, provide an overview of developments relating to the implementation of the United Nations Convention on the Law of the Sea, 1982, *(Convention)*²⁰⁸ and the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea during the period under review. The reports contain updates on the status of the Convention and its implementing Agreements, as well as on declarations and statements made by States under articles 287, 298 and 310 of the Convention. In relation to the topic of maritime space, the reports provide an overview of State practice, maritime claims and delimitation of maritime zones.

The reports also outline the work carried out in 2005 by the three institutions established by the Convention, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea²⁰⁹ and the Commission on the Limits of the Continental Shelf (CLCS). ISA held its eleventh session from 15 to 26 August 2006,²¹⁰ during which it continued its work on the Regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts.²¹¹ CLCS held its fifteenth and sixteenth sessions from 4 to 22 April and 29 August to 16 September 2005, respectively,²¹² during which it continued the examination of the submission made by Brazil, and began the consideration of the submissions made, respectively, by Australia and Ireland, regarding the outer limits of their respective continental shelves.

²⁰⁷ A/60/63 and Add.1 and 2. Information contained in the reports of the Secretary-General on the law of the sea with regard to the work of other related international organizations within the United Nations system are not covered in this chapter, see chapter III B below.


²⁰⁹ For the work of the Tribunal, see chapter VII below.

²¹⁰ See the Statement of the President on the work of the Assembly at the eleventh session (ISBA/11/A/11).

²¹¹ See the Statement of the President on the work of the Council at the eleventh session (ISBA/11/C/11), paras. 13 to 17.

²¹² For more information on the fifteenth and sixteenth sessions of the CLCS, see CLCS/44 and CLCS/48, respectively.
At its fifteenth session, the CLCS took note of the legal opinion of the Legal Counsel of the United Nations on the following question: “Is it permissible, under the United Nations Convention on the Law of the Sea and the rules of procedure of the Commission, for a coastal State, which has made a submission to the Commission in accordance with article 76 of the Convention, to provide to the Commission in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission?” The CLCS decided to act in accordance with the legal opinion.213

At its sixteenth session, the Commission adopted some amendments to its rules of procedure.214

In his reports, the Secretary-General also provided information on the training courses which the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs began to deliver in 2005, in order to promote and facilitate compliance with article 76 of the Convention on the part of developing States that may have an extended continental shelf. In 2005, training courses were organized in Fiji, in Sri Lanka for Indian Ocean developing countries, and in Ghana for developing States of the African region bordering the eastern Atlantic.

With regard to climate change, the Secretary-General reported on the outcome of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, held in Mauritius. The Meeting unanimously adopted a proactive strategy to further implement the 1994 Barbados Programme of Action, called the Mauritius Strategy for Implementation,215 and a political declaration, the Mauritius Declaration.216

The sixth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held from 6 to 10 June 2005, organized its discussions about fisheries and their contribution to sustainable development, as well as about the issue of marine debris.217 The Consultative Process agreed on a number of elements concerning this subject, to be suggested to the General Assembly for its consideration. Nevertheless, in light of the fact that not all elements under consideration by the Consultative Process were finalized, only proposed elements relating to marine debris and cooperation and coordination were forwarded at this stage.218 The sixth meeting marked the end of the second three-year cycle of the Informal Consultative Process.

213 See section 6 of chapter VI below.
214 See CLCS/48, para. 44.
215 Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10–14 January 2005 (United Nations publication, Sales No. E.05.II.A.4 and corrigendum), chap. I, resolution I, annex II.
216 Ibid., annex I.
217 For more information on the work of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, see A/60/99.
218 Ibid., Part A, sections I and II.
Still in 2005, the Secretary-General transmitted a report to the General Assembly on issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. This report contained information on scientific, technical, economic, legal, environmental, socio-economic and other aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. It also provided an overview on past and present activities of the Organization and other relevant international organizations in this area.

The Secretary-General also issued his annual report on Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and its related instruments, providing an overview of the state of implementation of the Agreement and other international fishery instruments.

(b) General Assembly

On 25 November 2005, the General Assembly, without reference to a Main Committee, adopted resolution 60/30 entitled “Oceans and the law of the sea”. The General Assembly, after reviewing for the second time the effectiveness and utility of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea decided, inter alia, to continue with the Process for the following three years and further review its effectiveness and utility at its sixty-third session.

The Assembly also decided that the Ad Hoc Open-ended Informal Working Group to study specified issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which had been established by paragraph 73 of resolution 59/24, should be open to all States Members of the United Nations and all parties to the Convention, with others invited as observers in accordance with past practice of the United Nations. It also decided that the meeting of the Working Group should be coordinated by two co-chairpersons, who would be appointed by the President of the General Assembly in consultation with Member States and taking into account the need for representation from developed and developing countries.

Regarding the marine environment, the General Assembly endorsed the conclusions of the second International Workshop on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects, and decided to launch a start-up phase, the “assessment of assessments”, to be completed within two years, as a preparatory stage towards the establishment of the regular process. For this purpose, the General Assembly established an organizational arrangement that included an ad hoc steering group to oversee the execution of the “assessment of assessments”, two United Nations agencies, the United Nations Environment Programme and

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219 A/60/63/Add.1. The report was also meant to assist the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction established by the General Assembly and in preparing its agenda. See subsection (b) on the “General Assembly”, below.

220 A/60/189.

221 A/60/91, annex.
the Intergovernmental Oceanographic Commission, to co-lead the process, and a group of experts.

Also on 25 November 2005, the General Assembly further adopted, without reference to a Main Committee, resolution 60/31 entitled “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”. In this resolution, the General Assembly, inter alia, reaffirmed paragraph 16 of resolution 59/25 concerning the convening of a review conference with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks, to be held in New York from 22 to 26 May 2006, and requested the Secretary-General to undertake several tasks in the preparation of such a conference. It further welcomed the adoption of the Code of Safety for Fishermen and Fishing Vessels as revised by the Food and Agriculture Organization of the United Nations, the International Labour Organization and the International Maritime Organization.222

11. Crime prevention and criminal justice223

(a) International instruments224


(b) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission to deal with a broad range of policy matters in this field, including combating national and transnational crime, including organized crime, economic crime and money laundering, promoting the role of criminal law in environmental protection, crime prevention in urban areas, including juvenile crime and violence, as well as improving


223 This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at http://www.unodc.org. See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

224 For complete lists of signatories and States parties to the international instruments relating to penal matters that are deposited with the Secretary-General, see Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005 (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. II, chap. XVIII.

the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions. It also provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice.

The fourteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 23 to 27 May 2005.\textsuperscript{226} During the session, the Commission provided policy guidance and direction to the United Nations Office on Drugs and Crime (UNODC) and held the following thematic discussion: Consideration of the conclusions and recommendations of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice.

\textbf{(c) Eleventh United Nations Congress for Crime Prevention and Criminal Justice}

The Eleventh United Nations Congress for Crime Prevention and Criminal Justice took place in Bangkok, Thailand, from 18 to 25 April 2005. The main theme for the Congress was “Synergies and responses: strategic alliances in crime prevention and criminal justice”.\textsuperscript{227} There were five main items on the Congress’ agenda, namely: (i) effective measures to combat transnational organized crime; (ii) international cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of UNODC; (iii) corruption: threats and trends in the twenty-first century; (iv) economic and financial crimes: challenges to sustainable development; and (v) making standards work: fifty years of standard-setting in crime prevention and criminal justice. Six technical workshops were held on the following subjects: (i) enhancing international law enforcement cooperation, including extradition measures; (ii) enhancing criminal justice reform, including restorative justice; (iii) strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk; (iv) measures to combat terrorism, with reference to the relevant international conventions and protocols; (v) measures to combat economic crime, including money-laundering; and (vi) measures to combat computer-related crime.

In addition, a high-level segment was held during the last three days of the Congress, from 23 to 25 April 2005. On the last day, the Congress adopted the “Bangkok Declaration” entitled “Synergies and responses: strategic alliances in crime prevention and criminal justice”,\textsuperscript{228} in which matters such as the expansion and dimensions of transnational organized crime, including illicit drug trafficking, money-laundering, trafficking in persons, smuggling of migrants, illegal arms trafficking and terrorism, and any existing links between them, were addressed.

\textsuperscript{226} For the report of the fourteenth session of the Commission, see \textit{Official Records of the Economic and Social Council, 2005, Supplement No. 10 (E/2005/30)}.

\textsuperscript{227} For the report of the Eleventh Congress, see A/CONF.203/18.

\textsuperscript{228} Ibid., chap. I, resolution 1.
(d) Economic and Social Council

On 22 July 2005, the Economic and Social Council adopted, on the recommendation of the Commission on Crime Prevention and Criminal Justice, several resolutions on this item.\(^{229}\)

(a) Resolution 2005/14 entitled “Model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988”. In this resolution, the Council adopted the Model Bilateral Agreement as a useful model that could be of assistance to States interested in negotiating and concluding bilateral agreements to facilitate the sharing of proceeds of crime. The Council further stressed that the Model Bilateral Agreement would not prejudice the principles set forth in the United Nations Convention against Corruption or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention. Finally, the Council invited Member States, in concluding agreements with other States in the area of sharing proceeds of crime, to take into account the Model Bilateral Agreement.

(b) In resolution 2005/15, entitled “Eleventh United Nations Congress on Crime Prevention and Criminal Justice”, the Council endorsed the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,\(^ {230}\) adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice. In addition, it invited Governments to take this Declaration into consideration in formulating legislation and policy directives and to make all efforts to implement its principles, bearing in mind their respective economic, social, legal and cultural specificities.

(c) In resolution 2005/16, entitled “Action against transnational organized crime: protection of witnesses”, the Council took note with appreciation of the report of the Secretary-General on the United Nations Convention against Transnational Organized Crime and the Protocols thereto.\(^ {231}\) It further requested the Secretary-General to pay special attention to the issue of the protection of witnesses within the framework of technical assistance activities. Finally, the Council also requested the Secretary-General to convene an open-ended intergovernmental group of experts to exchange experiences and put forward suggestions and recommendations with regard to protecting witnesses and encouraging them to collaborate in the judicial process.

(d) The Council further adopted resolution 2005/17 on “International cooperation in the fight against transnational organized crime”, in which it urged all States and relevant regional economic integration organizations to take all necessary measures to improve international cooperation in criminal matters, especially extradition and mutual legal assistance.

\(^{229}\) Resolutions 2005/14 to 2005/19 had been recommended by the Commission on Crime Prevention and Criminal Justice for adoption by the General Assembly. The Economic and Social Council adopted the said resolutions and decided not to forward them to the General Assembly. (See Economic and Social Council decision 2005/246).

\(^{230}\) A/CONF.203/18, chap. I, resolution 1.

\(^{231}\) E/CN/15/2005/6.
In resolution 2005/18 on “Action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption”, the Council, *inter alia*, took note with appreciation of the report of the Secretary-General on the United Nations Convention against Corruption, and urged Member States to promote a culture of integrity and accountability in both the public and private sector. It also called upon them to adopt measures to facilitate the recovery and return of assets that are consistent with the principles of the United Nations Convention against Corruption.

In resolution 2005/19 on “Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime”, the Council, *inter alia*, took note of the legislative assistance tools developed by UNODC, and requested UNODC to finalize the draft guide for legislative incorporation and implementation of the universal instruments against terrorism and to develop it further to serve as a training tool when providing assistance to States.

UNODC was further requested to intensify its efforts in providing Member States with technical assistance to strengthen international cooperation in preventing and combating terrorism by facilitating the implementation of the universal counter-terrorism instruments, in particular through training in the judicial and prosecutorial fields. The need to coordinate such work with the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate was particularly emphasized.

In addition, the Economic and Social Council recognized the role of fair and effective criminal justice systems within the overall framework of the rule of law as an integral component of any strategy to counter terrorism. In this context, it requested UNODC to take into account in its technical assistance programme the elements necessary for capacity-building in order to strengthen criminal justice systems and the rule of law, to facilitate the effective implementation of the universal counter-terrorism instruments and relevant Security Council resolutions.

In resolution 2005/20 on “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”, the Council adopted the said Guidelines as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system.

Finally, the Council also adopted resolution 2005/21 entitled “Strengthening the technical cooperation capacity of the United Nations Crime Prevention and Criminal Justice Programme in the area of the rule of law and criminal justice reform”, resolution 2005/22 on “Action to promote effective crime prevention”, and resolution 2005/23 on “Strengthening reporting on crime”.

*General Assembly*

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, two resolutions relating to crime prevention and criminal justice.

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(a) Resolution 60/175 entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”. In this resolution, the Assembly welcomed the entry into force of the United Nations Convention against Corruption.

(b) Resolution 60/177 on the “Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice”. In this resolution, the Assembly endorsed the Bangkok Declaration on “Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice”, previously approved by the Economic and Social Council.

Furthermore, on 22 December 2005, the General Assembly adopted, on the recommendation of the Second Committee, resolution 60/207 entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention Against Corruption”, in which it encouraged all Governments to prevent, combat and penalize corruption in all its forms, including bribery, money-laundering and the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery, consistent with the principles of the United Nations Convention against Corruption.

12. International drug control233,234

(a) Commission on Narcotic Drugs

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council resolution 1999/30, the Commission’s agenda is structured in two distinct segments; one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. Furthermore, the Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its forty-eighth session in Vienna, which was held on 19 March 2004 and from 7 to 11 March 2005 and from 7 to 8 December 2005 (reconvened session), the Commission held a thematic debate on drug abuse prevention, treatment and rehabilitation.235

The following resolutions were adopted, among others, by the Commission and brought to the attention of the Economic and Social Council:

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233 This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Narcotic Drugs. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at http://www.ohchr.org. See also General Assembly resolution 60/1 of 16 September 2005 on “2005 World Summit Outcome” and section 2 of the present chapter.

234 For complete lists of signatories and States parties to the international instruments relating to narcotic drugs and psychotropic substances that are deposited with the Secretary-General, see Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005 (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. VI.

Resolution 48/5 entitled “Strengthening international cooperation in order to prevent the use of the Internet to commit drug-related crime”, in which Member States were urged to cooperate with a view to enhancing the effectiveness of law enforcement action in relation to the use of the Internet to combat drug-related crime and to establish joint teams to identify illegal drug-related Internet sites;

Resolution 48/8 entitled “Application of research in practice”, in which Member States were strongly urged to consider adopting, implementing and evaluating, in line with the international drug control treaties, best practices and relevant research-based evidence for policy and workforce development and programme delivery at all levels, in partnership with civil society and academic and research institutions;

Resolution 48/9 entitled “Strengthening alternative development as an important drug control strategy and establishing alternative development as a cross-cutting issue”, in which the Commission reiterated that, in formulating and implementing drug control strategies, Member States and the United Nations entities should ensure that measures of law enforcement, interdiction, eradication and alternative development be applied in a coherent and balanced manner and in the appropriate sequence, and that there be optimal coordination between the various institutions involved;

Resolution 48/11 entitled “Strengthening international cooperation to prevent the illicit manufacture of and trafficking in narcotic drugs and psychotropic substances preventing the diversion and smuggling of precursors and essential equipment in the context of Project Prism, Operation Purple and Operation Topaz”. In this resolution, Member States that had not yet done so were called upon to enact the necessary legislation to implement fully the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,\(^\text{236}\) with the possible assistance and legal advice of the United Nations Office on Drugs and Crime. The Commission further called upon all States to initiate investigations by their law enforcement authorities into seizures and cases involving the diversion or smuggling of precursors and essential equipment, with a view to tracking them back to the source of diversion, in order to prevent continuing illicit activity, and to communicate the details of those seizures and investigations on a real-time basis to the International Narcotics Control Board and to the States concerned, pursuant to Commission on Narcotic Drugs resolution 45/12 of 15 March 2002.

(b) **Economic and Social Council**

On 22 July 2005, the Council adopted resolution 2005/26 entitled “Demand for and supply of opiates used to meet medical and scientific needs”, in which it urged all Governments to continue to contribute to maintaining a balance between the licit supply of and demand for opiate raw materials used for medical and scientific purposes, and to cooperate in preventing the proliferation of sources of production of opiate raw materials. The Council also urged Governments of all producer countries to adhere strictly to the provisions

of the Single Convention on Narcotic Drugs of 1961\textsuperscript{237} and that Convention as amended by the 1972 Protocol.\textsuperscript{238}

On the same day, the Council also adopted, among others, resolution 2005/27 entitled “International assistance to States affected by the transit of illicit drugs”.

\textbf{(c) General Assembly}

On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/178 entitled “International cooperation against the world drug problem”. In this resolution, the Assembly, \textit{inter alia}, called upon all States to strengthen international cooperation among judicial and law enforcement authorities at all levels in order to prevent and combat illicit drug trafficking and to share and promote best operational practices in order to interdict illegal drug trafficking, providing technical assistance and establishing effective methods for cooperation, in particular in the areas of air, maritime, port and border control and in the implementation of extradition treaties. The Assembly further urged Member States to cooperate with a view to enhancing the effectiveness of law enforcement action in relation to the use of the Internet to combat drug-related crime, and to consider including provisions in their national drug control plans for the establishment of national networks to enhance their respective capabilities to prevent, monitor, control and suppress serious offences connected with money-laundering and the financing of terrorism.

\textbf{13. Refugees and displaced persons}\textsuperscript{239}

\textbf{(a) Executive Committee of the Programme of the United Nations High Commissioner for Refugees}\textsuperscript{240}

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees was established by the Economic and Social Council in 1958\textsuperscript{241} and functions as a subsidiary organ of the General Assembly and reports to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the Office of the United Nations High Commissioner for Refugees (UNHCR), to advise it on international protection issues and to discuss a wide range of other items with UNHCR and its intergovernmental and non-govern-

\textsuperscript{238} Ibid., vol. 976, p. 105.
\textsuperscript{239} For complete lists of signatories and States parties to the international instruments relating to refugees that are deposited with the Secretary-General, see \textit{Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005} (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. V.
\textsuperscript{240} For detailed information and documents relating to this topic generally, see the website of the United Nations Office of the High Commissioner for Refugees at http://www.unhcr.org.
\textsuperscript{241} Economic and Social Council resolution 672 (XXV) of 30 April 1958.
mental partners. The fifty-sixth plenary session of the Executive Committee was held in Geneva from 3 to 7 October 2005, during which it adopted a number of conclusions. 242

In its first conclusion, entitled “General Conclusion on international protection”, the Executive Committee, inter alia, expressed concern at instances of persecution, generalized violence and violations of human rights, which continued to cause and perpetuate displacement within and beyond national borders, and which increased the challenges faced by States in effecting durable solutions. In this regard, it called on States to promote and protect the human rights of all refugees, and other persons of concern, paying special attention to those with specific needs, and to tailor their protection responses appropriately. Furthermore, the Executive Committee expressed deep concern that refugee protection was seriously jeopardized by expulsion of refugees leading to refoulement and called upon all States to refrain from taking such measures and in particular from returning or expelling refugees contrary to the principle of non-refoulement.

In its second conclusion, entitled “Conclusion on the provision of international protection, including through complementary forms of protection”, the Executive Committee, inter alia, noted the value of establishing general principles upon which complementary forms of protection for those in need of international protection may be based, on the persons who might benefit from it, and on the compatibility of these forms of protection with the 1951 Convention on the Status of Refugees243 and its 1967 Protocol244 and other relevant international and regional instruments. It further called upon State parties to interpret the criteria for refugee status in the 1951 Convention and/or its 1967 Protocol in such a manner that all persons who fulfil these criteria are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection. Nevertheless, the Executive Committee also acknowledged that complementary forms of protection, provided by States to ensure that persons in need of international protection actually receive it, were a positive way of responding pragmatically to certain needs and encouraged the use of complementary forms of protection for individuals in need of international protection who did not meet the refugee definition under the 1951 Convention or its 1967 Protocol. In this regard, it affirmed that such protection should be implemented in a manner that strengthens the existing protection regime. The Committee finally encouraged States, in granting complementary forms of protection to those persons in need of it, to provide for the highest degree of stability and certainty by ensuring the human rights and fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles.

In its third conclusion, entitled “Conclusion on local integration”, the Executive Committee, inter alia, noted that the criteria for identifying refugees who could benefit from local integration should be clear and objective and be applied in a non-discriminatory manner. It further noted that characteristics that may assist in determining circumstances in which local integration can be an appropriate durable solution could include, subject to States’ consideration:

242 For the report of the fifty-sixth session of the Executive Committee, see Official Records of the General Assembly, Sixtieth Session, Supplement No. 12A (A/60/12/Add.1).


(a) refugees born in asylum countries who might otherwise become stateless; and/or 

(b) refugees who, due to their personal circumstances including the reasons prompting their flight, are unlikely to be able to repatriate to their country of origin in the foreseeable future; and/or 

(c) refugees who have established close family, social, cultural and economic links within their country of asylum, including those who already have, or have the capacity to attain, a considerable degree of socio-economic integration.

Furthermore, the Executive Committee affirmed the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalization. In this regard, it recognized that the 1951 Convention and its 1967 Protocol and relevant human rights instruments provided a useful legal framework for guiding the local integration process and that host countries may need technical and financial support to adapt and revise their national legal and administrative frameworks to allow refugees equal enjoyment of rights, services and programmes without discrimination.

(b) Commission on Human Rights

During its meeting on 19 April 2005, the Commission on Human Rights adopted resolution 2005/48 entitled “Human rights and mass exoduses”, in which it, inter alia, reaffirmed the primary responsibility of States to ensure the protection within their own territories of refugees, as well as internally displaced persons. The Commission further recognized that acts of deportation or forcible transfer of populations, which lead to or result from mass exoduses and displacements, were included as crimes against humanity in the Rome Statute of the International Criminal Court. The importance of ending impunity for perpetrators of such crimes was also recognized. Additionally, the Commission urged States to uphold the civilian and humanitarian character of asylum consistent with international law, inter alia, through effective measures to prevent the infiltration of armed elements, to identify and separate any such armed elements from refugee populations, to settle refugees at safe locations, and to afford humanitarian workers prompt, safe and unhindered access to refugees.

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On 16 December 2005, the General Assembly adopted, on the recommendation of the Third Committee, resolution 60/127 entitled “Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees”, in which it decided to increase the number of members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees from sixty-eight to seventy States. The Economic and Social Council was requested to elect the additional members at its 2006 resumed organizational session.

On the same day, also on the recommendation of the Third Committee, the General Assembly further adopted resolution 60/129 entitled “Office of the United Nations High Commissioner for Refugees” and resolution 60/168 entitled “Protection of and assistance to internally displaced persons”.

In resolution 60/129, the Assembly, inter alia, endorsed the report of the Executive Committee on the work of its fifty-sixth session. It also emphasized the obligation of all States to accept the return of their nationals and called upon States to facilitate such return. In this context, the need for the return to be undertaken in a safe and humane manner, with full respect for their human rights and dignity, irrespective of the status of the persons concerned, was affirmed.

In addition, the Assembly noted that local integration in the refugee context was a sovereign decision and an option to be exercised by States, guided by their treaty obligations and human rights principles. This was a dynamic and multi-faceted two-way process that required efforts by all parties concerned, including a preparedness on the part of the refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population. The Assembly acknowledged that the process of local integration was complex and gradual, comprising three distinct but interrelated legal, economic, and social and cultural dimensions.

In resolution 60/168, the General Assembly, inter alia, emphasized that States had the primary responsibility to provide protection and assistance to internally displaced persons within their jurisdiction, as well as to address the root causes of the displacement problem in appropriate cooperation with the international community. Furthermore, the Assembly recognized the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons.

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247 See also resolution 60/1 of 16 September 2005 on the “2005 World Summit Outcome”. For General Assembly resolutions dealing with refugees and displaced persons in particular regional areas, see the following resolutions: 60/100 of 8 December 2005 (Assistance to Palestine refugees), 60/101 of 8 December 2005 (Persons displaced as a result of the June 1967 and subsequent hostilities), 60/102 of 8 December 2005 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), 60/103 of 8 December 2005 (Palestine refugees’ properties and their revenues) and 60/128 of 16 December 2005 (Assistance to refugees, returnees and displaced persons in Africa).

14. International Court of Justice249

(a) Organization of the Court

As from 15 February 2005,250 the composition of the Court is as follows:
President: Shi Jiuyong (China);
Vice-President: Raymond Ranjeva (Madagascar);
Judges: Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); and Ronny Abraham (France).

The Registrar of the Court, elected for a term of seven years on 10 February 2000, is Mr. Philippe Couvreur; the Deputy-Registrar, re-elected on 19 February 2001, also for a term of seven years, is Mr. Jean-Jacques Arnaldez.

The Chamber of Summary Procedure, which is established annually in accordance with Article 29 of the Statute to ensure the speedy dispatch of business, is composed as follows:

*Members*
President: Shi Jiuyong;
Vice-President: R. Ranjeva;

*Substitute Members*
Judges: N. Elaraby and H. Owada.

Following the resignation of Judge Gilbert Guillaume as of 11 February 2005 and the election held on 8 April 2005, the Court’s Chamber for Environmental Matters, which was established in 1993 pursuant to Article 26, paragraph 1, of the Statute, and whose mandate in its present composition runs to February 2006, is composed as follows:
President: Shi Jiuyong;
Vice-President: R. Ranjeva;

On 7 November 2005, the General Assembly and the Security Council elected five Members to the International Court of Justice for a term of office of nine years, beginning on 6 February 2006. As a result, Judge Thomas Buergenthal (United States of America) was re-elected as member of the Court; and Mr. Mohamed Bennouna (Morocco), Mr. Kenneth

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249 For more information about the Court, see the reports of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 4* (A/60/4) and *ibid., Sixty-first Session, Supplement No. 4* (A/61/4). Information about the cases before the International Court of Justice during 2005 is contained in chapter VII below.

250 Following the resignation, as from 11 February 2005, of Judge Gilbert Guillaume (France), the General Assembly and the Security Council, on 15 February 2005, elected Mr. Ronny Abraham (France) for the remainder of Judge Guillaume’s term, which will expire on 5 February 2009.
Keith (New Zealand), Mr. Bernardo Sepúlveda Amor (Mexico) and Mr. Leonid Skotnikov (Russian Federation) were elected members of the Court.

(b) Jurisdiction of the Court

On 25 February 2005, Portugal amended its declaration recognizing the compulsory jurisdiction of the Court. The declaration reads as follows:

“On behalf of the Portuguese Republic, I declare and give notice that Portugal, continuing to accept the jurisdiction of the International Court of Justice, amends its declaration made on 19 December 1955, replacing its terms by the following:

1. Under Article 36, paragraph 2, of the Statute of the International Court of Justice, the Portuguese Republic recognizes the jurisdiction of the Court as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation (and to the extent it accepts it), until such time as notice may be given to terminate the acceptance, in all legal disputes other than:

(i) any dispute which Portugal has agreed or shall agree with the other party or parties thereto to settle by some other method of peaceful settlement;

(ii) any dispute with any State that has deposited or ratified the acceptance of the Court’s compulsory jurisdiction or an amendment thereto so that the dispute became included in its scope less than twelve months prior to the filing of the application bringing the dispute before the Court;

(iii) any dispute, unless it refers to territorial titles or rights or to sovereign rights or jurisdiction, arising before 26 April 1974 or concerning situations or facts prior to that date;

(iv) any dispute with a party or parties to a treaty regarding which the jurisdiction of the International Court of Justice has, under the applicable rules, been explicitly excluded, irrespective of whether the scope of the dispute refers to the interpretation and application of the treaty provisions or to other sources of international law.

2. The Portuguese Republic also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added,

Lisbon, 18 February 2005”

Furthermore, on 2 September 2005, Djibouti deposited a declaration recognizing the compulsory jurisdiction of the Court.

The declaration of Djibouti reads as follows:

“Desiring, on the one hand, to reach a peaceful and equitable settlement of all international disputes, including those in which it may be involved, and, on the other hand, to make a contribution to the further development and consolidation of international law, the Republic of Djibouti, in accordance with Article 36 (2) of the Statute of the International Court of Justice, hereby declares that it recognizes as compulsory ipso facto and

251 For more information regarding the States that have made declarations recognizing the compulsory jurisdiction of the Court, see Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2005 (United Nations publications, Sales No. 06.V.2 P, ST/LEG/SER.E/24), vol. I, chap. I.
without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute a breach of an international obligation;
(d) The nature and extent of the reparation to be made for the breach of an international obligation;

with the reservation, however, that this declaration shall not apply to:

1. Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method or methods of settlement;

2. Disputes in regard to matters which are exclusively within the domestic jurisdiction of the Republic of Djibouti, under international law;

3. Disputes relating to or connected with facts or situations of hostilities, armed conflicts, individual or collective actions taken in self-defence, resistance to aggression, fulfilment of obligations imposed by international bodies and other similar or related acts, measures or situations in which the Republic of Djibouti is, has been or may in future be involved;

4. Disputes concerning the interpretation or application of a multilateral treaty unless all the parties to the treaty are also parties to the case before the Court or the Government of Djibouti specially agrees to jurisdiction of the Court;

5. Disputes with the Government of any State with which, on the date of an application to bring a dispute before the Court, the Government of Djibouti has no diplomatic relations or which has not been recognized by the Government of Djibouti;

6. Disputes with non-sovereign States or territories;

7. Disputes with the Republic of Djibouti concerning or relating to:

(a) The status of its territory or the modification or delimitation of its frontiers or any other matter concerning boundaries;

(b) The territorial sea, the continental shelf and the margins, the exclusive fishery zone, the exclusive economic zone and other zones of national maritime jurisdiction including for the regulation and control of marine pollution and the conduct of scientific research by foreign vessels;

(c) The condition and status of its islands, bays and gulfs;

(d) The airspace superjacent to its land and maritime territory; and

(e) The determination and delimitation of its maritime boundaries.

This declaration is made for a period of five years, without prejudice to the right of denunciation and modification which attaches to any commitment undertaken by the State in its international relations.

It shall take effect on the date of its receipt by the Secretary-General of the United Nations.

Djibouti, 18 July 2005

[Signed] MAHMOUD ALI YOUSSOUF
Minister for Foreign Affairs and International Cooperation"
(c) Amendments to the Rules of Court

In 2005, the Court adopted a new procedure for the promulgation of amendments to its Rules. The Preamble to the Rules was also amended to reflect this procedure.252

Under the new procedure, the text of any amendment to the Rules is posted on the Court’s website, with an indication of its date of entry into force and a note of any temporal reservation relating to its applicability. The practice of indicating each amendment in the Preamble has been discontinued and amended articles are instead indicated by an asterisk and footnote in the integral updated text.

The Court also amended article 52 of its Rules dealing with the procedure to be followed where the Registrar arranges for the printing of a pleading,253 and article 43 regarding the notifications to be sent by the Court to those not directly involved in a case, but who are parties to a convention whose construction may be in question in the proceedings.254

(d) General Assembly

On 27 October 2005, during its sixtyieth session, the General Assembly adopted, without reference to a Main Committee, decision 60/507, in which it took note of the report of the International Court of Justice for the period from 1 August 2004 to 31 July 2005.255

15. International Law Commission256

(a) Membership of the Commission

The membership of the International Law Commission during the 2002–2006 quinquennium, for the fiftyieth session of the Commission, is Mr. Emmanuel Akwei Addo (Ghana); Mr. Husain M. Al-Baharna (Bahrain); Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. João Clemente Baena Soares (Brazil); Mr. Ian Brownlie (United Kingdom); Mr. Enrique Candioti (Argentina); Mr. Choung Il Chee (Republic of Korea); Mr. Pedro Comissario Afonso (Mozambique); Mr. Riad Daoudi (Syrian Arab Republic); Mr. Christopher John Robert Dugard (South Africa); Mr. Constantin P. Economides (Greece); Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzislaw Galicki (Poland); Mr. Peter C. R. Kabatsi (Uganda); Mr. Maurice Kamto (Cameroon); Mr. James Lutabanzibwa Kateka (United Republic of Tanzania); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation); Mr. Martti Koskenniemi (Finland); Mr. William Mansfield (New Zealand); Mr. Michael Matheson (United States); Mr. Theodor Viorel Melescanu (Romania); Mr. Djamchid Montaz (Islamic Republic of Iran); Mr. Bernd H. Niehaus (Costa Rica); Mr. Didier Opertti Badan (Uruguay); Mr. Guillaume

253 Ibid., paras. 233–235.
255 Ibid., Sixtieth Session, Supplement No. 4 (A/60/4).
256 Detailed information and documents regarding the work of the Commission may be found on the Commission’s website at http://www.un.org/law/ilc/index.htm.
Pambou-Tchivounda (Gabon); Mr. Alain Pellet (France); Mr. Pemmeraju Sreenivasa Rao (India); Mr. Víctor Rodríguez Cedeño (Venezuela); Mr. Bernardo Sepúlveda (Mexico); Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

(b) Fifty-seventh session of the Commission

The International Law Commission held the first part of its fifty-seventh session from 2 May to 3 June and the second part of the session from 11 July to 5 August 2005 at its seat at the United Nations Office at Geneva.257 The Commission considered the following topics.

With regard to the topic “Shared Natural Resources”, the Commission considered the third report258 of the Special Rapporteur (Mr. Chusei Yamada), which contained a complete set of 25 draft articles on the law of transboundary aquifers. The Commission also had before it a set of comments and observations received from Governments and relevant intergovernmental organizations.259 The Commission established a Working Group on Transboundary Groundwaters chaired by Mr. Enrique Candioti, to review the draft articles presented by the Special Rapporteur, taking into account the debate in the Commission on the topic. The Working Group reviewed and revised eight draft articles and recommended that it be reconvened in 2006 to complete its work. The Commission requested those States and intergovernmental organizations that had not yet responded to submit detailed and precise information on the basis of a questionnaire prepared by the Special Rapporteur.260

As regards the topic “Effects of armed conflicts on treaties”, the Commission considered the first report261 of the Special Rapporteur on the topic (Mr. Ian Brownlie), presenting an overview of the issues involved in the topic together with a set of 14 draft articles without prejudice to their final form, as well as a memorandum prepared by the Secretariat entitled “The effect of armed conflicts on treaties: an examination of practice and doctrine”.262 The Commission endorsed the Special Rapporteur’s suggestion that the Secretariat circulate a note to Governments requesting information about their practice with regard to this topic, in particular the more contemporary practice.

Concerning the topic “Responsibility of international organizations”, the Commission considered the third report263 of the Special Rapporteur (Mr. Giorgio Gaja), proposing nine draft articles dealing with the existence of a breach of an international obligation on the part of an international organization and with the responsibility of an international organization in connection with the act of a State or another international organization. The Commission adopted nine draft articles together with commentaries. As the fourth report of the Special Rapporteur will address the questions relating to circumstances pre-

257 For the report of the International Law Commission on the work of its fifty-seventh session, see Official Records of the General Assembly, Sixtieth Session, Supplement No. 10 (A/60/10).
261 A/CN.4/552.
263 A/CN.4/553.
cluding wrongfulness and responsibility of States for the international wrongful acts of international organizations, the Commission stated that it would welcome comments and observations relating to these questions.

As regards the topic “Diplomatic protection”, the Commission considered the sixth report\textsuperscript{264} of the Special Rapporteur (Mr. John Dugard), dealing with clean hands doctrine in international law.

As regards the topic “Expulsion of aliens”, the Commission considered the preliminary report\textsuperscript{265} of the Special Rapporteur (Mr. Maurice Kamto), presenting an overview of some of the issues involved and a possible outline for further consideration of the topic. The Special Rapporteur requested that the Secretariat prepare a compilation of applicable national and international instruments, texts and jurisprudence on the topic. The Commission further requested States to submit any information concerning their practice on the subject, including national legislation.

With regard to the topic “Unilateral Acts of States”, the Commission considered the eighth report\textsuperscript{266} of the Special Rapporteur (Mr. Victor Rodríguez Cedeño), which contained the analysis of 11 cases of State practice and the conclusions thereof. The Commission stated that it would be interested in receiving comments and observations from States on the revocability or modification of unilateral acts, in particular regarding their practice in this regard, the circumstances and conditions, as well as the effects of such revocation or modification and the scope of possible third party reactions in that respect. A Working Group on Unilateral Acts was reconstituted under the chairmanship of Mr. Alain Pellet. Its work focused on the study of State practice and on the elaboration of preliminary conclusions on the topic, which the Commission would consider at its next session.

Concerning the topic “Reservations to Treaties”, the Commission considered part of the tenth report\textsuperscript{267} of the Special Rapporteur (Mr. Alain Pellet) on the validity of reservations and the concept of the object and purpose of the treaty, and referred to the Drafting Committee seven draft guidelines dealing with validity of reservations and the definition of object and purpose of the treaty. The Commission also adopted two draft guidelines, together with commentaries, dealing with the definition of objections to reservations and the definition of objections to the late formulation or widening of the scope of a reservation. Finally, the Commission stated that it would be interested in receiving comments from Governments on the practice by States with regard to objections to a reservation considered incompatible with the object and purpose of a treaty without opposing the entry into force of that treaty between themselves and the author of the reservation.

In relation to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, the Commission held an exchange of views on the topic on the basis of a briefing by the Chairman of the Study Group (Mr. Martti Koskenniemi) on the status of work of the Study Group. The Study Group had before it the following documents: (a) a memorandum on regionalism in the context of the study on “the function and scope of the lex specialis rule and the question of self-con-

\textsuperscript{264} A/CN.4/546.
\textsuperscript{265} A/CN.4/554.
\textsuperscript{266} A/CN.4/557.
tained regimes”; (b) a study on the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) a study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (d) a study on the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (e) a study on hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules. The Study Group also had before it an informal paper on the “Disconnection Clause”.

The Study Group reaffirmed its approach to focus on the substantive aspects of fragmentation in the light of the Vienna Convention on the Law of Treaties, 1969, while leaving aside institutional considerations pertaining to fragmentation. It further reaffirmed its intention to prepare, as the substantive outcome of its work, a single collective document consisting of two parts, namely, one part consisting of an analytical study on the question of fragmentation, and, a second part of a condensed set of conclusions, guidelines or principles. It envisaged that it would be in a position to submit such a consolidated document to the fifty-eighth session of the Commission in 2006.

(c) Sixth Committee

The Sixth Committee considered the item “Report of the International Law Commission on the work of its fifty-seventh session” at its 11th to 20th and 22nd meetings from 24 to 26 October and on 28 and 31 October, and from 1 to 3 November and on 16 November 2005.

The Chairman of the International Law Commission at its fifty-seventh session, Mr. Djamchid Momtaz (Islamic Republic of Iran), introduced the various chapters of the report of the Commission at the Committee’s 11th, 13th and 17th meetings and made a concluding statement at the 20th meeting.

During the debate of this item, with regard to the topic *Shared natural resources*, the progress made on the topic including the submission by the Special Rapporteur of a complete set of draft articles on the law on transboundary aquifers was welcomed. Support was expressed for the flexible approach to the topic, proposed by the Special Rapporteur, allowing for the adaptation of the rules being developed, by means of bilateral or regional accords. It was also suggested that it was important to make clear that the work on the topic did not constitute codification since the draft articles went beyond established law.

While some delegations expressed support for the initial focus on transboundary aquifers, others expressed concern over the limited scope of the draft articles, noting that it would have been better to have overarching rules on the topic shared natural resources as a whole. In terms of a further view, the Commission was cautioned against taking up oil and gas; while others expressed the wish for the consideration of such related aspects.

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268 For a more exhaustive summary of the debate of the Sixth Committee with regard to the various topics, see the website of the Sixth Committee (http://www.un.org/ga/sixth/) and the summary records (A/C.6/60/SR.11–20 and 22).
Other suggestions included focusing on the rules relating to the relationship between aquifer States, since any extension of the topic to obligations of non-aquifer States would delay the project. In terms of another view, it was important to acknowledge the international dimension of the topic and to include duties applicable to all States. Others stressed the importance of the principle of the sovereignty of aquifer States over underground waters and reaffirmed the relevance of resolution 1803 (XVII) on permanent sovereignty over natural resources. Caution was expressed against unnecessarily universalizing the regime for transboundary waters. The inclusion of a provision relating to developing countries was also favoured. Several delegations welcomed in particular the involvement of experts in the elaboration of the draft articles.

It was further suggested that the Commission focus only on aspects that differed from the 1997 Convention on the law of non-navigational uses of international watercourses, while others underscored the usefulness of the 1997 Convention as a model, which could be resorted to together with other approaches. Doubts were also expressed as to the appropriateness of applying the 1997 Convention as a precedent since it had not yet entered into force.

As to the final form of the draft articles, several delegations preferred to defer the matter until the content of the draft articles was made more precise. Nevertheless, some delegations expressed a preference for recommendatory principles or a framework approach that would provide the basis for the elaboration of legally binding agreements. Others observed that the framework approach needed to be revisited. Still others opted for the elaboration of a model regional agreement. Several delegations noted that context-specific arrangements, including bilateral and regional arrangements, were the best way of addressing pressures on transboundary groundwaters, while others favoured a holistic approach. It was proposed that the Commission develop a list of considerations or guidelines that States may take into account in negotiating bilateral or regional arrangements.

In connection with the debate on topic **Effects of armed conflicts on treaties**, all delegations supported the general approach to the topic taken by the Commission, namely to ensure the stability of treaty relations between States. Agreement was expressed with the view that the topic formed part of the law of treaties and not that relating to the use of force. Support was expressed for the inclusion within the scope of the topic of treaties between States as well as those concluded by international organizations, and of both international and non-international armed conflicts, as well as the question of military occupation. Others expressed doubts on including such issues within the scope of the topic. It was further suggested that the draft articles also apply to treaties which are being provisionally applied. As regards the phrase “armed conflict”, it was suggested that any definition take into account the report of the High Level Panel on Threats, Challenges and Change.

Support was expressed for the basic proposition of the Special Rapporteur, in article 3, that the outbreak of an armed conflict does not ipso facto terminate or suspend the operation of treaties, while others raised concerns. It was proposed that the position of third States be considered.

As regards the resort to the concept of the intention of the parties as the indicia of the treaty’s susceptibility to termination or suspension, it was maintained that it was an

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269 A/51/869.

important criterion, albeit not the only one, in determining whether a treaty is terminated or suspended following the outbreak of armed conflict. Others expressed concerns, and called for additional criteria. In terms of another suggestion, the concept could be supplemented by the criterion of the “nature” of the treaty.

Several delegations preferred greater clarification of the indicative list in draft article 7, while others opposed its inclusion. In terms of another suggestion, the indicative list, if it were to be retained, should include “treaties creating or modifying boundaries”, as well as a reference to the Charter of the United Nations.

Several delegations were of the view that draft article 10 had to be revisited to make it clear that a State should be permitted to avoid any treaty obligations not in conformity with its inherent right of self-defence, or with a decision of the Security Council taken under Chapter VII of the Charter of the United Nations. It was suggested that further consideration be given to the question of the legality of conduct of the parties to an armed conflict and the possible asymmetry in the relationship between an aggressor State and a victim State.

Opposition was also expressed to the inclusion of draft article 11 on the legal effect of decisions of the Security Council taken in accordance with Chapter VII of the Charter of the United Nations.

Concerning the topic Responsibility of international organizations, the delegations commended the Commission for its progress on the topic, notably the adoption of draft articles 8 to 16 at its recent session. Reference was made to the complexity of the topic in light of the diversity of international organizations. Some delegations stressed the need for further examination of the notion of “international organization”, account being taken of entities that are not (purely) intergovernmental.

As to the question of the legal nature of the internal rules of an international organization, support was expressed for the present inconclusive provision, while others maintained that further clarification was required. In terms of a third view, the provision was unnecessary. The view was also expressed that paragraph 2 of draft article 8 (dealing with international obligations established by the “rules” of an international organization) would not cover procedural or administrative rules.

Regarding the relationship between the responsibility of international organizations and that of their member States, the view was expressed that the articles should be redrafted to cover the full range of possibilities. Some delegations questioned the distinction between recommendations and binding decisions. While support was expressed for the Commission’s approach, others felt that it required further consideration. It was suggested that the special case of integration organizations also be covered, while others considered it as distinct from general international law. It was also suggested that the Commission consider the question of joint and several responsibility for States and international organizations, with a view to including a provision on proportionate responsibility sharing.

With regard to the questions raised in the Commission’s report, the view was expressed that assistance to an international organization in the commission of an internationally wrongful act was a question of State responsibility, but that, in light of its exclusion from the draft articles on State responsibility, it could be included in the commentary.
As to future work, several delegations believed that the Commission should consider issues relating to State responsibility, while others felt that such issues were beyond the scope of the topic given the differences between States and international organizations, as well as the diversity of such organizations.

Concerning the topic Diplomatic protection, general support was expressed for the Commission’s decision not to include the doctrine of “clean hands” within the draft articles on diplomatic protection. Support was expressed for the basic approach that States have a right, not a duty, to exercise diplomatic protection. Support was also expressed for the basic principle in draft article 7 dealing with cases of multiple nationalities, as well as draft article 8 on the diplomatic protection of stateless persons and refugees.

In terms of suggestions for the second reading, it was proposed that the question of the consequences of diplomatic protection should be considered; that the Commission reconsider the provisions on the diplomatic protection of legal persons; and that provisions be included on the exercise of diplomatic protection, as well as on the allocation of compensation in the context of group claims. Some delegations cautioned against draft article 17 being interpreted as allowing for the undertaking of coercive measures.

As regards the debate on the topic Expulsion of aliens, support was expressed for the general approach taken by the Special Rapporteur in trying to reconcile the right of States to expel aliens and the need to ensure respect for human rights. In terms of another view, the appropriateness of the topic’s consideration by the Commission was questioned.

Emphasis was placed on the importance of a proper delimitation of the scope of the topic, with several delegations favouring the exclusion of questions relating to international humanitarian law, and others that of large scale expulsions as a result of a territorial dispute as well as expulsion from occupied territories. Still others suggested that mass expulsions occurring in such contexts might be covered. A preference was also expressed for the exclusion of issues related to non-admission and immigration law in general. In terms of another view, questions relating to preventive measures (“éloignement”) and to the admission of expelled aliens could be considered. Others also proposed the inclusion of the situation of illegal aliens.

Several delegations stressed the importance of considering legitimate grounds for expulsion, while others also highlighted some procedural requirements, such as motivation, due process and judicial review. It was also suggested that decisions on expulsion should be taken on an individual basis. Several delegations considered collective expulsion as being prohibited under international law.

It was proposed that an in-depth study of national legislation and case-law be undertaken, with the support of the Secretariat, and which would give equal attention to developed and developing countries. The Commission was also called upon to take into account the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. 271

Some doubts were expressed as to the possible outcome of the work of the Commission on this topic. In terms of some suggestions, it could be a repertory of practice, a political declaration, or a text that could eventually become a protocol to the International Covenant on Civil and Political Rights.

As regards the debate on the topic *Unilateral acts of States*, several delegations welcomed the work accomplished by the Commission thus far. All delegations noted that the topic raised particular challenges. While some expressed doubts as to continuing its study, others emphasized the importance of continuing the work.

Emphasis was further placed on retaining the current focus towards an analysis of State practice. Several observations were made, including: that it was difficult to define a unilateral act of the State; that the intention of the State to commit itself was an important feature; and that it may not be appropriate to produce definitions and rules that draw parallels with the Vienna Convention on the Law of Treaties. The Commission was encouraged to also consider within the scope of the topic unilateral acts of States which have extraterritorial effect, including national legislation.

Several delegations suggested that the work of the Commission’s working group on the topic should focus on unilateral acts *stricto sensu*, and that it would be useful to reach a consensus on preliminary conclusions on how it should proceed with and conclude the topic. It was suggested that the Commission could take stock of the work done in the past ten years and identify some basic principles, guidelines or conclusions accompanied by examples of State practice that may be of use to States. Some delegations did not rule out the possibility of a binding instrument.

On the topic *Reservations to treaties*, delegations expressed gratitude for the continued work on the preparation of a Guide to Practice seeking to clarify the relevant provisions of the Vienna Convention on the Law of Treaties. At the same time, emphasis was placed on the importance of consistency with the Vienna Convention, in particular articles 19 to 23 thereof. The view was expressed that the Guide to Practice should serve as a reference tool in the daily work of Governments.

Preliminary approval was expressed regarding the observations by the Special Rapporteur on the definition of the concept of “object and purpose” of a treaty, although it was specified that the criterion was not applicable in respect of a reservation that affected a pre-emptory norm of international law, particularly procedural protections for human rights. Agreement was expressed with the Special Rapporteur’s view that “object and purpose” should be seen as a single term. Some other delegations questioned the usefulness of attempting to define such a term, and noted that the definition currently offered by the Special Rapporteur did not add significant clarity. It was further proposed that the definition could be improved with the inclusion of references to doctrine and case law.

With regard to the question posed to States regarding the practice of maintaining treaty relations despite having objected to a reservation as incompatible with the object and purpose of a treaty, some delegations indicated that such decisions were of a practical nature, and that, consistent with article 21 of the Vienna Convention, the objecting State could determine the consequences of its objection on the bilateral treaty relations. On the other hand, other delegations were of the view that when a reservation was incompatible with the object and purpose of the treaty, the reserving State could not be considered a party to the treaty. It was noted that given the bureaucratic difficulties inherent in objecting to a reservation, limited significance should be given to the failure to object. It was also noted that objections to incompatible reservations do not have the same legal effects as objections to reservations that have satisfied the object and purpose test. Several Governments highlighted their practice on the issue, under which such reservations are considered *per se*
invalid, and severed from the treaty, which remains enforceable. It was pointed out that in such a case, guideline 3.3.3, allowing the acceptance of an invalid reservation was unnecessary. It was further suggested that the practice of objecting to a reservation under article 19 of the Vienna Convention on the basis of its inconformity with the object and purpose of the treaty should be distinguished from the practice of objecting to a reservation under articles 20 and 21 by dealing with them in separate sub-guidelines and by referring to the former as “rejection” and the latter as “objection”. In this connection, differing views were expressed as to whether reservations incompatible with the object and purpose of a treaty should be referred to as “invalid” rather than “impermissible” or “opposable”. In terms of a further view, a State which objected on the ground of the incompatibility of the reservation with the object and purpose, but chose to retain a treaty relation with the reserving State, might in fact merely be making a simple objection in line with article 21 of the Vienna Convention. In terms of another suggestion, the Commission could consider proposing the establishment of an authority to decide on the validity of reservations, although opposition was expressed to giving such authority to the depositary.

Concerning draft guideline 3.1.7, on vague reservations, some delegations pointed out that vague reservations caused significant legal uncertainty and caused difficulties for potential objecting States. It was suggested that a procedure for clarifying a vague reservation with the formulating State be set forth in a draft guideline. Alternatively, it suggested that vague reservations could be considered invalid since they did not pertain to “certain provisions of a treaty” as required by article 2 of the Vienna Convention. Others were of the view that the automatic qualification of vague reservations as incompatible with the object and purpose of a treaty was too severe.

While it was suggested that human rights treaties might require special consideration, the view was expressed that a separate regime should not be created for human rights treaties in the draft guidelines. It was also suggested that an additional guideline dealing with reservations relating to the jurisdiction of the International Court of Justice be included.

With regard to the debate on the topic Fragmentation of international law: difficulties arising from the diversification and expansion of international law, appreciation was expressed for the results achieved thus far by the Study Group of the Commission. While the basic approach that focused on the substantive aspects of fragmentation was welcomed, some delegations expressed reservations on the topic as a whole as well as regarding its eventual outcome. The view was expressed that the Commission should exercise restraint when finalizing its work since the content of the topic was uncertain. Others were of the view that that the outcome of the studies would be of great reference value to practitioners. At the same time, it was noted that it was important for practitioners to have a clear understanding of the relationships among various instruments. In terms of a further view, the outcome should be confined to the analytical study itself, and should not be prescriptive as implied by the terms “guidelines” and “principles” (nor was it suitable for the elaboration of draft articles). Others maintained that guidelines of a general nature may be appropriate to avoid the academic orientation of the topic.

Concerning the topic International liability in case of loss from transboundary harm arising out of hazardous activities (international liability in case of loss from transboundary harm arising out of hazardous activities), it was noted that the Commission had achieved significant progress in the completion on first reading in 2004 of the draft principles on
allocation of loss, which struck a fair balance between the rights and obligations of the operator and the victim.

As regards chapter XII of the Commission’s report concerning other decisions and conclusions of the Commission, several delegations supported the Commission’s decision to include the topic “the obligation to extradite or prosecute (aut dedere aut judicature)” in its work plan. The view was expressed that the topic should include an analysis of the principle of “universal” jurisdiction. It was also suggested that the Commission reconsider its programme with a view to ending some topics which have been on the agenda for a long time. Emphasis was placed on the importance of the Commission taking into account the statements made in the Sixth Committee.

Suggestions for new topics included: pre-emptive use of force in international law; the responsibility to protect; and international disaster relief law.

At the 22nd meeting, on 16 November, the representative of Jordan, on behalf of the Bureau, introduced a draft resolution entitled “Report of the International Law Commission on the work of its fifty-seventh session”, which was adopted by the Committee, at the same meeting.

(d) General Assembly

On 23 November 2005, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 60/22 entitled “Report on the work of the International Law Commission on the work of its fifty-seventh session”.

In the resolution, the Assembly took note of the report of the International Law Commission and drew the attention of Governments to the importance for the Commission of receiving their views on the draft articles and commentaries on diplomatic protection, as well as on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, which were adopted by the Commission at its fifty-sixth session. The General Assembly also invited Governments to provide information to the International Law Commission regarding the topics “Shared natural resources”, “Effects of armed conflicts on treaties”, “Responsibility of international organizations”, “Expulsion of aliens”, “Unilateral acts of States”, and “Reservations to treaties”. Finally, the Assembly endorsed the decision of the International Law Commission to include the topic “The obligation to extradite or prosecute (aut dedere aut judicature)” in its programme of work.

\[^{272}\text{ A/C.6/60/L.14.}\]

(a) United Nations Commission on International Trade Law

The General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) at its twenty-first session in 1966, to promote the progressive harmonization and unification of the law of international trade, and requested the Commission to submit an annual report to the Assembly. The Commission began its work in 1968. It originally consisted of 29 Member States representing the various geographic regions and the principal legal systems of the world. Later on, the General Assembly increased the membership of the Commission from 29 to 36 States, and from 36 to 60 States.

Thirty-eighth session of the Commission

UNCITRAL held its thirty-eighth session in Vienna from 4 to 15 July 2005 and adopted its report on 15 July 2005.

During the session, the Commission finalized and approved the draft Convention on the use of electronic communications in international contracts. The Commission noted that the draft convention aimed at removing legal obstacles to electronic commerce, and those that arose under other instruments on the basis of well-established principles, such as functional equivalence. As many States were taking steps to broaden the use of electronic commerce and actively promote the modernization of business methods, the Commission observed that the draft convention would serve as a useful basis to allow States to simplify various domestic rules applying to electronic commerce. The draft convention would also enhance confidence and trust in electronic commerce in cross-border trade.

With respect to its work on procurement, the Commission recalled its decision to update the UNCITRAL Model Law on Procurement of Goods, Construction and Services to reflect new practices, in particular those which resulted from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform in public procurement, as well as possible additional issues. At its thirty-eighth session, the Commission took note of the reports of the sixth and seventh sessions of the Working Group. During the sixth session, the Working Group began its work on the preparation of proposals for the revision of the Model Law, with the preliminary consideration of the following topics: (a) electronic publication of procurement-related information; (b) the use of electronic communications in the procure-

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273 Detailed information and documents regarding the work of the Commission may be found on the Commission’s website at http://www.uncitral.org/.


275 General Assembly resolution 2205 (XXI) of 17 December 1966.

276 General Assembly resolution 3108 (XXVIII) of 12 December 1973.

277 General Assembly resolution 57/20 of 19 November 2002.


280 A/CN.9/568 and A/CN.9/575, respectively.
ment process; (c) controls over the use of electronic communications in the procurement process; (d) electronic reverse auctions; (e) the use of suppliers’ lists; (f) framework agreements; (g) procurement of services; (h) evaluation and comparison of tenders and the use of procurement to promote industrial, social and environmental policies; (i) remedies and enforcement; (j) alternative methods of procurement; (k) community participation in procurement; (l) simplification and standardization of the Model Law; and (m) legalization of documents.

With respect to the topic of arbitration, the Commission had before it the reports of the Working Group on its forty-first and forty-second sessions.\textsuperscript{281} The Commission noted that discussions had continued on the power of an arbitral tribunal to grant interim measures of protection on an ex-parte basis. In this context, a draft text for revision of article 17, paragraph 7, of the UNCITRAL Model Law on International Commercial Arbitration\textsuperscript{282} was under discussion. A new article to be inserted in the Model Law, on the recognition and enforcement of interim measures of protection issued by an arbitral tribunal, tentatively numbered 17 bis, was also being considered. The Commission also noted that, notwithstanding the wide divergence of views, the Working Group had agreed, at its forty-second session, to include a compromise text of the revised draft of paragraph 7 in draft article 17, on the basis of the principle that this paragraph would apply unless otherwise agreed by the parties, and that it should be made clear that preliminary orders had the nature of procedural orders, and not of awards, and that no enforcement procedure would be provided for such orders in article 17 bis.

Concerning transport law, the Commission had before it the reports of the Working Group on its fourteenth and fifteenth sessions.\textsuperscript{283} It was noted that the Working Group had achieved progress on a number of difficult issues arising during the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea], including those regarding the basis of liability pursuant to the draft instrument, as well as the scope of application of the instrument and related freedom of contract issues.

With regard to its work on security interests, the Commission had before it the reports of the Working Group on its sixth and seventh sessions.\textsuperscript{284} The Commission observed that a complete consolidated set of legislative recommendations, which included, in addition to recommendations on inventory, equipment and trade receivables, recommendations on negotiable instruments, negotiable documents, bank accounts and proceeds from independent undertakings, would be before the Working Group at its eighth session. In addition, the Commission noted with appreciation the progress made by the Working Group in the coordination of its work with: (a) the Hague Conference on Private International Law, which had prepared the Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary;\textsuperscript{285} (b) the International Institute for the Unification of Private Law (Unidroit), which was preparing a draft convention on security and other rights in intermediated securities; (c) the World Bank, which was revising its Principles

\textsuperscript{281} A/CN.9/569 and A/CN.9/573, respectively.
\textsuperscript{282} \textit{Official Records of the General Assembly, Fortieth Session, Supplement No. 17} (A/40/17), annex I. The Model Law has been published as a United Nations publication (Sales No. E.95.V.18).
\textsuperscript{283} A/CN.9/572 and A/CN.9/576, respectively.
\textsuperscript{284} A/CN.9/570 and A/CN.9/574, respectively.
and Guidelines for Effective Insolvency and Creditor Rights Systems; and (d) the World
Intellectual Property Organization.

Regarding the topic “Monitoring the implementation of the 1958 New York Conven-
tion”,286 the Commission recalled that it had requested the Secretariat to undertake its
best efforts to produce for consideration by the Commission at its thirty-eighth session a
preliminary analysis of the replies received by the Secretariat in response to the question-
naires circulated in connection with the project.287

(b) Sixth Committee

The Sixth Committee considered the item entitled “Report of the United Nations
Commission on International Trade Law on the work of its thirty-eighth session” at its 1st,
2nd, 10th and 14th meetings, on 3, 4, 21 and 26 October 2005.

At the 1st meeting, Mr. Jorge Pinzón Sánchez (Colombia), Chairman of UNCITRAL
at its thirty-eighth session, presented the report of the Commission.

During the debate on this item,288 delegations welcomed the approval by UNCITRAL
of the draft convention on the use of electronic communication in international contracts,
which would facilitate electronic commerce, create legal certainty and address problems
related to fraud.

Several delegations commended the Commission on the progress it had achieved
with regard to the various topics under consideration, including procurement, arbitra-
tion, transport law and security interests. Furthermore, several delegations stressed the
importance of continuing the coordination and cooperation between UNCITRAL and
other organizations in order to prevent duplication of work and inconsistencies in legal
instruments.

Several delegations further welcomed the Commission’s plans to explore ways to com-
batt commercial fraud and commended the Commission for cooperating with the United
Nations Office on Drugs and Crime in this area.

In addition, support was expressed for the convening of an UNCITRAL congress in
2007 to review the results of the past and current work programmes as well as to elaborate
topics for future work. A suggestion was also made that the Commission consider estab-
lishing a group to monitor the implementation of legal instruments already adopted by the
Commission in order to identify the difficulties that States may experience.

Delegations stressed the importance of technical assistance programmes in the area
of international trade law. In this context, support was expressed for the creation within
the Secretariat of a unit on technical assistance and the efforts to collect and disseminate
legal material related to the instruments adopted by the Commission.

286 For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral
para. 84.
288 For a more exhaustive summary of the debate of the Sixth Committee with regard to this
topic, see the website of the Sixth Committee (http://www.un.org/ga/sixth/) and the summary records
(A/C.6/60/SR.1, 2, 10 and 14).
At the 10th meeting, on 21 October, the representative of Austria, on behalf of Algeria, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Ethiopia, Fiji, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Mexico, Mongolia, Morocco, the Netherlands, New Zealand, Norway, the Philippines, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine and the United Kingdom of Great Britain and Northern Ireland and Uruguay, subsequently joined by Bolivia, the Dominican Republic, the Gambia and Latvia, introduced a draft resolution entitled “Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session”.

Also at the 10th meeting, on 21 October, the Chairman of the Committee introduced a draft resolution entitled “United Nations Convention on the Use of Electronic Communications in International Contracts”. At its 14th meeting, on 26 October, the Committee adopted the two draft resolutions.

(c) General Assembly


17. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixtieth session of the General Assembly, the Sixth Committee, in addition to the topics concerning the International Law Commission and the United Nations Commission on International Trade Law, discussed above, considered a wide range of topics. The work of the Sixth Committee and of other related subsidiary organs is described below, together with the relevant resolutions and decisions of the General Assembly adopt-

\[^{289}\text{A/C.6/60/L.7.}\]
\[^{290}\text{A/C.6/60/L.8.}\]
\[^{291}\text{For the text of the Convention, see section 3 of chapter IV below, “Treaties concerning international law concluded under the auspices of the United Nations”}\]
ed during 2005. The resolutions of the General Assembly described in this section, unless otherwise indicated, were adopted during its sixtyeth session on 23 November 2005 on the recommendation of the Sixth Committee.

(a) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider appreciation of International Law

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider appreciation of International Law was established by the General Assembly at its twentieth session in 1965 to provide direct assistance in the field of international law by means of fellowship programmes, regional courses and symposia in international law, as well as through the preparation and dissemination of publications and other information relating to international law. Its continuation was subsequently authorized by the Assembly at its annual sessions until its twenty-sixth session, and thereafter biennially.

(i) Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which assists the Secretary-General in the performance of the functions entrusted to him by the General Assembly under this item, held its fortieth session on 17 October 2005 to consider the draft report of the Secretary-General. The discussion held during the fortieth session is reflected in the final report of the Secretary-General on this topic.

(ii) Sixth Committee

The Sixth Committee considered this item at its 19th to 21st meetings, on 2, 3 and 9 November 2005, respectively.

During the debate, delegations remarked on the importance of international law and that the Programme of Assistance activities, as described in the report of the Secretary-General, including the fellowship programmes, regional courses and legal publications,
contributed to the spread of knowledge of the law, especially in developing countries. It was pointed out that the fellowship programmes also offered the young jurists selected the opportunity to network, thus furthering the development of their role in the enhancement of international law and the rule of law. Some delegations emphasized the need for increased voluntary contributions to the Programme of Assistance, in order that the achievements of the Programme may be augmented.

At the 19th meeting, on 2 November, the Chairman of the Advisory Committee on the Programme of Assistance introduced a draft resolution entitled “United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law”, which was adopted by the Committee at its 21st meeting.

(iii) General Assembly

In its resolution 60/19, the General Assembly took note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and the guidelines and recommendations on future implementation of the Programme contained therein. It approved the guidelines and recommendations and authorized the Secretary-General to carry out in 2006 and 2007 the activities specified in the said report.

(b) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

At its twenty-ninth session, in 1974, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. At its thirtieth session, in 1975, the General Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law. Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

298 A/C.6/60/L.5.
299 For the report of the Sixth Committee, see A/60/514. For the summary records, see A/C.6/60/SR.19, 20 and 21.
300 General Assembly resolution 3349 (XXIX) of 17 December 1974.
301 General Assembly resolution 3499 (XXX) of 15 December 1975.
The Special Committee met at United Nations Headquarters from 14 to 18 March 2005. The issues considered by the Special Committee during this session were: maintenance of international peace and security, in particular the questions of sanctions, the legal basis for United Nations peacekeeping operations, and the strengthening of the role of the Organization; peaceful settlement of disputes; proposals concerning the abolition of the Trusteeship Council; the publications Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council; and working methods of the Special Committee and the identification of new subjects.

In its report, the Special Committee made several recommendations to the General Assembly. The Special Committee recommended, inter alia, that, at its sixtieth session, the General Assembly continue to consider the results of the ad hoc expert group meeting established by resolution 52/162 concerning the effects of sanctions on third States, taking into account the different views expressed on the matter. It also recommended that the Assembly address further the question of the implementation of the provisions of the Charter relating to the assistance to third States affected by the application of sanctions, and that it recognize the value of considering measures to ensure the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter. It further recommended that the Assembly encourage voluntary contributions to the trust funds concerning the Repertory and the Repertoire and that cooperation with academic institutions for the preparation of studies for both publications be enhanced. Finally, the Special Committee also submitted to the Assembly its decision relating to new subjects, in which the Special Committee “express[d] its readiness to engage, as appropriate, in the implementation of any decisions that may be taken at the High-level Plenary Meeting of the sixtieth session of the General Assembly in September 2005 that concern the Charter of the United Nations and any amendments thereto.”

At its 248th meeting, on 18 March 2005, the Special Committee adopted the report of its 2005 session.

(ii) Sixth Committee

The Sixth Committee considered this agenda item at its 7th, 8th and 21st meetings, on 14 and 19 October and on 9 November 2005. The Chairman of the Special Committee during its 2005 session introduced its report.

Delegations welcomed the report of the Special Committee and recalled that it had indicated its availability to consider any proposals relating to the reform of the Charter which arose from the High-level plenary meeting of the General Assembly held in September 2005.

At the 21st meeting, on 9 November, the representative of Egypt introduced a draft resolution entitled “Report of the Special Committee on the Charter of the United Nations...”

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303 See General Assembly resolution 60/1 of 16 September 2005 on the “2005 World Summit Outcome”. 
and on the Strengthening of the Role of the Organization”, \textsuperscript{304} which was adopted by the Committee at the same meeting. \textsuperscript{305}

(iii) General Assembly

In its resolution 60/23, entitled “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 took note of the report of the Special Committee and of the report of the Secretary-General on the Repertory and the Repertoire. \textsuperscript{306}

In addition, the Assembly, \textit{inter alia}, requested that during its next session in 2006, the Special Committee continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the Organization, continue to consider, on a priority basis, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, keep on its agenda the question of the peaceful settlement of disputes between States, and continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. Furthermore, the Assembly requested the Special Committee to consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto.

The Assembly also recognized the important role of the International Court of Justice in adjudicating disputes among States and the value of its work, as well as the importance of having recourse to the Court in the peaceful settlement of disputes. In this regard, it stressed the desirability of finding practical ways and means to strengthen the Court, taking into consideration the needs resulting from its workload.

Finally, the General Assembly welcomed the establishment of the trust fund to eliminate the backlog of the Repertory, encouraged the enhanced cooperation with academic institutions and the use of the internship programme for the preparation of studies, and endorsed the efforts of the Secretary-General to eliminate the backlog in the Repertoire.

(c) Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

(i) Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel

The Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel held its fourth session from 11 to 15 April 2005, with a mandate to expand the scope of legal protection under the Convention

\textsuperscript{304} A/C.6/60/L.13.

\textsuperscript{305} For the report of the Sixth Committee, see A/60/517. For the summary records, see A/C.6/60/SR.7, 8 and 21.

\textsuperscript{306} A/60/124.
on the Safety of United Nations and Associated Personnel,307 including by the means of a legal instrument.308 In its report on the work of its fourth session to the General Assembly,309 the Ad Hoc Committee recommended that work to expand the scope of legal protection under the Convention continue during the sixtieth session of the General Assembly, within the framework of a working group of the Sixth Committee. The Ad Hoc Committee also recommended that the revised Chairman’s text of a draft optional protocol to the Convention, as contained in annex I to its report, be used as the basis of work of the working group, and that the proposal by Costa Rica concerning the relationship between the Convention and international humanitarian law, in annex II. A, be considered by the working group separately.

(ii) Sixth Committee

At its 1st meeting, on 3 October 2005, the Sixth Committee established a working group in order to continue work on the matter, which held four meetings, on 4, 5 and 10 October 2005, as well as informal consultations on 5, 6 and 7 October. Informal consultations on the text of a draft optional protocol continued among interested delegations during the session of the Sixth Committee with a view to finalizing discussions on the outstanding issues.

The Sixth Committee considered the item at its 8th, 9th and 22nd meetings, on 19 and 20 October and 16 November 2005. At the 8th meeting, the Chairman of the Ad Hoc Committee and the Working Group introduced the respective reports.310

During the debate on this item, delegations condemned the continuing attacks against United Nations and associated personnel and urged States to ensure that such crimes do not go unpunished and that the perpetrators are brought to justice. While several delegations welcomed the inclusion by the Secretary-General of core provisions of the Convention in status-of-forces, status-of-mission and host country agreements, the importance of universal acceptance of the Convention was also emphasized. Furthermore, delegations highlighted the urgent need to expand the scope of legal protection under the Convention to include a broader category of operations. In this connection, several delegations expressed their support for the inclusion of the term “peacebuilding” in a draft protocol since such operations contained an inherent element of risk. However, other delegations considered that the term was too ambiguous to be used in a law-enforcement instrument. Several delegations also expressed support for the proposal to expand the scope of protection to operations undertaken for the purpose of delivering emergency humanitarian assistance in situations of natural disaster. However, the need to include a mechanism of non-applicability of the draft protocol to such situations, when no risk was present, was also stressed. A few delegations were of the view that situations of natural disaster should not be included at all in the draft protocol.

308 General Assembly resolution 59/47 of 2 December 2004.
310 Ibid., and A/C.6/60/L.4.
While delegations acknowledged the duty of States to protect United Nations and associated personnel, the reciprocal duty of such personnel to respect and obey the law of the host countries was also emphasized. Delegations also stressed that while a satisfactory legal framework for the protection of United Nations personnel was essential for the effective execution of United Nations operations, the success of such operations also depended on their adequate financing and support.

At the 22nd meeting, on 16 November 2005, the Chairman of the Ad Hoc Committee and of the Working Group introduced a draft resolution entitled “Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel”, to which was annexed the text of the Optional Protocol, which was adopted at the same meeting.

(iii) General Assembly

In its resolution 60/42 of 8 December 2005, entitled “Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel”, the General Assembly adopted the said Optional Protocol contained in its annex, and invited all Members States to become parties thereto. In the resolution, the General Assembly also reaffirmed, in the context of the Convention and its Optional Protocol, the importance of maintaining the integrity of international humanitarian law, as well as the obligation of all humanitarian personnel and United Nations and associated personnel to respect the national laws of the country in which they are operating, in accordance with international law and the Charter of the United Nations.

(d) Measures to eliminate international terrorism

(i) Ad hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

In 1996, the General Assembly, in resolution 51/210, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.

In accordance with General Assembly resolution 59/46 of 2 December 2004, the Ad Hoc Committee held its ninth session from 28 March to 1 April 2005 in order to continue elaborating the draft comprehensive convention on international terrorism and to resolve the outstanding issues relating to the elaboration of the draft international convention for the suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism, and to keep on its agenda the question of convening a high-level conference under the auspices of the

311 A/C.6/60/L.11. For the text of the Optional Protocol, see section 4 of chapter IV below, “Treaties concerning international law concluded under the auspices of the United Nations”.
312 For the report of the Sixth Committee, see A/60/518. For the summary records, see A/C.6/60/SR.8, 9 and 22.
United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.  

At its meeting on 1 April, the Ad hoc Committee finalized the draft International Convention for the Suppression of Acts of Nuclear Terrorism and decided to recommend to the General Assembly the adoption during its resumed fifty-ninth session, of a draft resolution to which the draft Convention was annexed.

(ii) Sixth Committee

At its 1st meeting, on 3 October 2005, the Sixth Committee established a working group with a view to finalizing the draft comprehensive convention on international terrorism and to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Working Group held three plenary meetings, as well as informal consultations and bilateral contacts with interested delegations.

The Sixth Committee considered this item at its 3rd to 6th, 10th and 23rd meetings, on 6, 7, 10 and 21 October and on 29 November 2005. At the 3rd and 10th meetings, the Chairman of the Ad Hoc Committee and the Working Group introduced the reports of the Ad Hoc Committee and of the Working Group, respectively.

During the debate in the Sixth Committee, delegations condemned terrorism in all its forms and manifestations committed by whomever, wherever and for whatever purpose, and stressed that it constituted a serious threat to international peace and security, economic development and human rights. Several delegations rejected any identification of terrorism with a single race, culture or religion and stressed the need for enhancing dialogue and broadening understanding amongst civilizations. In particular, exchanges between leaders of religious communities were encouraged to enhance inter-faith dialogue. Several delegations reiterated that terrorism required a coordinated response, at the national, regional and international levels. In this context, the central role of the United Nations in combating terrorism was underlined, considering its unique legitimacy in legislative matters. The importance of bilateral, subregional and regional efforts in combating terrorism was also highlighted. Some delegations appealed to donor countries to support regional initiatives in the area of counter-terrorism and called for strengthened capacity-building measures in this area.

While delegations commended the role of United Nations Office of Drugs and Crime in assisting States in their ratification and implementation of counter-terrorism conventions, the need to further strengthen capacity-building measures in this area was highlighted. Several delegations stressed the importance of combating terrorism in a holistic

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313 For the report of the Ad Hoc Committee, see Official Records of the General Assembly, Sixtieth Session, Supplement No. 37 (A/60/37).
315 For the report of the Working Group, see A/C.6/60/L.6.
manner, and in particular, addressing its root causes. Furthermore, the link between terrorism and transnational organized crime was highlighted.

Support was expressed for the Secretary-General’s proposed five point counter-terrorism strategy. However, it was stated by some delegations that although the elements and objectives identified by the Secretary-General could form a basis for developing such a strategy, the list was not exhaustive and required careful consideration by Member States. It was suggested that such a strategy should include the following elements: completion of the draft comprehensive convention on international terrorism, implementation of the measures adopted by the Security Council under its relevant resolutions, and addressing the root causes of terrorism.

Several delegates also commented on the draft comprehensive convention on international terrorism and on the proposal concerning the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestation. In addition, references were made to other proposals, including the establishment of an international counter-terrorism centre, the formulation of an international counter-terrorism code of conduct, and the convening of a high-level special session of the General Assembly on cooperation against terrorism.

At the 23rd meeting, on 29 November, the representative of Poland, on behalf of the Bureau of the Sixth Committee, introduced a draft resolution entitled “Measures to eliminate international terrorism”, which was adopted at the same meeting.

(iii) General Assembly

At its resumed fifty-ninth session, on 13 April 2005, the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism. The Assembly also requested the Secretary-General to open the Convention for signature at United Nations Headquarters in New York, from 14 September 2005 to 31 December 2006, and called upon all States to sign and ratify, accept, approve or accede to the Convention.

On 8 December 2005, during its sixtieth session, the General Assembly adopted resolution 60/43 on “Measures to eliminate international terrorism”, in which it, inter alia, reiterated its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities, and urged States to ensure that any person within their territory who willfully provide or collect funds for the benefit of persons who commit, attempt to commit, facilitate or participate in the commission of terrorist acts, be punished by penalties consistent with the grave nature of such acts. Furthermore, the Assembly reminded States of their obligations under relevant international counter-terrorism conventions and protocols, and Security Council resolutions, to ensure that perpetrators of terrorist acts were brought to justice. It welcomed the adoption and opening for signature of the International Convention for the Suppression of Acts of Nuclear Ter-

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316 A/C.6/60/L.12.
317 For the report of the Sixth Committee, see A/60/519. For the summary records, see A/C.6/60/SR.3–6, 10 and 23.
318 General Assembly resolution 59/290 of 13 April 2005.
rorism, and urged all States to consider becoming parties to it as well as to other relevant instruments. It also called upon all States to enact the domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enabled them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end.

(e) Report of the Committee on Relations with the Host Country

(i) Committee on Relations with the Host Country

The Committee on Relations with the Host Country was established by the General Assembly at its twenty-sixth session in 1971 to deal with a wide range of issues concerning the relationship between the United Nations and the United States as the host country, including questions pertaining to security of the missions and their personnel, privileges and immunities, immigration and taxation, housing, transportation and parking, insurance, education and health, as well as public relations issues with New York as the host city. In 2005, the Committee was composed of the following 19 Member States: Bulgaria, Canada, China, Costa Rica, Côte d’Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libyan Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom and United States.

In accordance with General Assembly resolution 59/42 of 2 December 2004, the Committee reconvened in 2005 and held four meetings: its 223rd meeting on 15 April, its 224th meeting on 6 July, its 225th meeting on 28 September and its 226th on 28 October 2005.

During its 2005 session, the Committee dealt with the following topics: transportation (use of motor vehicles, parking and related matters), acceleration of immigration and customs procedures, entry visas issued by the host country, exemption from taxes, and host country travel regulations.

At its 226th meeting, on 28 October 2005, the Committee approved various recommendations and conclusions dealing with the said matters.\(^\text{320}\)

(ii) Sixth Committee

The Sixth Committee considered this item at its 21st meeting, on 9 November 2005, during which the Chairman of the Committee on Relations with the Host Country introduced the report of the Committee and the draft resolution on this item.\(^\text{321}\)

During the debate, appreciation was expressed for the continued efforts of the host country to fulfill its obligations under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946\(^\text{322}\) and the Headquarters Agreement,\(^\text{323}\) to provide

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\(^{319}\) General Assembly resolution 2819 (XXVI) of 15 December 1971.


\(^{321}\) A/C.6/60/L.15.


\(^{323}\) See General Assembly resolution 169 (II) of 31 October 1947.
full facilities for the normal functioning of the missions accredited to the United Nations. With respect to the Parking Programme for Diplomatic Vehicles adopted in 2002, hope was expressed that various shortcomings in its implementation would be addressed by the host country and that it would be implemented consistent with international law, in a fair, non-discriminatory and effective manner. Some delegations also referred to instances of delays in the issuance of entry visas, the question of travel restrictions, and urged the host country to resolve existing problems in accordance with the Headquarters Agreement.

The Host Country confirmed its commitment to fulfill its obligations under international law and noted, in particular, the success achieved in the implementation of the Parking Programme for Diplomatic Vehicles.

During the same meeting, the representative of Cyprus, on behalf of other sponsor delegations, introduced a draft resolution entitled “Report of the Committee on Relations with the Host Country”, which was adopted by the Sixth Committee.324

(iii) General Assembly

In its resolution 60/24, the General Assembly endorsed the recommendations and conclusions made by the Committee on Relations with the Host Country contained in its report.325

In addition, the Assembly considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations, as well as the observance of their privileges and immunities, were in the interest of the United Nations and all Member States. Therefore it requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions.

The Assembly also noted that the Committee would continue to review the implementation of the Parking Programme for Diplomatic Vehicles, with a view to addressing the problems experienced by some permanent missions in that respect, and continuously ensuring its proper implementation in a manner that is fair, non-discriminatory, effective and consistent with international law.

Further, the General Assembly noted that during the reporting period, some travel restrictions previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities had been removed, and requested the host country to consider removing the remaining travel restrictions.

Finally, the Assembly noted that the Committee anticipated that the host country would enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States for travel to New York on United Nations business, as well as to facilitate the participation of representatives of Member States in other United Nations meetings.

324 For the report of the Sixth Committee, see A/60/520. For the summary records, see A/C.6/60/SR.21.
(f) **Observer status in the General Assembly**

(i) **Sixth Committee**

The Sixth Committee considered requests for observer status in the General Assembly by the Latin American Integration Association, the Common Fund for Commodities, the Hague Conference on Private International Law, and the Ibero-American Conference.

The question of observer status for the Latin American Integration Association and the Common Fund for Commodities was considered at the Committee's 2nd and 6th meetings, on 4 and 10 October 2005. The question of the observer status for the Hague Conference on Private International Law was considered at the 16th and 19th meetings of the Sixth Committee, on 28 October and 2 November. Finally, the observer status for the Ibero-American Conference was considered at the 19th and 20th meetings of the Committee on 2 and 3 November 2005.

(ii) **General Assembly**

In its resolutions 60/25, 60/26, 60/27 and 60/28, the General Assembly granted observer status to the Latin American Integration Association, the Common Fund for Commodities, the Hague Conference on Private International Law, and the Ibero-American Conference, respectively.

18. **Ad hoc international criminal tribunals**

(a) **Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)**

(i) **Organization of ICTY**

Judge Theodor Meron (United States) continued to act as President of the Tribunal and Judge Fausto Pocar (Italy) acted as Vice-President until 17 November 2005, at which date Judge Pocar and Judge Kevin Parker (Australia) were elected President and Vice-President of the Tribunal for a two-year term, respectively.

In November 2005, some changes occurred in the membership of the Tribunal. Judge Amin El Mahdi (Egypt) was not re-elected as a permanent judge and Judge Florence Nde-

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326 For the reports of the Sixth Committee, see A/60/521 and 522, respectively. For the summary records, see A/C.6/60/SR.2 and 6.

327 For the report of the Sixth Committee, see A/60/533. For the summary records, see A/C.6/60/SR.16 and 19.

328 For the report of the Sixth Committee, see A/60/534. For the summary records, see A/C.6/60/SR.19 and 20.

329 This section covers the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were the subject of resolutions of the Security Council and the General Assembly. Further information regarding the Judgments and Decisions of the ICTY and ICTR is contained in chapter VII below.
pele Mwachande Mumba (Zambia) did not stand for re-election; they were replaced with then ad litem Judge Christine Van den Wyngaert (Belgium) and Judge Bakone Melema Moloto (South Africa), respectively.

Thus, at the end of 2005, the 14 permanent judges of the Tribunal were as follows: Carmel A. Agius (Malta), Jean-Claude Antonetti (France), Iain Bonomy (United Kingdom), O-gon Kwon (Republic of Korea), Liu Daqun (China), Theodor Meron (United States), Bakone Melema Moloto (South Africa), Alphonsus Martinus Maria Orie (Netherlands), Kevin Parker (Australia), Fausto Pocar (Italy), Patrick Lipton Robinson (Jamaica), Wolfgang Schomburg (Germany), Mohamed Shahabuddeen (Guyana) and Christine Van den Wyngaert (Belgium).

Ad litem Judges Ivana Janu (Czech Republic), Chikako Taya (Japan), Volodymyr Vassilenko (Ukraine) and Carmen Maria Argibay (Argentina) finished their terms of service with the Tribunal, and György Szénási (Hungary) resigned in May 2005.

The ad litem judges during this period have been Joaquín Martín Canivell (Spain), Vonimbolana Rasozanany (Madagascar), Bert Swart (Netherlands), Krister Thelin (Sweden), Christine Van Den Wyngaert (Belgium), Hans Henrik Brydensholt (Denmark), Albin Eser (Germany), Claude Hanoteau (France), Janet Nosworthy (Jamaica) and Frank Höpfel (Austria).

(ii) Organization of ICTR

On 21 May 2005, at the Judges’ annual Plenary Meeting of the ICTR, Judge Erik Møse (Norway) was re-elected as President of the Tribunal for a second two-year term. Judge Arlette Ramaroson (Madagascar) was elected Vice-President, succeeding Judge Andrésia Vaz (Senegal).

The composition of the Tribunal during 2005 was as follows:

Trial Chamber I: Judge Erik Møse (Norway), Judge Jai Ram Reddy (Fiji) and Judge Sergei Alekseevich Egorov (Russian Federation);

Trial Chamber II: Judge William Hussein Sekule (United Republic of Tanzania), Judge Arlette Ramaroson (Madagascar) and Judge Asoka de Silva (Sri Lanka);

Trial Chamber III: Judge Andrésia Vaz (Senegal), replaced by Judge Inés Mónica Weinberg de Roca (Argentina) on 15 August 2005, Judge Khalida Rashid Khan (Pakistan) and Judge Dennis Charles Michael Byron (Saint Kitts and Nevis).

The ad litem judges were Judge Solomy Balungi Bossa (Uganda), Judge Flavia Lattanzi (Italy), Judge Lee Gacugia Muthoga (Kenya), Judge Florence Rita Arrey (Cameroon), Judge Emile Francis Short (Ghana), Judge Karin Hökborg (Sweden), Judge Taghrid Hikmet (Jordan), Judge Seon Ki Park (Republic of Korea) and Judge Gberdao Gustave Kam (Burkina Faso).

(iii) Composition of the Appeals Chamber

The two judges of ICTR who were serving in the Tribunal’s Appeal Chamber were Judges Mehmet Güney (Turkey) and Inés Mónica Weinberg de Roca (Argentina). Judge Andresia Vaz (Senegal) was assigned on 15 July 2005, by order of President Møse, to replace Judge Weinberg de Roca, the replacement being effective on 15 August 2005.
At the beginning of 2005, the seven-member bench of the shared Appeals Chamber of the two Tribunals was composed of Judge Theodor Meron (United States), Judge Mohamed Shahabuddeen (Guyana), Judge Florence Mumba (Zambia), Judge Mehmet Güney (Turkey), Judge Fausto Pocar (Italy), Judge Wolfgang Schomburg (Germany) and Judge Inés Mónica Weinberg de Roca (Argentina).

At the end of 2005, the members of the Appeals Chamber were Judge Fausto Pocar (Italy), Judge Mohamed Shahabuddeen (Guyana), Judge Mehmet Güney (Turkey), Judge Liu Daqun (China), Judge Andresia Vaz (Senegal), Judge Theodor Meron (United States) and Judge Wolfgang Schomburg (Germany).

(b) General Assembly

On 24 August 2005, during its fifty-ninth session, the General Assembly elected 27 ad litem judges to the ICTY for a four-year term of office beginning on 24 August 2005.331


On the same date, the General Assembly also adopted resolution 60/241 entitled “Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994” and resolution 60/243 entitled “Financing 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”, in which the Assembly endorsed the respective budgets of the two Tribunals for the biennium 2006–2007.

330 Following the changes mentioned above.
332 A/60/573 and A/60/575, respectively.
333 A/60/591.
(c) Security Council

In view of the fact that 27 ad litem judges of the ICTY had their term of office expiring on 11 June 2005, the Security Council adopted resolution 1597 (2005) on 20 April 2005, amending the Statute of the Tribunal, allowing those ad litem judges to be re-elected.


(d) Amendments to the Rules of Procedure and Evidence of the ICTY


In revising rule 11 bis, the Judges established a Bench of three permanent judges selected from the Trial Chambers. The Referral Bench was identified as the body “which solely and exclusively shall determine whether a case should be referred to the authorities of a State: i) in whose territory the crime was committed; or ii) in which the accused was arrested; or iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.” The rule revision further established the appeal process, as a matter of right, from a decision of the Referral Bench.

Rule 11 bis of the Rules allows for a case in which there is a confirmed indictment to be referred to the authorities of a State with the jurisdiction, the willingness, and the ability to prosecute. Beyond the rule’s critical function in helping the Tribunal achieve its completion strategy, referral proceedings have addressed a number of important legal issues under international law, including the determination of what is required for a “fair trial” in a national court.

Regarding the amendment to rule 124, it clarified that the President of the Tribunal was only required to confer with members of the Bureau and permanent judges of the sentencing Chamber who remain Judges of the Tribunal on questions of pardon and commutation.

On 11 March 2005, rule 28 was amended to allow the inclusion of ad litem judges on the duty roster.

(i) Proceedings for referral of cases under rule 11 bis

Rule 11 bis in its current form provides as follows:

(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the Presi-
dent may appoint a bench of three permanent judges selected from the Trial Chambers (hereinafter referred to as the Referral Bench), which solely and exclusively shall determine whether the case should be referred to the authorities of a State:

(i) in whose territory the crime was committed; or
(ii) in which the accused was arrested; or
(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

(B) The Referral Bench may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

(C) In determining whether to refer the case in accordance with paragraph (a), the Referral Bench shall, in accordance with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

(D) Where an order is issued pursuant to this rule:

(i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned;
(ii) the Referral Bench may order that protective measures for certain witnesses or victims remain in force;
(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;
(iv) the Prosecutor may send observers to monitor the proceedings in the national courts on her behalf.

(E) The Referral Bench may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred to trial.

(F) At any time after an order has been issued pursuant to this rule and before the accused is found guilty or acquitted by a national court, the Referral Bench may, at the request of the Prosecutor and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral within the terms of rule 10.

(G) Where an order issued pursuant to this rule is revoked by the Referral Bench, it may make a formal request to the State concerned to transfer the accused to the seat of the Tribunal and the State shall accede to such a request without delay in keeping with article 29 of the Statute. The Referral Bench or a Judge may also issue a warrant for the arrest of the accused.

(H) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules.

(I) An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the
decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

a. The referral of Prosecutor v. Stanković

1. The actual course of referral proceedings is best illustrated by the case of Prosecutor v. Stanković, the first motion for referral decided upon by the Referral Bench. Stanković, a Bosnian Serb who had been in the custody of ICTY since 10 July 2002, was charged with rape, enslavement and outrages upon personal dignity as crimes against humanity and violations of the laws or customs of war, which allegedly took place in the eastern Bosnian town of Foča in 1992. In a motion filed on 21 September 2004, the Prosecutor requested referral of the Stanković case to the authorities of Bosnia and Herzegovina. The Referral Bench thereupon ordered both the Prosecution and Stanković to file written submissions with respect to the propriety of referral of the case. The Government of Bosnia and Herzegovina, being the State to which referral was sought, was also invited to participate in the proceedings, including a hearing which was held on 4 March 2005.

2. On 17 May 2005, the Referral Bench rendered its very first decision, referring the Stanković case to the authorities of Bosnia and Herzegovina for trial, and ordering the transfer of the accused to Bosnia and Herzegovina within 30 days of the decision becoming final and binding. In doing so, the Referral Bench concluded that referral to the authorities of Bosnia and Herzegovina should be ordered “having considered the matters raised, in particular the gravity of the criminal conduct alleged against the Accused in the present Indictment and the level of responsibility of the Accused, and being satisfied on the information presently available that the Accused should receive a fair trial and that the death penalty will not be imposed or carried out . . .”.

3. Radovan Stanković appealed against the Referral Bench’s Decision. On 1 September 2005, the Appeals Chamber dismissed Stanković’s appeal, and on 29 September 2005 he was transferred to Bosnia and Herzegovina.

b. Category of referral cases

According to rule 11 bis (C), the Referral Bench shall “consider the gravity of the crimes charged and the level of responsibility of the accused”. Consideration of these criteria must be based on the allegations that are contained in the operative indictment at the time of the Referral Bench’s decision, and not on the indictment as it was when the request for referral was made. Subsequent amendments of an indictment do not require the Prosecution to submit a new motion for referral based on the amended indictment. However, such amendments have given rise to the argument that the Prosecution was deliberately downplaying the gravity of the crimes in order to suit referral by tailoring an accused’s alleged responsibility and narrowing the geographical scope of the alleged crimes. Furthermore, the Referral Bench has held that it is only the individual conduct of an accused which has to be considered for the purposes of referral, not the entire scope of a joint criminal enterprise in which the accused allegedly participated.

The Referral Bench enjoys a wide margin of discretion when deciding whether the two criteria of “gravity of the crimes charged” and “level of responsibility of the accused”
militate in favour or against referral of a case. These criteria may separately, or in combination, persuade the Referral Bench to refer a case, or to refrain from doing so. These considerations are not exclusive of other relevant circumstances, and neither of them is necessarily determinative. In the Trbić case, the alleged involvement of the accused in the Srebrenica genocide of several thousand Muslim men did not prevent referral of the case for trial in Bosnia and Herzegovina in view of the “limited authority” enjoyed by Trbić in these events. On the other hand, the Referral Bench in Dragomir Milošević held that this accused’s high rank—subordinate only to Karadžić and Mladić—and his alleged responsibility for a campaign of sniping and shelling of the Sarajevo civilian population required a trial at ICTY. Likewise, the alleged level of responsibility of Rasim Delić—which included his position as the most senior military officer in the Army of Bosnia and Herzegovina—required that the case be tried before the Tribunal. The decision of the Referral Bench in this regard is guided by the purpose to give effect to the efforts to concentrate on trying the “most senior leaders” suspected of being most responsible for the crimes within the ICTY jurisdiction. The notion of “most senior leaders” is not restricted to individuals who are “architects” of an “overall policy” which forms the basis of alleged crimes. Further, there need not be a nexus between leadership responsibility for the most serious crimes and a broad geographic area.

c. State of referral

According to article 9 of the ICTY Statute, ICTY and national courts have “concurrent jurisdiction” in war crimes cases although ICTY may at any time request national courts to defer to its competence. As a correlate to this exercise of primacy, ICTY also has the authority to restore jurisdiction of the competent State or States. In doing so, ICTY is not bound by rules of inter-State cooperation in criminal matters and other rules applicable in a horizontal relationship between States. Rule 11 bis (A) provides the Referral Bench with three options as to the State to which a case can be referred: (1) the State in whose territory the alleged crimes were committed; or (2) the State in which the accused was arrested; or (3) any State having jurisdiction over the alleged crimes and willing to exercise it. This provision allows for the referral of a case to any State in the world, although no ICTY case has yet been referred to a State outside the former Yugoslavia.

As there is no hierarchy among the criteria mentioned in rule 11 bis (A), the Referral Bench retains discretion as to the choice of the State of referral. The Referral Bench will usually follow the recommendation of the Prosecutor unless there are “significant problems” with referral to that State. The defence and States have no standing to file a formal request for referral to a particular State, although this has repeatedly occurred.

In determining the State of referral, the Referral Bench has consistently chosen the State to which the case against the accused had the strongest nexus. For example, it found that the link to the State where the alleged crimes were committed and whose citizens had been victims was stronger than the link to the State whose citizenry the accused belongs or on whose territory he surrendered. In one case, however, these considerations were out-
weighed by humanitarian considerations regarding the health of the accused. The Referral Bench has accepted that rendering justice as geographically close as possible to the victims is a consideration that may guide its discretion. Other considerations include whether the State of referral can provide a fair and expeditious trial, safety for witnesses, and guarantee the availability of evidence.

As is evident from rule 11 bis (A), the Referral Bench may refer a case only to a State, not to a specific court within that State. It is for the sovereign State to whose jurisdiction a case is referred to decide which court is competent to hear the case. Bosnia and Herzegovina has enacted legislation to the effect that cases referred from the ICTY will be tried before the War Crimes Chamber within the State Court of Bosnia and Herzegovina (BiH Court) in Sarajevo. Notwithstanding that the War Crimes Chamber is partly composed of international judges, the BiH Court is still a “national court” of the State of referral. In Croatia, the State Prosecutor will initiate proceedings against the accused before one of the four especially designated County Courts in Osijek, Rijeka, Split or Zagreb upon assignment by the President of the Supreme Court of the Republic of Croatia. In Serbia, trial proceedings in a referred case are presumed to take place before the Belgrade District Court.

d. Substantive law to be applied by referral State

While it is for the sovereign State to whose jurisdiction a case is referred to determine the applicable substantive law, the Referral Bench needs to satisfy itself that the domestic law would permit the prosecution, trial and—if applicable—appropriate punishment of the accused, and that the offences under domestic law are of the type charged before ICTY. While it is not required that the law of the State contain exactly the same criminal provisions as the ICTY Statute, it suffices that they are “substantially analogous”. Likewise, the Referral Bench has not considered as an impediment that the doctrine of superior responsibility (article 7, paragraph 3, of the ICTY Statute) does not have a counterpart in the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY).

In situations where it is possible for more than one set of laws to be applied by the domestic court, the Referral Bench has considered each under the above considerations. In each case considered by the Referral Bench, the question has arisen as to whether the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) would apply—being the criminal law in force at the time when the crimes were committed—or a more newly enacted criminal code of one of the States of the former Yugoslavia, such as the Criminal Code of Bosnia and Herzegovina and Law on Amendments (2003) or the Criminal Act of Croatia (1997). The applicability of law may have an effect on the recognition of certain crimes or modes of liability, the statute of limitations and the maximum permissible sentence which may be adjudged. So far, the Referral Bench has not once suggested that any of the newly enacted criminal legislations, or the 1977 Criminal Code of the SFRY, fail to meet the required standard.

In the two referred cases adjudged to date by the BiH Court, the accused have been found guilty under provisions of the 2003 Criminal Code of Bosnia and Herzegovina, rather than the 1977 Criminal Code of the SFRY, although the crimes in question had been committed in 1992.
e. Non-imposition of death penalty

Rule 11 bis (B) requires that the Referral Bench be satisfied that the death penalty will not be imposed or carried out if a case is to be referred. Although the death penalty was provided for in the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia, such punishment would be in contravention of Protocol 13 to the European Convention on Human Rights (ECHR). Bosnia and Herzegovina, Croatia and Serbia, to which all cases have so far been referred, have ratified the European Convention on Human Rights and its protocols. The Referral Bench thus concluded in all cases before it that there was no reason to believe that States would choose to ignore their international obligations by imposing or executing the death penalty.

f. Fair trial at referral State

Rule 11 bis (B) requires that the Referral Bench be satisfied that the accused will receive a fair trial before the courts of the referral State. In determining what procedural guarantees are necessary for such an assessment, the Referral Bench consistently relies on provisions such as article 21 of the ICTY Statute, article 14 of the International Covenant on Civil and Political Rights, and article 6 of the ECHR, each as a compendium of fair trial rights. Thus, the Referral Bench has considered the following guarantees to form part, and be essential components of, the right to a fair trial:

- the equality of all persons before the court;
- a fair and public hearing by a competent, independent, and impartial tribunal established by law;
- the presumption of innocence until guilt is proven according to the law;
- the right of an accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- the right of an accused to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- the right of an accused to be tried without undue delay;
- the right of an accused to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;
- the right of an accused to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- the right of an accused to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- the right of an accused to have the free assistance of an interpreter if he cannot understand or speak the language used in the proceedings; and

341 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.
- the right of an accused not to be compelled to testify against himself or to confess guilt.

g. Additional considerations for referral

Witness protection: The Referral Bench has considered the issue of witness protection in the referral State in assessing whether a case should be referred, even though the issue does not arise directly within the context of an accused’s right to a fair trial. However, promoting witness presence at trial by providing measures for their protection may become relevant to the accused’s fair trial right to obtain the attendance and examination of witnesses on his behalf under the same conditions as the witnesses who testify against him. The Referral Bench regularly reviews the domestic legislation of the referral State and may order protective measures granted in ICTY proceedings for certain witnesses or victims to remain in force.

Physical transfer: Within each decision to refer a case, the Referral Bench has included an order requiring the Registrar to arrange for the transport of the accused to the State of referral within 30 days of the decision becoming final. Where a referral request includes two or more accused, the Referral Bench may suspend its order concerning transfer of an accused who has waived appeal “until such time as the Decision has become final with regard to both Accused”.

Monitoring of proceedings: Rule 11 bis (D) (iv) provides that the Prosecutor may send observers to monitor the proceedings before national courts on her behalf. This provision, along with rule 11 bis (F), which allows for a referral to be revoked and a case transferred back to ICTY, serve as remedies against a failure of the State to diligently prosecute a referred case or conduct a fair trial of the accused. The Referral Bench consistently held that referral of a case implies that the proceedings in relation to an accused become the primary responsibility of the authorities of the State of referral, including its investigative, prosecutorial, and judicial organs. However, the Appeals Chamber confirmed that the Referral Bench has the inherent authority to order the Prosecution to report back on the progress of a case referred to national authorities. At the time when the Referral Bench issued its first decision in Stanković, the Prosecutor was in negotiations with the Organisation for Security and Co-operation in Europe (OSCE) for the monitoring and reporting on trial proceedings in a referred case on her behalf. An agreement between her and OSCE was concluded subsequently. The Referral Bench has accepted that monitoring of the proceedings by OSCE, in view of the standing and neutrality of the organisation, provides an adequate monitoring mechanism to take care of any fair trial issues that might arise in the conduct of proceedings before a national court. In all referred cases, the Prosecution was ordered to report back periodically to the Referral Bench on the course of proceedings at a national level. In these reports, the Prosecution in turn relies on trial monitoring reports prepared by OSCE. The Appeals Chamber has confirmed the propriety of this monitoring mechanism.

Confidentiality and protective measures: The Referral Bench has consistently in its referral decisions included orders that the ICTY protective measures for victims and witnesses shall remain in force after referral, and that referral should not have the effect of revoking the previous orders and decisions in that case. Continuity of ICTY orders and decisions has ramifications for the conduct of national proceedings: the national court has
to seek leave from ICTY when a variation of measures protecting confidentiality becomes necessary or even inevitable, for instance when the national prosecutor decides to alter protective measures for a witness or when new counsel is assigned to the case. ICTY rule 75, which deals with protective measures for victims and witnesses, has recently been amended to give national courts standing to apply for a variation of protective measures granted during ICTY proceedings.

(ii) Appeals Chamber case law

In 2005, the Appeals Chamber of the Tribunal rendered over 120 appeals decisions, 70 orders and 5 appeal judgements (including 4 judgements on sentencing appeal). The Appeals Chamber notably touched upon the following issues: the sentencing practices at ICTY, joint criminal enterprise as a mode of responsibility, and the interpretation of articles 3 and 5 of the Statute.

a. Sentencing practices at ICTY in general

The year 2005 has indubitably been the year of judgements on sentencing appeals for the ICTY Appeals Chamber, shedding light on the plea agreement procedure and providing sentencing guidelines. The Appeals Chamber rendered the following judgements: Prosecutor v. Dragan Nikolić, Case No. IT-94–02-A, Judgement on Sentencing Appeal, 4 February 2005 (Nikolić); Prosecutor v. Milan Babić, Case No. IT-03–72-A, Sentencing Judgement, 18 July 2005 (Babić); Prosecutor v. Miroslav Deronjić, Case No. IT-02–61-A, Judgement on Sentencing Appeal, 20 July 2005 (Deronjić); and Prosecutor v. Miodrag Jokić, Case No. IT-01–42/1-A, Sentencing Judgement, 30 August 2005 (Jokić).342

b. Plea agreements

Upon transfer of an accused to ICTY, the case is assigned by the President to a Trial Chamber, and the accused is brought without delay before that Trial Chamber or a Judge thereof. The indictment is read out and the accused is called upon to enter a plea of guilty or not guilty. Once an accused has entered a plea of guilty, the Trial Chamber must ensure that his plea has been made voluntarily, is informed, is not equivocal, and that there is a sufficient factual basis for the crimes under consideration and the accused’s involvement. When those conditions are met, there will be no trial, a sentencing hearing will take place, and a sentencing judgement will be issued. A person convicted following a plea of guilt will not be able to appeal his conviction, but only his sentence.

In most cases, a plea of guilt will be preceded by a plea agreement, in which the parties will agree on the facts underlying the charges to which the accused will plead guilty (Babić, paragraph 18). They will very often recommend a sentence. This recommendation, while not binding, will be given “due consideration” and Trial Chambers will have to issue a reasoned opinion under article 23, paragraph 2, of the Statute should they ”substantially” depart from it (Nikolić, paragraph 89; Babić, paragraph 30).

342 See also chapter VII D below.
c. Sentencing guidelines

Pursuant to article 24 of the Statute and rule 101 of the Rules, Trial Chambers must take into account the following factors in sentencing: the gravity of the offence or totality of the culpable conduct and the individual circumstances of the convicted person, the general practice regarding prison sentences in the courts of the former Yugoslavia, and aggravating and mitigating circumstances. Trial Chambers shall also take into account the following sentencing goals: deterrence and retribution (Nikolić, paragraphs 134–140).

While the Statute and the Rules oblige Trial Chambers to take into account the mitigating and aggravating circumstances of a case, those instruments do not mention which factors should be taken into account in mitigation or aggravation of a sentence, with the exception of substantial cooperation with the Prosecution (Nikolić, paragraph 66). It is for the parties to argue which further factors should in their view be taken into account. Aggravating circumstances must be proven beyond reasonable doubt, whereas mitigating circumstances must be proven on a "balance of probabilities": the circumstance in question must have existed or exists "more probably than not" (Babić, paragraph 43). A Trial Chamber may decide, where the parties agree on some of the mitigating circumstances, to discharge the accused of that burden (Jokić, paragraph 47). The determination of what can constitute an aggravating or a mitigating factor and what weight has to be attached to it is within the Trial Chambers’ discretion and, accordingly, a Trial Chamber’s decision will only be disturbed on appeal if the appellant shows that the Trial Chamber either erred in the weighing process involved in the exercise of its discretion by taking into account what it ought not to have, or erred by failing to take into account what it ought to have. In so doing, the appellant is not allowed to challenge the Trial Chamber’s overall findings but must challenge the findings for each specific factor (Babić, footnote 215).

Various mitigating factors have been taken into account throughout the years. In Babić (paragraph 43), the Appeals Chamber recalled the law applicable to mitigating circumstances and drew a non-exhaustive list of such factors. Examples of mitigating circumstances are: co-operation with the Prosecution, admission of guilt or a guilty plea, expression of remorse, voluntary surrender, good character with no prior criminal convictions, comportment in detention, personal and family circumstances, post-conflict conduct (Babić, paragraphs 48–50 and 55; Jokić, paragraph 54), duress, indirect participation, diminished mental responsibility, age, assistance to detainees or victim, and poor health.

With regard to aggravating circumstances, in principle they must relate to the offender him- or herself. This does not mean that they must necessarily pertain to the offender’s personal characteristics, but rather that the accused can only be held responsible for acts for which he has done something or failed to do something that justifies holding him responsible (Deronjić, paragraph 124). The position of authority of an accused, coupled with the manner in which the authority is exercised (Babić, paragraphs 80–81), may for example be taken in aggravation of a sentence. Other examples are: the vulnerability and the defencelessness of the victims (Deronjić, paragraph 127) or the sadistic behaviour of an accused (Nikolić, paragraphs 27–28). An important consideration is that the same factors shall not be taken into account both as aspects of the gravity of the crimes and as aggravating factors (Babić, paragraphs 106–107).

There is no sentencing scale at ICTY and each sentence is tailored to fit the individual circumstances of the accused and the gravity of the crimes. Accordingly, the guid-
ance provided by previous sentences at ICTY is very limited, and comparison will be undertaken only when the offences are the same and committed in substantially similar circumstances (Nikolić, paragraph 19; Babić, paragraph 32). In determining the proper sentence, Trial Chambers must take into account the sentencing practices of the courts of the former Yugoslavia. They are not bound by such practices but, should they depart from the sentencing limits those courts set, must give reasons for such departure (Nikolić, paragraph 69). Because ICTY exercises a different jurisdiction from the national jurisdiction in which the crimes were committed, the principle of lex mitior, according to which a less severe law should be applied, does apply to changes in the laws of the former Yugoslavia (Nikolić, paragraphs 80–85).

Finally, once an accused has served two-thirds of the sentence imposed on him, he is eligible for early release upon a decision by the President of ICTY. However, Trial Chambers shall not attach too much weight to such practice when sentencing an accused, since such a decision remains only a possibility (Nikolić, paragraph 97).

d. “Joint criminal enterprise” as a mode of responsibility

On 28 February 2005, the Appeals Chamber rendered its judgement in the Kvočka case (Prosecutor v. Miroslav Kvočka et al., Case No. IT-98–30/1-A, 28 February 2005 (Kvočka)). It affirmed that joint criminal enterprise is not a crime in itself but a form of commission under article 7, paragraph 1, of the Statute (Kvočka, paragraph 91), which requires a plurality of co-perpetrators who act pursuant to a common purpose involving the commission of a crime in the Statute (Kvočka, paragraph 81). When the Prosecution relies on a theory of joint criminal enterprise, the material facts of this mode of responsibility—such as the purpose of the enterprise, the identity of the participants, and the nature of the participation of the accused in the enterprise—must be clearly pleaded in the indictment (Kvočka, paragraph 42).

Three forms of joint criminal enterprise have been recognised in the jurisprudence of ICTY. At issue in Kvočka was the second form of joint criminal enterprise: the “systemic” form, characterised by the existence of an organised criminal system, in particular in the

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343 Preliminarily, a joint criminal enterprise (JCE) requires that there be two or more persons, who share a common plan, design or purpose which amounted to or involved the commission of a crime otherwise encompassed in the Statute.

JCE I exists where all co-perpetrators share the intent to carry out the common criminal purpose. An accused who intends to perpetrate the crime, sharing the criminal intent of the co-perpetrator(s), can be held responsible for JCE I.

JCE II exists where there is an organized criminal system such as detention camps or centres. An accused who has personal knowledge of the system of ill-treatment, as well as the intent to further this common concerted illegal system can be held responsible for JCE II.

JCE III is an extended form of liability where an accused is liable for additional crimes that were carried out during the criminal enterprise where they are a natural and foreseeable consequence of some other act which is part of the criminal purpose. An accused who intends to participate in and further the criminal activity or purpose of the group and to contribute to the joint criminal enterprise or in any event related to the commission of a crime by the group can be held responsible for JCE III provided that the additional event, to the commission of which the accused did not necessarily agree personally, was a foreseeable event (i.e., in that it was foreseeable that this event might be committed by one or another member of the group), and that the accused willingly took that risk.
case of concentration / detention camps. This second form of joint criminal enterprise requires personal knowledge of the organised system and intent to further the system’s common criminal purpose (Kvočka, paragraph 82).

As a general rule, there is no requirement for the contribution of the accused underlying his participation in a joint criminal enterprise to be substantial (Kvočka, paragraph 97), nor is his participation a sine qua non for the commission of the crime (Kvočka, paragraph 98). In practice, however, the significance of an accused’s contribution will be relevant to demonstrate that he shared the intent to pursue the common purpose (Kvočka, paragraph 188). Moreover, in the case of an “opportunistic visitor” entering a detention camp, a substantial contribution to the overall effect of the camp is necessary to establish his responsibility under the joint criminal enterprise doctrine (Kvočka, paragraph 599). Whether an accused will be held responsible as an aider and abettor for assisting an individual crime committed by a single perpetrator, or as a co-perpetrator responsible for assisting in all the crimes committed by the plurality of persons involved in a joint criminal enterprise, will depend on the effect of the assistance and on the knowledge of the accused (Kvočka, paragraph 90).

There is no requirement of a formal agreement for the systemic form of joint criminal enterprise: once it has been established that the accused had knowledge of the system of discriminatory ill-treatment, it is a question of determining his involvement in that system, without it being necessary to establish that he had entered into an agreement with the principal perpetrators of the crimes committed under the system to commit those crimes (Kvočka, paragraph 209).

(iii) Interpretation of articles 3 to 5 of the Statute by the Appeals Chamber

a. Jurisdiction over crimes listed in articles 3 (b), (d) and (e) of the Statute

In its Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98 bis Motions for Acquittal rendered on 11 March 2005 in Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01–47-AR73.3 (Hadžihasanović Decision), the Appeals Chamber specified that the prohibitions of “wanton destruction of cities, towns or villages not justified by military necessity” (article 3 (b)), “destruction or wilful damage done to institutions dedicated to religion” (article 3 (d)) and “plunder of public or private property” (article 3 (e)) are applicable both in situations of international and non-international armed conflicts, and that therefore no proof of occupied territory is required (Hadžihasanović Decision, paragraphs 29–30, 37 and 46). The violation of these rules entails, under customary international law, the individual criminal responsibility of the offender (Hadžihasanović Decision, paragraphs 30, 38 and 48).

b. Murder under article 3 of the Statute

For the crime of murder under article 3 of the Statute to be established, the Prosecutor bears the onus of proving: the death of a victim taking no active part in the hostilities; that the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible; and the intent of the accused or of the persons for whom he is criminally responsible (i) to kill the victim or (ii) to wilfully cause serious
bodily harm which the perpetrator should reasonably have known might lead to death (Kvočka, paragraph 261).

If the murder was committed as part of a joint criminal enterprise it is not necessary to establish the accused’s (physical) participation in each murder (Kvočka, paragraphs 112 and 263). It is sufficient to prove (i) that the death of the victim was the result of implementing a joint criminal plan, i.e. of setting up a system of ill-treatment; and (ii) the responsibility of the accused in furthering that common criminal purpose. In the context of the detention camp established in Omarska, it had therefore to be proven that the death of the victim was the result of what happened in Omarska camp, be it inhumane conditions, beatings or ill-treatment (Kvočka, paragraph 262).

c. Harassment, humiliation and other psychological abuse amounting to persecution under article 5 of the Statute

Acts and omissions not specifically listed in the Statute can amount to the crime of persecution if they are of the same gravity as the crimes enumerated in article 5 of the Statute. In order to apply this standard of gravity, the acts or omissions in question must not be considered in isolation, but in context, by looking at their cumulative effect (Kvočka, paragraph 321). The Appeals Chamber applied this standard to the specific acts of harassment, humiliation and psychological abuse found to have been committed in the Omarska camp. While harassment, humiliation and psychological abuse are not as such listed under article 5 of the Statute, the acts in question, in the context of the “horrendous conditions of detention and the demoralizing treatment of detainees in Omarska camp”, and taking into account their cumulative effect, were found to be acts which by their gravity constituted material elements of the crime of persecution (Kvočka, paragraphs 324–325).

B. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. Universal Postal Union

On the 24 February 2005, the Universal Postal Union (UPU) signed an agreement between the United Nations Joint Staff Pension Board and UPU on the transfer of pension rights of participants in the United Nations Joint Staff Pension Fund and of participants in the Provident Scheme of UPU.

On 29 August 2005, UPU signed a memorandum of understanding between the United Nations Development Programme (UNDP) and UPU concerning the management of the Junior Professional Officer Programme for UPU. Junior Professional Officers are UNDP staff members, loaned to UPU. While on loan to UPU they will be subject to administrative supervision and technical guidance of UPU, but they will retain their contractual relationship with UNDP and, as UNDP staff members, will be subject to United Nations Staff Rules and Regulations (200-series).

A memorandum of understanding was signed on 8 November 2005 between the Union Network International (UNI) and UPU. UNI is a member of the newly created Consultative Committee of UPU. UNI and UPU wish to promote social dialogue within
the framework of their respective functions, in order to help achieve the objectives of the UPU Bucharest World Postal Strategy.\textsuperscript{344}

A Cooperation Agreement between the Government of the Republic of South Africa and the International Telecommunication Union and UPU was signed on 18 November 2005. The parties agreed to collaborate in the implementation of a project to contribute to the expansion of the rural telecommunications information technology network and services of developing countries.

2. **International Labour Organization**

   (a) **Membership**

   Samoa became the 178th member of the International Labour Organization (ILO) and was admitted under article 1.3 of the ILO Constitution\textsuperscript{345} on 7 March 2005.

   (b) **Resolutions and recommendations adopted by the International Labour Conference during its 93rd session**

   At the 93rd session of the International Labour Conference, Geneva, the following resolutions were adopted:\textsuperscript{346}

   (a) Resolution concerning youth employment;
   
   (b) Resolution to place on the agenda of the next ordinary session of the Conference an item entitled "Occupational safety and health";
   
   (c) Resolution concerning the flag of the International Labour Organization;
   
   (d) Resolution concerning the adoption of the Programme and Budget for 2006–2007 and the allocation of the budget of income among member States;
   
   (e) Resolution concerning the arrears of contributions of the Republic of Moldova;
   
   (f) Resolution concerning the arrears of contributions of Togo;
   
   (g) Resolution concerning the arrears of contributions of Georgia;
   
   (h) Resolution concerning the arrears of contributions of Iraq;
   
   (i) Resolution concerning the assessment of contributions of new member States; and
   
   (j) Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization.

\textsuperscript{344} UPU 23rd Congress, Bucharest, Romania, 2004, Congrès-Doc-46.


\textsuperscript{346} CONFREP-93rd-2005–06-0019–1-En.doc.
(c) Report of the Tripartite Meeting of Experts for the development of the Joint ILO/World Health Organization (WHO) Guidelines

The Tripartite Meeting of Experts to Develop Joint ILO/WHO Guidelines on Health Services and HIV/AIDS was held in Geneva from 19 to 21 April 2005, and was chaired by Dr. Lester Wright (United States).

The Meeting was attended by Government experts from Cameroon, Chile, Indonesia and the Russian Federation, as well as five Employer and five Worker experts. A Government representative from Morocco attended as an observer, as did a representative of the United Nations Office on Drugs and Crime. Representatives from the following international non-governmental organizations also attended as observers: International Confederation of Free Trade Unions; International Cooperative Alliance; International Council of Nurses; the International Organization of Employers; International Pharmaceutical Federation; Public Services International; World Confederation of Labour; and World Economic Forum-Global Health Initiative.

The agenda of the Meeting was to develop joint ILO/WHO guidelines on health services and HIV/AIDS. The Meeting considered draft guidelines jointly prepared by the International Labour Office and WHO and unanimously adopted the revised draft Joint ILO/WHO Guidelines on Health Services and HIV/AIDS and the report of the discussion.

3. International Civil Aviation Organization

(a) Membership

On 4 August 2005, Timor-Leste deposited with the Government of the United States its notification of adherence to the Convention on International Civil Aviation (Chicago Convention). The adherence took effect on 3 September 2005, bringing the number of member States of the International Civil Aviation Organization (ICAO) to 189.

(b) Conventions and agreements

On 18 April 2005, the Protocol relating to an amendment to the Convention on International Civil Aviation [article 56], signed at Montréal on 6 October 1989, entered into force, having been ratified by 108 States. This Protocol provides for the increase of the Air Navigation Commission from 15 to 19 members.

On 2 November, the conditions for the entry into force of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft

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347 GB.293/6.
349 TMEHS/2005/7.
Equipment,\textsuperscript{352} signed at Cape Town on 16 November 2001 (CAPE Town Protocol), were met. Thus, the Protocol and the Convention on International Interests in Mobile Equipment, signed at Cape Town on 16 November 2001\textsuperscript{353} (Cape Town Convention), as applied to aircraft equipment, will enter into force on 1 March 2006.

\(c\) Major legal developments

\((i)\) Work programme of the Legal Committee and legal meetings

Pursuant to a decision of the 176th session of the Council of ICAO, the General Work Programme of the Legal Committee is as follows:

\((a)\) Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952.\textsuperscript{354} The Special Group on the Modernization of the Rome Convention of 1952 held two meetings, the first from 10 to 14 January, and the second from 4 to 8 July 2005. The Group continued to refine the text of the Draft Convention on Damage Caused by Foreign Aircraft to Third Parties, and commenced consideration of a Supplementary Compensation Mechanism to cover payments to victims beyond the amounts which may be available through insurance to the airlines and possibly certain other aviation entities. On 14 November, the Council decided to convene a third meeting of the Group from 13 to 17 February 2006.\textsuperscript{355}

\((b)\) Acts or offences of concern to the international aviation community and not covered by existing air law instruments. The legal measures to cover the new and emerging threats to civil aviation security were considered under this item. After a survey conducted through a questionnaire circulated on 24 March 2005 under cover of State letter,\textsuperscript{356} the Council, during its 176th session, decided to establish a Secretariat Study Group to further study this matter. Furthermore, the Secretariat maintained a close relationship with its United Nations counterpart in this field.

\((c)\) Consideration, with regard to navigation and surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS), of the establishment of a legal framework. Pursuant to resolution A35–3, the Secretariat monitored and, when requested, assisted in the development of regional initiatives. In particular, it participated, in September, in a meeting in the South American (SAM) region, during which the possibility of establishing regional structures was considered.

\((d)\) International interests in mobile equipment (aircraft equipment). The Preparatory Commission for the International Registry held its third meeting at ICAO Headquarters in Montréal from 17 to 18 January 2005, during which it approved the Regulations for the International Registry, the user-fee schedule and the Contract with the Registrar, and defined the amount of insurance to be procured by the Registrar. In October, the Preparatory Commission approved the Procedures for the International Registry through a written procedure. The Council decided, in June, to confirm its acceptance of the functions of

\textsuperscript{352} ICAO Document 9794.

\textsuperscript{353} ICAO Document 9793.


\textsuperscript{355} See the annual report of the Council, doc. 9862.

\textsuperscript{356} LE 4/65–05/45.
Supervisory Authority of the International Registry upon the entry into force of the Cape Town Convention and Protocol, to which it had been invited by the Cape Town Diplomatic Conference. Taking into account that Malaysia had deposited, on 2 November 2005, its instrument of accession to the Cape Town Convention and Protocol and that, as a result thereof, these instruments would enter into force on 1 March 2006, the Council decided later in November to initiate the process of establishing a commission of experts to assist in the performance of the functions of Supervisory Authority by the Council, in accordance with article XVII of the Protocol and resolution No. 2 of the Cape Town Diplomatic Conference. The Final Acceptance Tests of the International Registry were conducted successfully in October and the corresponding Final Acceptance Certificate was issued in November, thus concluding the establishment phase of the Registry and declaring it ready to enter into operation when the Cape Town Convention and Protocol enter into force, as required under these instruments.

(e) Review of the question of the ratification of international air law instruments. The Secretariat continued to take administrative action necessary to encourage ratification, such as the development and dissemination of ratification packages, promotion of ratification at various fora and continued emphasis on ratification matters by the President of the Council and the Secretary General during their visits to States. To assist States in their ratification of these treaties, administrative packages have been updated and are being posted on the ICAO-NET.

(f) United Nations Convention on the Law of the Sea—Implications, if any, for the application of the Chicago Convention of 1944, its annexes and other international air law instruments. The Secretariat pursued its monitoring activities in this area.

(ii) Council Special Group on Legal Aspects of Emissions Charges

In June 2005, the Council agreed to establish the Council Special Group on Legal Aspects of Emissions Charges (CSG-LAEC) which met in Montréal in September. The Special Group conducted its analysis on the basis of a list of legal questions addressing emissions charges at the local level, as well as at the global level, that was prepared by the Committee on Aviation Environmental Protection (CAEP) Emissions Charges Task Force at a meeting convened in April. The Special Group agreed on key conclusions which reflected two significantly different approaches, in particular regarding the interpretation of article 15 of the Chicago Convention. This was noted by the Council (176/1) which further agreed that the outcome of the CSG-LAEC meeting be considered by the CAEP Steering Group in October.

(iii) Assistance in the field of aviation war risk insurance

Globaltime, an ICAO proposal for a global scheme intended to provide non-cancellable, third-party aviation war risk coverage through a non-profit insurance entity with multilateral backing of Governments for the initial years, is a short and medium term contingency scheme. By the end of the year, Contracting States representing 46.19 per cent of annual

357 C-WP/12530, attachment A.
contribution rates indicated their intention to participate in Globaltime, among which 34.19 per cent under certain conditions. Therefore, the 51 per cent threshold of intentions to participate has so far not been reached and the ICAO global scheme is held in contingency mode. The Secretariat continued monitoring developments in this respect.

4. Food and Agriculture Organization of the United Nations

(a) Constitutional and general legal matters

(i) Membership

The Food and Agriculture Organization of the United Nations (FAO) Conference, at its thirty-third session, admitted Belarus to membership in the Organization.

(ii) Amendment to the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Central Region

The FAO Council approved at its hundred and twenty-eighth session an amendment to article IX of the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Central Region as proposed by that Commission. The Commission had proposed that article IX of the Agreement be amended so that the number of the members or the Executive Committee of the Commission be increased to 7 as it would allow greater efficiency in carrying out the Commission’s functions.

(iii) Agreement between the Food and Agriculture Organization of the United Nations (FAO) and the World Intellectual Property Organization (WIPO)

The FAO Conference, at its thirty-third session, confirmed the Agreement between the Food and Agriculture Organization of the United Nations (FAO) and the World Intellectual Property Organization (WIPO), which had been approved by the Council at its hundred and twenty-ninth session in November 2005.

(iv) Amendments to the Statutes of the Codex Alimentarius Commission

At its twenty-eighth session, held in Rome in July 2005, the Codex Alimentarius Commission agreed to recommend to the FAO Conference and to the World Health Assembly that article 1 of its Statutes be revised in order to abolish the acceptance procedure by

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359 Resolution A35–24.
361 For the report of FAO Conference’s thirty-third session (Rome, 19–26 November 2005), see C 2005/REP.
362 For the report of FAO Council’s hundred and twenty-eighth session (Rome, 20–24 June 2005), see CL 128/REP.
363 For the report of FAO Council’s hundred and twenty-ninth session (Rome, 16–18 November 2005), see CL 129/REP.
which food standards adopted by the Commission were voluntary, subject to acceptance by Governments.

The FAO Conference approved at its thirty-third session the amendments to the Statutes of the Codex Alimentarius Commission after the FAO Council, at its hundred and twenty-ninth session in November 2005, had endorsed the amendments proposed by the Codex Alimentarius Commission.

(v) Security expenditure facility—Amendments to financial regulations

The FAO Conference adopted by resolution 5/2005 the proposed amendments to financial regulation VI of the Financial Regulation of the Organization by which a security expenditure facility, consisting of a separate budgetary chapter of the Programme of Work and Budget and a security account, was established.

(vi) Restriction of attendance by the “general public” to meetings

In line with an old tradition of the United Nations system, the meetings of the main governing bodies of the FAO and the technical committees of open membership are held in public, subject to some limited exceptions regarding committees of restricted membership. However, security concerns have acquired an important dimension and these concerns have placed upon the Director-General responsibilities for security within the Organization, which he discharges in cooperation with the authorities of the host country.

The FAO Conference at its thirty-third session amended the General Rules of the Organization in order to allow the Director-General to take into account all relevant security concerns when making arrangements for the admission of the public to plenary meetings of the Conference and Council, while taking into account the traditional practice of the United Nations.

The principle that plenary meetings of the Conference and Council are public continues to be clearly stated in the General Rules of the Organization and the regime of access by representatives of the press and other information agencies remains unchanged.

(b) Legislative matters

(i) Activities connected with international meetings

- Thimun Model United Nations (The Hague, January 2005);
- Workshop on Safety Assessment of Food Derived from Modern Technology (Riyadh, 7–9 February 2005);
- Annual Meeting of the Legal Advisers of the United Nations system (London, 3–4 March 2005);
- COFI, Committee on Fisheries (FAO, Rome, March 2005);
- Subcommittee on Flag States Implementation, (International Maritime Organization, London, March 2005);
– International Workshop on Groundwater Management in Arid and Semi-arid Countries (Cairo, 4–6 April 2005);
– IBSA Right to Food Monitoring Project (Mannheim, 18–19 April 2005);
– Presentation “Le droit à l’eau comme droit de l’homme” (Scuola Superiore di Sant’Anna, Pisa, April 2005);
– Second Workshop on the Impact of Biotechnology on Human Rights organized by the Law Department of the European University Institute (Florence, June 2005);
– Workshop on Policies Against Hunger: Implementing the Voluntary Guidelines (Berlin, 14–16 June 2005);
– Ad Hoc Consultation on Strengthening Flag State Implementation (London, 7–8 July 2005);
– Global Fisheries Enforcement Training Workshop (Kuala Lumpur, 13–23 July 2005);
– APFIC Regional Workshop on Mainstreaming Co-Management in Asia Pacific (Siem Reap Cambodia, 9–12 August 2005);
– Expert Meeting on The Right to Water, World Water Council (Paris, October 2005);
– ECOST Workshop on Development of an assessment method of the societal cost for best fishing practices and efficient public policies (Rome, November 2005);
– Options and strategies for the conservation for farm animal genetic resources, convened by the System-wide Genetic Resources Programme of the CGIAR, FAO and AGROPOLIS (Montpellier, 7–10 November 2005);
– CITES Workshop on Introduction from the Seas (Geneva, 30 November-2 December 2005);
– Primo Congresso Europeo di Diritto Alimentare (Italian Association of Food Law, Rovigo, 8 December 2005); and

(ii) Legislative assistance and advice

During 2005, legislative assistance and advice were given to the following countries and entities on the following topics:

Agrarian legislation

China, Ghana, Madagascar, Mozambique, Nigeria, Sierra Leone and Sudan.

Water legislation

Ghana, Kyrgyzstan, Lebanon and Malta. In addition, legal assistance was provided through a regional project for the Nile Basin countries (Burundi, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda) and through a regional project for the Iullemened Aquifer System (Mali, Niger and Nigeria).
Veterinary legislation
Albania, Belize, Benin, Burkina Faso, Côte d’Ivoire, Guinea Bissau, Jordan, Lithuania, Mali, Niger, Senegal and Togo.

Plant protection legislation, including pesticides control
Benin, Botswana, Burkina Faso, Cambodia, Côte d’Ivoire, Eritrea, Guinea Bissau, Iran (Islamic Republic of), Lao People’s Democratic Republic, Mali, Mozambique, Myanmar, Namibia, Niger, Senegal, Swaziland, Syrian Arab Republic, Togo, Trinidad and Tobago, Uganda, Viet Nam, Yemen and Zambia.

Seed legislation and plant variety protection
Afghanistan, Angola, Burkina Faso, Democratic Republic of the Congo and Uzbekistan.

Food legislation

Fisheries and aquaculture legislation
Brazil, Cameroon, Chad, Chile, Colombia, Costa Rica, Cuba, Federated States of Micronesia, Georgia, Guatemala, Indonesia, Iran (Islamic Republic of), Jamaica, Kiribati, Marshall Islands, Mexico, Nauru, Nigeria, Palau, Philippines, Trinidad and Tobago, Venezuela, Viet Nam and SEAFDEC (Southeast Asian Fisheries Development Centre).

Forestry and wildlife legislation
Angola, Antigua and Barbuda, Argentina, Armenia, Bahamas, Barbados, Belize, Bolivia, Brazil, Bulgaria, Cameroon, Central African Republic, Chile, Colombia, Congo, Costa Rica, Côte d’Ivoire, Cuba, Cyprus, Democratic Republic of the Congo, Timor-Leste, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Gabon, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Liberia, Mauritius, Mexico, Mongolia, Mozambique, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Serbia, Saint Vincent and the Grenadines, Sudan, Suriname, Trinidad and Tobago, Uruguay, Venezuela and Kosovo.

Biodiversity and genetic resources legislation
Armenia, Bolivia, Guinea, Madagascar, Sri Lanka and Uzbekistan.

Biotechnology legislation
Bolivia, Grenada, Paraguay and Swaziland.

General agricultural issues (trade, markets and economic reform)
Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Comoros, Congo, Côte d’Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome
and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

(iii) Legislative research and publications

In 2005, the following legislative studies were published by the FAO Legal Office:

- The legal framework for the management of animal genetic resources;
- Legal and institutional aspects of urban and peri-urban forestry and greening;
- Perspectives and guidelines on food legislation, with a new model food law; and
- Groundwater in international law—Compilation of treaties and other legal instruments.

The FAO Legal Office also published the following legal papers online in 2005:

- El papel de la legislación forestal y ambiental en países de América Latina para la conservación y gestión de los recursos naturales renovables;
- Legal and institutional aspects of urban, peri-urban forestry and greening: A working paper for discussion;
- Tendances du droit forestier en Afrique Francophone, Hispanophone et Lusophone;
- Improving the legal framework for participatory forestry: Issues and options for Mongolia with reference to international trends;
- The interface between customary and statutory water rights—A statutory perspective;
- Funding options for agricultural development: The case for special purpose levies;
- Effectivité de la protection de la biodiversité forestière en République Démocratique du Congo: Cas du Parc National des Virunga (PNVI); and
- Étude comparative de la mise en oeuvre des plans fonciers ruraux en Afrique de l’ouest: Benin, Burkina Faso, Côte d’Ivoire.

(iv) Collection, translation and dissemination of legislative information

The FAO Legal Office maintains a database (FAOLEX) of national legislation and international agreements concerning food and agriculture (including fisheries, forestry and water). FAOLEX is designed to provide online access to the full texts of food and agriculture legislation worldwide and offers access to legislation, regulations and international agreements in sixteen different areas related to the fields of expertise of FAO. It is a comprehensive research tool that can be used to identify the state of national laws on natural resource management and, at the same time, compare legislation in different countries. FAOLEX provides a trilingual (English, French and Spanish) keyword and category search. Records are provided in English, French or Spanish according to the language of communication used by the originating country.

In 2005, 6,500 records were entered into FAOLEX.

Together with FAOLEX, FISHLEX (coastal State requirements for foreign fishing) and WATERLEX (international agreements on international water sources) databases were also updated in 2005. With regard to ECOLEX (information service on environmental law,
operated jointly by FAO, the International Union for Conservation of Nature (IUCN) and the United Nations Environment Programme (UNEP)), the bases of the new portal have been designed and work on cross-searches, including various databases (FAO, IUCN and UNEP), has been started.

5. United Nations Educational, Scientific and Cultural Organization

(a) Constitutional and procedural questions

Membership


(b) International regulations

(i) Entry into force of instruments previously adopted

Within the period covered by this review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

(ii) Instruments adopted by the General Conference of UNESCO at its 33rd session

a. Conventions and agreements

During its 33rd session, the General Conference adopted the International Convention against Doping in Sport on 19 October 2005, and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, on 20 October 2005.

b. Declarations

The Universal Declaration on Bioethics and Human Rights was adopted by the General Conference at its 33rd session on 19 October 2005.

364 The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on the website of UNESCO at http://www.unesco.org/legal.


366 33 C/Resolution 14. For the text of the Convention, see also section 1 of chapter IV B below, “Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations”.

367 33 C/Resolution 41. For the text of the Convention, see also section 2 of chapter IV B below, “Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations”.

368 33 C/Resolution 36.
(iii) **Proposal concerning the preparation of new instruments**

**Culture**

Having taken note of Recommendation No. 4 adopted by the thirteenth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (Paris, 7–10 February 2005) on the draft principles relating to cultural objects displaced in relation to the Second World War, the General Conference decided that the subject of cultural objects displaced in connection with the Second World War should be the subject of a standard-setting instrument, and that the form of this instrument should be a non-binding “Declaration of Principles”. The General Conference invited the Director-General to submit to it at its next session a draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War after having convened an intergovernmental meeting to elaborate such a draft.\(^{369}\)

**Human rights**

**Examination of cases and questions concerning the exercise of human rights coming within the fields of competence of UNESCO**

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 12 to 15 April 2005 and from 14 to 16 September 2005, in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.\(^{370}\)

At its April 2005 session, the Committee examined 30 communications of which 6 were examined with a view to determining their admissibility or otherwise, 16 as to their substance, and 8 were examined for the first time. Three communications were struck from the list because they were considered as having been settled. The examination of the 27 was deferred. The Committee presented its report to the Executive Board at its 171st session.\(^{371}\)

At its September 2005 session, the Committee examined 27 communications of which 5 were examined with a view to determining their admissibility, 22 as to their substance, and no new communications were submitted to the Committee. Two communications were struck from the list because they were considered as having been settled. The examination of the 25 was deferred. The Committee presented its report to the Executive Board at its 172nd session.\(^{372}\)

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\(^{369}\) 33 C/Resolution 45.

\(^{370}\) Decision 104 EX/3.3 relates to the study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective. For the text of decision 104 EX/3.3, see 104/EX/Decisions.

\(^{371}\) For the Committee’s report, see doc. 171 EX/61.

\(^{372}\) For the Committee’s report, see doc. 172 EX/58.
(d) Copyright activities

In 2005, the activities of UNESCO in the field of copyright and related rights focused mainly on the following.

(i) Information and public awareness activities

(a) E-copyright bulletin. Online publication of UNESCO Copyright Bulletin in six languages—Arabic, Chinese, English, French, Russian and Spanish—as a free-of-charge electronic legal journal. The Copyright Bulletin contains doctrines articles, information on national laws (new laws, revisions, updating), and information about the activities of UNESCO in the field (meeting reports, summaries of undertaken actions, etc.), participation of States in various conventions and new specialised books recently published in the world.

(b) Publication of Persistence of Piracy: The Consequences for Creativity, Cultural Industries and Sustainable Development by Darrell Panethiere. The study defines and analyses the piracy phenomenon as well as its negative economic impact on the different cultural industries—music, book publishing, film and broadcasting. It focuses as well on the detrimental effect to culture, creativity, the loss of job opportunities and the negative impact on society in general. The publication is intended for Government policy makers, law enforcement officials and stakeholders from the civil society.

(c) Collection of national copyrights laws. This unique tool, essential for professionals, students and researchers, endeavours to provide access to legal texts. It comprises more than 100 national copyright and related rights legislations of UNESCO member States. In 2005, in addition to the regular update of information, the concept of the collection and its layout were revised.

(ii) Training and teaching activities

Teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs. UNESCO has contributed to the reinforcement of some Chairs, and to the development of national expertise in the field of copyright, by supplying the Chairs with pedagogical material in the field of copyright or supporting them in publishing their own publication. A new Copyright Chair has been created in Cameroon.

In collaboration with Centro Regional para el Fomento del Libro en America Latina y el Caribe, UNESCO organized a meeting of the University Twinning and Networking, UNITWIN/UNESCO Ibero-American network for university teaching of copyright and neighbouring rights (RAMLEDA), which provided an opportunity for the network members to study the ways and means of strengthening the transfer of specialised and general knowledge in this field, with particular emphasis on distance learning.

In addition, copyright training seminars were organised in different parts of the world.

For more information on copyright activities, see http://www.unesco.org/culture/copyright.
(iii) Administration of the Universal Copyright Convention[^374] and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention)[^375]

The 13th session of the Intergovernmental Copyright Committee, established under the Universal Copyright Convention, for which UNESCO provides secretariat functions, and the 19th session of the Intergovernmental Committee of the Rome Convention (ICR), for which the secretariat functions are provided jointly by UNESCO, the World Intellectual Property Organization and the International Labour Organization, took place in June 2005 at UNESCO Headquarters. The following studies were presented to the Intergovernmental Copyright Committee: “Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks”; “Applicable law in cross-border cases of copyright infringement in the digital environment”; and “Report on piracy: current trends and rates and consequences for creativity and sustainable development”. The ICR debated, among others things, issues related to the necessity of developing a new international instrument to protect the rights of broadcasters.

(iv) Enforcement and management of rights

a. Prevention of piracy through training

Further to the Anti-Piracy Training for Trainers project, launched in 2004, UNESCO organised a series of national follow-up anti-piracy seminars for copyright law enforcement officials in the countries of South-Eastern Europe. Anti-piracy seminars were also organised in Africa. The objective of these events was to provide knowledge and expertise in the field of copyright law and intellectual piracy to large circles of national enforcement officers involved in anti-piracy activities—law-makers, Government, police, customs, magistrates, etc.

b. Prevention of piracy through public awareness-raising and information

A significant awareness-raising campaign for the general public was launched through the display of posters throughout the Bogotá public transport network in Colombia. Mafalda, a popular cartoon character, has been used to convey a message that promotes the civic value of respect for copyright with the support of cartoonist Quino.

6. International Maritime Organization

(a) Membership

Timor-Leste and Zimbabwe became members of the International Maritime Organization (IMO) in 2005. As of 31 December 2005, the membership of the Organization stood at 166.

(b) Review of legal activities

The Legal Committee (the Committee) met only once in 2005 due to the Diplomatic Conference on the Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its Protocol of 1988 relating to fixed platforms located on the continental shelf, which was held in October 2005. The Committee held its ninetieth session from 18 to 29 April 2005.\(^{376}\)


The Committee concluded its consideration of draft protocols to the SUA Convention and Protocol. As the basis for discussion, it considered revised draft texts reflecting the outcome of the deliberations of the Legal Committee Working Group on the review of the SUA Convention and Protocol, which took place during the eighty-ninth session of the Committee and at the Working Group’s second intersessional meeting, held from 31 January to 4 February 2005.

The Committee embarked on an article-by-article discussion of the texts, in the course of which it extensively discussed the Preamble, the new offences and the boarding provisions of the draft protocol to the SUA Convention. The Committee decided to include in the Preamble references, \textit{inter alia}, to United Nations Security Council resolution 1540 (2004), which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological (BCN) weapons and their means of delivery; and to General Assembly resolution 59/24 of 14 November 2004, urging States to become party to the SUA treaties and to participate in the review of those instruments by the Legal Committee, as well as a reference to the importance of the United Nations Convention on the Law of the Sea, 1982\(^{379}\) and customary law of the sea.

The Committee approved, by majority, the inclusion of a dual use offence, namely, the transport of “any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.” In this connection, it rejected a proposal to include in the provision a specific reference to national control lists or a terrorist motive.

The Committee agreed, by majority, to the inclusion, as an offence, of the transport on board a ship of “any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a comprehensive safeguards agreement.” Some delegations expressed dissatisfaction with this decision on the basis that these issues should be decided by consensus rather than majority and that including

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\(^{376}\) The report of the Legal Committee is contained in document LEG 90/15.
\(^{378}\) \textit{Ibid}.
the safeguard requirement would have the effect of imposing the Non-Proliferation Treaty (NPT) regime on non-NPT States, or would go beyond the NPT regime.

The Committee approved, by majority, a compromise proposal by the Chairman of the Committee setting out certain exceptions to the transport offences in draft article 3 bis 1 (b) (iii) and (iv). Some delegations objected to this decision and expressly reserved the right to raise the subject again at the Diplomatic Conference, while other delegations reserved their position on the grounds that they were unable to get instructions from their capitals.

The Committee approved the text of draft article 8 bis, setting out conditions for the boarding of ships on the high seas in situations where there are reasonable grounds to suspect that the ship or a person on board the ship is, has been or is about to be involved in the commission of an offence under the protocol. A proposal regulating the consequences of non-reply to a request for boarding was retained in square brackets.

The Committee approved the inclusion of a reference in draft article 11 ter to prosecution and punishment on account of a person’s gender among the reasons to justify denial of a request for extradition or mutual legal assistance. It also amended some of the definitions in draft article 1 and agreed on the definition of “transports”, as well as the substitution of “BCN weapon” for “prohibited weapon”.

The Committee also completed its review of the final clauses. In this regard, it did not approve a proposal to include a tonnage requirement as a condition for entry into force of the protocol on the grounds, inter alia, that such an inclusion in a treaty of this nature, not being an IMO technical convention, was both inappropriate and unprecedented and that neither the original treaty nor other counter-terrorism conventions included a tonnage factor.

After discussing the possibility of States making reservations to the protocol, the Committee agreed that there was no need to develop a specific reservation provision for inclusion in the draft text.

The Committee approved the list of conventions in the annex to the protocol (article 7) as well as the annex amendment procedure (article 20).

Subject to the amendments agreed to at the session under review, the Committee approved, for submission to a diplomatic conference in October 2005, the texts of a draft protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and of a draft protocol to the Protocol for the Suppression of Unlawful acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988. In so doing, the Committee noted several calls for delegations to pursue negotiations before and during the diplomatic conference in order to achieve consensus in connection with the few issues where differences of opinion still prevailed.

(ii) Draft wreck removal convention

The Committee continued its consideration of a draft convention on wreck removal (DWRC), using, as a basis for discussion, a revised draft which incorporated amendments agreed to by the Committee at its previous session, amendments discussed and agreed to by the Ad Hoc Working Group, drafting proposals suggested by the Secretariat and proposals developed intersessionally following the eighty-ninth session. In so doing, it noted the information provided by the Secretariat concerning the expression of encouragement by the Contracting parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, at their twenty-sixth Consultative Meeting (1 to 5 November 2004), to make every effort to conclude the negotiations on the DWRC as soon as possible.

The Committee discussed the DWRC on an article-by-article basis, with the aim of reaching consensus on as many outstanding issues as possible, in order to present the “cleanest” possible text for consideration at a diplomatic conference, tentatively scheduled to be held in the forthcoming biennium, as well as to ascertain whether the text was ready for consideration at such a conference.

The Committee considered several new proposals and made a number of changes to the draft text. It agreed that the draft convention required further consideration in the light of the comments and proposals made at the session. Interested delegations were encouraged to continue working intersessionally under the leadership of the delegation of the Netherlands to further refine the text and to submit documents to the ninety-first session.

(iii) Provision of financial security


The Committee noted the progress made by the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Joint Working Group) as well as supplementary information provided by the representative of ILO on the development by ILO of a joint database on incidents of abandonment of seafarers, the aim of which was to facilitate monitoring of the problem of abandonment in a comprehensive and informative manner.

The Committee noted the contents of a letter from the Chairman of the Joint Working Group, expressing the view that the database appeared to meet the requirements of the Group and that, when the Group next met, it should include on its agenda the question of how to deal with resolved cases.

The Committee also noted the concerns expressed by the representative of the International Shipping Federation (ISF) that, although a significant proportion of the cases cited in the database in its testing phase had been resolved, their entries remained on it and that some of the cases seemed to be related to fishing vessels, which were not within the remit of the Joint Working Group. ISF also questioned the compelling need to convene the Joint Working Group this year.
The Committee noted that, pending agreement by the Social Partners, the database would not be open to the public prior to the next meeting of the Joint Working Group and that, although ILO was not able to control the accuracy of the information, the provider had no interest in submitting incorrect information since the data was subject to verification by the port State, the flag State, the International Transport Federation and ISF.

The Committee confirmed the holding of the sixth session of the Joint Working Group from 19 to 21 September 2005.

(iv) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

a. Bareboat chartered vessels

The Committee noted information submitted by the Comité Maritime International (CMI) to the effect that the rights of passengers of a ship being bareboat chartered under the 1974 Athens Convention and its 2002 Protocol would be protected, through checking by flag and port States, of the existence for each ship of insurance or other financial security. In the light of this information, the Committee decided that no further action was needed to comply with the request contained in the resolution adopted at the 2002 Diplomatic Conference.

b. Correspondence Group on the Athens Convention 2002:

draft Assembly resolution

The Committee noted that intersessional discussions had taken place on the issue of the lack of available insurance cover, which is required for acts of terrorism under the 2002 Athens Protocol. It also noted a submission by the International Group of P&I Associations (P&I Clubs) and the International Union of Marine Insurance that an IMO Assembly resolution be developed recommending that States parties agree to interpret an “act of war” in article 3 (1) (a) as including an “act of terrorism”, the effect of which would be to exclude liability for terrorist acts from the cover provided by the P & I Clubs and other liability underwriters.

The Committee ultimately approved a draft Assembly resolution for submission to the twenty-fourth session of the Assembly for adoption. The draft resolution aimed at resolving the problem by recommending that, when States ratify the Athens Protocol, “they reserve the right to issue and accept insurance certificates with such special exceptions and limitations as the insurance market conditions at the time of issue of the certificate necessitate, such as the bio-chemical clause and terrorism related clauses.” The resolution was adopted by the Assembly at its twenty-fourth session in December 2005.

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383 The International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.
384 Resolution A.988(24).
The Committee recognized that further work would be needed to develop the guidance called for in the draft resolution as well as to address other outstanding issues relating to the 2002 Athens Protocol, including liability issues.

(v) **Fair treatment of seafarers: report on the first session of the joint IMO/ILO ad hoc expert working group on fair treatment of seafarers**

The Committee took note of the report of the first session of the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers (the Group), which had met from 17 to 19 January 2005.

The Committee noted that, although some international agreements highlighted problems related to the question of fair treatment of seafarers, none of them addressed the issue in a comprehensive way. Guidelines on fair treatment of seafarers were, therefore, required but there had been insufficient time for the Group to complete their development.

The Committee agreed that there was an urgent need to prepare guidelines and have them implemented as soon as possible. To this end, it approved a draft Assembly resolution for submission to the twenty-fourth session of the Assembly for adoption. The draft resolution had been prepared by the Group and, inter alia, called for the adoption of guidelines as a matter of urgency. The resolution was adopted by the Assembly at its twenty-fourth session in December 2005.

The Committee approved the continuation of the Group’s deliberations as well as the establishment of a correspondence group to assist its progress during the intersessional period.

The Committee discussed whether the terms of reference of the Group should be expanded to include, inter alia, “incidents”. Taking into account, however, the fact that any amendments would have to be agreed upon by the Governing Body of ILO, thus delaying the preparation of the urgently needed guidelines, it agreed that the terms of reference should remain unchanged.

(vi) **Places of refuge**

The Committee noted the information provided by CMI on international treaties relevant to the question of places of refuge and the view of CMI that the present regime did not provide clear guidance to parties involved in requests for places of refuge and that, accordingly, the development of a new international instrument should be considered.

The Committee considered a submission by the International Association of Ports and Harbors, in which it urged the Committee to develop a convention on places of refuge, as well as a submission containing a revised version of a proposed standard form letter of guarantee, previously submitted to the eighty-ninth session of the Legal Committee by the P&I Clubs, relating to vessels granted a place of refuge.

385 LEG 90/15, annex 7.
386 Resolution A.987(24).
While some delegations supported the proposal for a new convention, most were of the opinion that there was no need for it, given that the existing regime of liability and compensation for pollution damage worked reasonably well and would work even better once all the existing conventions entered into force.

The Committee agreed that the subject of places of refuge was very important and needed to be kept under review but that, for the time being, there was no need to develop a new convention.

(vii) Monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention)\textsuperscript{387}

The Committee noted the information on the status of the HNS Convention submitted by the Secretariat and, in particular, that none of the, to date, eight Contracting States had submitted information on contributing cargo received. It also noted a declaration by the representative of the Oil Companies International Marine Forum expressing concern about the failure of Contracting States to submit estimates of their receipts.

The Committee recalled that, in accordance with article 43 of the HNS Convention, States, which ratify the Convention, were obliged, at the time of ratification, and annually thereafter, to provide information on the volume of contributing cargo received during the previous calendar year. To this effect, the Committee requested the Secretariat to write to the Contracting States to the HNS Convention underlining the importance of their obligation under article 43 of the Convention to report on contributing cargoes received.

The Committee noted the reports of several delegations on the progress made in their countries towards ratification of the Convention.

(viii) Matters arising from the ninety-third session of the Ad Hoc Council Working Group on the Organization’s Strategic Plan

The Committee noted the information submitted by the Secretariat on the outcome of the Ad Hoc Council Working Group on the Organization’s Strategic Plan. As requested by the Council, at its ninety-third session (15–19 November 2004), the Committee considered the draft high-level action plan prepared by the Council with a view to amending or adding, as necessary, high-level actions to address the anticipated activities of the Legal Committee over the remaining period of the Strategic Plan (to the end of 2009) in line with the Organization’s strategic directions for the period 2006 to 2010, as set out in resolution A.944(23). It also considered the draft outcome-based priorities for the Legal Committee for the 2006–2007 biennium, with a view to identifying all of the Legal Committee’s anticipated outputs over that period.

The Committee welcomed this new approach as being a transparent and balanced framework, but expressed concern that the draft high-level action plan will remain flexible enough to allow for adjustment of priorities when necessary.

\textsuperscript{387} LEG/CONF.10/8/2 of 9 May 1996.
With regard to the outcome-based priorities for the Legal Committee for the 2006-2007 biennium, the Committee recommended the inclusion, in the appropriate columns, of a reference to the development of conventions and to the preparation of guidance on interpretation and implementation of the 2002 Athens Protocol and other liability and compensation conventions.

(ix) Technical co-operation—sub-programme for maritime legislation

The Committee noted a progress report on technical co-operation activities in the field of maritime legislation, which had taken place from July to December 2004, and, in particular, that many requests for assistance for development of maritime legislation had been received, and assistance had been provided, within the framework of the IMO global programme on advisory assistance.

(x) Work programme and long-term work plan

The Committee noted the information provided by the Secretariat on the decision of the Council, at its ninety-third session, regarding the discontinuation of the Organization’s long-term work plan.

(xi) Any other business

a. Proposed CMI study on the implementation of procedural rules in limitation conventions

The Committee noted a submission by CMI proposing the study of the implementation of procedural rules in limitation conventions and the possibility of establishing a set of uniform rules of procedure for use by States parties.

The Committee agreed to examine, in due course, the results of the CMI study and its implications, at which time it would then decide on the need for any further action on its part.

7. World Health Organization

(a) Constitutional developments

In 2005, no new State joined the World Health Organization (WHO). Thus, at the end of 2005, there were 192 member States and two Associate members of WHO.

The amendments to articles 24 and 25 of the WHO Constitution, adopted in 1998 by the fifty-first World Health Assembly\(^\text{388}\) to increase the membership of the Executive Board from thirty-two to thirty-four, entered into force on 15 September 2005. The amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assemb-

bly\textsuperscript{389} to suspend certain rights of members practising racial discrimination, had been accepted by 96 member States as of 31 December 2005. The amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly\textsuperscript{390} to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 103 member States as of 31 December 2005. Acceptance by two-thirds of the member States, i.e. by 128 members, is required for the amendments to enter into force.

\textbf{(b) Other normative developments and activities}

\textbf{(i) WHO Framework Convention on Tobacco Control}

On 21 May 2003, the fifty-sixth World Health Assembly adopted, by resolution WHA56.1, the WHO Framework Convention on Tobacco Control (FCTC)\textsuperscript{391}. The WHO FCTC is the first global health treaty negotiated under the auspices of the World Health Organization and was developed in response to the globalization of the tobacco epidemic. It represents the first multilateral legal instrument designed to reduce the global burden of tobacco-related death and disease using evidence-based supply and demand reduction strategies. The FCTC entered into force on 27 February 2005 and became binding international law. The provisions of the FCTC set international standards and guidelines for tobacco control in areas including: tobacco price and tax increases, sales to and by minors, tobacco advertising, promotion and sponsorship, packaging and labelling of tobacco products, illicit trade and second-hand smoke.

\textbf{(ii) Revision of the International Health Regulations}

On 23 May 2005, the fifty-eight World Health Assembly adopted, by resolution WHA58.3, the revised International Health Regulations, referred to as the “International Health Regulations (2005)”. On 15 June 2005, in accordance with article 22 of the Constitution of the World Health Organization\textsuperscript{392} and paragraph 1 of article 65 of the International Health Regulations (2005), the Director-General notified all States members and Associate members of WHO and other parties to any international sanitary agreement or regulations listed in article 58 of the International Health Regulations (2005), of the adoption by the Health Assembly of these revised Regulations.

Therefore, pursuant to article 22 of the WHO Constitution and paragraph 2 of article 59 of the International Health Regulations (2005), the Regulations shall enter into force 24 months after the date of the said notification, i.e. on 15 June 2007. Any member State of WHO intending to reject or to make reservations to the Regulations, as provided for in articles 61 and 62 thereof, respectively, may notify the Director-General accordingly within a period of 18 months from the date of the said notification, expiring on 15 December


2006. In accordance with paragraph 1 of article 59, any rejection or reservation received thereafter shall have no effect. Any State intending to make a declaration concerning its domestic legislative and administrative arrangements pursuant to paragraph 3 of article 59 of the Regulation, may similarly submit such a declaration to the Director-General within a period of 18 months from the date of the notification.

The revision of the original International Health Regulations adopted in 1969 represents a significant development in the use of public international law instruments for public health purposes. The former regulations were designed to help monitor and control four serious infectious diseases—cholera, plague, yellow fever and smallpox. The new rules govern a broader range of public health emergencies of international concern, including emerging diseases. The purpose of the International Health Regulations (2005) is to ensure the maximum protection of people against the international spread of diseases, while minimizing interference with world travel and trade.

(iii) Health legislation

In 2005, the WHO Health Law Work Programme continued to administer the International Digest of Health Legislation and Recueil international de Législation sanitaire which contains a selection of national, regional and international health legislations. The texts represent over 180 jurisdictions and cover a range of diverse subjects, such as health sector organization, the control of emerging communicable diseases (SARS and avian influenza), organ transplantation, blood transfusion, domestic violence, abortion, the employment of disabled persons, mental health, smoking control, patients’ rights, pesticide residues in food, waste management, greenhouse gas emissions, radiation protection and road safety. The collection serves as an effective means for the exchange of information and technical cooperation with countries in the field of health legislation.

A new initiative was taken in 2005 by the WHO Right to Health Group to develop a systematic selection of national health legislations and to promote their diffusion at the international level through the International Digest of Health Legislation and Recueil international de Législation sanitaire. For this purpose, an annex entitled “Official journals and websites” was created, containing a set of links both to official journals and to a wide range of governmental and parliamentary websites at national and local levels. At the same time, the selection and presentation of constitutions, regional laws and local health legislations commenced.

The Organization continued to support member States, at their request, in developing appropriate national health legislation adapted to their needs. This country specific work, often conducted in collaboration with the WHO Regional and Country Offices, was performed, for example, with Lao People's Democratic Republic concerning the drafting of the national legislation on health personnel.

393 Available at http://www.who.int/idhl/.
(iv) Other activities

Created in March 2005, the Commission on Social Determinants of Health is the WHO vehicle to draw the attention of Governments, civil society, international organizations and donors to pragmatic ways of creating better social conditions for health. The launch of the Commission on Social Determinants of Health should add to the existing United Nations efforts to increase the chances of vulnerable people to a healthy life by acting upon the social and environmental causes of health inequities. The Commission’s most important objective is to leverage policy change by turning existing public health knowledge into an actionable global agenda. The Commission will operate for three years starting March 2005, and will be producing scientifically informed policy recommendations and spearheading a political process to promote their implementation.

Furthermore, under the theme “Policy and Partnership for Action: Addressing the Determinants of Health” the sixth Global Conference on Health Promotion was held in August 2005, in Bangkok, Thailand. Following a series of meetings which began in Ottawa in 1986, this Conference reviewed the changes that have taken place in the past two decades and considered how to best utilize advances in technology to improve health promotion. The “Bangkok Charter for Health Promotion in a globalized world” was agreed to by the participants at the Conference. The Charter identifies major challenges, actions and commitments needed to address the determinants of health in a globalized world by reaching out to people, groups and organizations that are critical to the achievement of health.

In 2005, WHO continued to provide technical support to the United Nations human rights treaty monitoring bodies, in particular to the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, in relation to health and human rights issues.

8. International Atomic Energy Agency

(a) Membership

In 2005, Chad became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 139 member States.

(b) Privileges and immunities


394 For the text of the Charter, see http://www.who.int/healthpromotion/en/.
(c) Legal instruments

(i) Convention on the Physical Protection of Nuclear Material, 1979

In 2005, Bangladesh, Guinea, Jamaica, Kazakhstan, Nauru, Nicaragua and Turkmenistan became party to the Convention. By the end of the year, there were 116 parties.

(ii) Convention on Early Notification of a Nuclear Accident, 1986

In 2005, Angola, Chile, El Salvador, Qatar and the United Republic of Tanzania became party to the Convention. By the end of the year, there were 97 parties.

(iii) Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

In 2005, Colombia, El Salvador, Qatar and the United Republic of Tanzania became party to the Convention. By the end of the year, there were 94 parties.

(iv) Vienna Convention on Civil Liability for Nuclear Damage, 1963

In 2005, the Russian Federation became party to the Convention. By the end of the year, there were 33 parties.

(v) Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, 1988

In 2005, the status of the Joint Protocol remained unchanged with 24 parties.

(vi) Convention on Nuclear Safety, 1994

In 2005, India became party to the Convention. By the end of the year, there were 56 parties.


In 2005, the status of the Joint Convention remained unchanged with 34 parties.

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(viii) Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997⁴⁰³

In 2005, the status of the Protocol remained unchanged with five parties.

(ix) Convention on Supplementary Compensation for Nuclear Damage, 1997 ⁴⁰⁴

In 2005, the status of the Convention remained unchanged with three parties.

(x) African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—(Third Extension) ⁴⁰⁵

Pursuant to article XIV.2 of the original Agreement, the third extension entered into force on 4 April 2005, upon expiration of the second extension, and will remain in force for an additional period of five years, i.e. through 3 April 2010.

In 2005, Algeria, Benin, Burkina Faso, Cameroon, the Central African Republic, the Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Ghana, the Libyan Arab Jamahiriya, Madagascar, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Tunisia, Uganda and the United Republic of Tanzania accepted the third extension. By the end of the year, there were 24 parties.

(xi) Third Agreement to extend the 1987 Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA) ⁴⁰⁶

In 2005, the status of the Agreement remained unchanged with 16 parties.

(xii) Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL) ⁴⁰⁷

The Agreement, pursuant to its article XI, came into force on 5 September 2005, after the deposit of the tenth instrument of ratification. In 2005, Argentina, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Haiti, Mexico, Panama, Peru and Venezuela became party to the Agreement. By the end of the year, there were 11 parties.

(xiii) **Cooperative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)**

In 2005, the status of the Agreement remained unchanged with seven parties.

(xiv) **Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)**

In 2005, Angola concluded the RSA Agreement. By the end of the year, there were 101 member States that had concluded the RSA Agreement with the Agency.

(xv) **Amendment to the Convention on the Physical Protection of Nuclear Material, 2005**

The Amendment to the Convention on the Physical Protection of Nuclear Material was adopted on 8 July 2005 by the Amendment Conference, held from 4 to 8 July 2005. The Amendment requires no signature but is subject only to ratification, acceptance or approval. In 2005, Turkmenistan accepted the Amendment. By the end of the year, there was one party.

(xvi) **Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Civil Liability for Nuclear Damage, 1963**

In 2005, the status of the Protocol remained unchanged with two parties.

(d) **Legislative assistance activities**

As part of its technical cooperation programme for 2005, IAEA provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 11 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 17 fellows.

In addition, the legislative assistance activities of IAEA included the organization of a regional meeting for senior government officials on the International Legal Framework Governing Nuclear Safety, Security and Safeguards, attended by participants from 32 French and English speaking African countries, which was held at IAEA Headquarters in Vienna from 12 to 14 December 2005.

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408 INFCIRC/613/Add.1.
409 INFCIRC/267.
410 Adopted on 8 July 2005 by the Conference to Consider Proposed Amendments to the Convention on the Physical Protection of Nuclear Material.
411 INFCIRC/500/Add. 3.
(i) Convention on the Physical Protection of Nuclear Material, 1979

By 19 January 2005, the Director General had received requests from the majority of States parties to the Convention on the Physical Protection of Nuclear Material (the CPPNM), to convene a conference to consider proposed amendments to the CPPNM. These proposed amendments had been circulated by the Director General on 5 July 2004 in accordance with article 20, paragraph 1, of the CPPNM, at the request of the Government of Austria and 24 cosponsoring States.

The Conference to consider the amendments to the CPPNM was held at IAEA Headquarters from 4 to 8 July 2005. Eighty-eight States parties and the European Atomic Energy Community (Euratom) participated in the Conference. Eighteen States not party to the CPPNM and three intergovernmental organizations participated as observers. While there were still some open issues at the beginning of the Conference, on 8 July 2005, on the basis of its deliberations, the Conference adopted by consensus an amendment to the CPPNM. Delegates of 81 States parties signed the Final Act of the Conference.412

The Amendment provides for an expanded regime by strengthening the CPPNM in a number of areas. First, the Amendment extends the scope of application of the CPPNM by requiring States to establish, implement and maintain a physical protection regime applicable to the physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities. Secondly, with regard to the prevention and combating of offences relating to nuclear material and nuclear facilities worldwide, the Amendment provides for new offences and the revision of the majority of the existing offences under the CPPNM. In particular, it requires States to bring under their jurisdiction and make punishable under their national laws certain offences including theft, robbery, smuggling of nuclear material or sabotage of nuclear facilities, as well as acts related to directing and contributing to the commission of such offences. Thirdly, new arrangements for expanded cooperation, assistance and coordination amongst States, for example, regarding rapid measures to locate and recover stolen or smuggled nuclear material, to mitigate any radiological consequences of sabotage and to prevent and combat relevant offences, are foreseen.

On 25 July 2005, the Director General, as depositary, circulated a certified copy of the Amendment to the CPPNM to all States parties and Euratom. At the same time, Governments were invited to deposit with the Director General, at their earliest convenience, their instruments of ratification, acceptance or approval of the Amendment to the CPPNM. The Amendment will enter into force on the thirtieth day after the date on which two thirds of the States parties have deposited with the Director General their relevant instruments.

On 19 and 29 September 2005, the IAEA Board of Governors and General Conference, in welcoming the Amendment to the Convention, encouraged “all States party to the Convention to ratify the amendment as soon as possible and to deposit instruments of ratification, acceptance or approval with the depositary to enable the early entry into force of the amendment.” In addition, “all States party to the Convention [were encouraged] to act in accordance with the object and purpose of the amendment until such time as the amendment enters into force”.

412 CPPNM/AC/5.
(ii)  Convention on Nuclear Safety, 1994

The third Review Meeting of the Contracting parties to the Convention on Nuclear Safety was held at IAEA Headquarters in Vienna, from 11 to 22 April 2005. It was attended by 50 Contracting parties, including over 500 delegates. During the meeting, the Contracting parties conducted a thorough peer review of the national reports that they had submitted in 2004. The many important findings and conclusions made during the Review Meeting will serve as valuable guidance for the Agency in implementing its future safety programmes. The Contracting parties made specific reference to the relevant IAEA Safety Standards as a tool to assist in the review process and recognized the value of the Agency’s safety services, such as operational safety and regulatory reviews.\(^{413}\)


In preparation for the second Review Meeting of the Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the Joint Convention), scheduled to be held at IAEA Headquarters from 15 to 24 May 2006, an organizational meeting took place in Vienna from 7 to 8 November 2005. This meeting elected the Officers and established the Country Groups for the Review Meeting.

Pursuant to article 31, paragraph (ii), of the Joint Convention, the Contracting parties also held, on 7 November 2005, an Extraordinary Meeting to consider proposed revised Rules of Procedure and Financial Rules, revised Guidelines regarding the Review Process and new Guidelines regarding the Topic Sessions in the Review Process.

(iv)  Code of Conduct on the Safety and Security of Radioactive Sources and Guidance on the Import and Export of Radioactive Sources\(^{414}\)

The Code of Conduct on the Safety and Security of Radioactive Sources is a non-binding international legal instrument which applies to civilian radioactive sources that may pose a significant risk to individuals, society and the environment. The Code of Conduct’s objectives are to achieve and maintain a high level of safety and security of radioactive sources. By the end of 2005, 79 States had, further to General Conference resolution GC(47)/RES/7.B, expressed their political support and intention to work towards following the Code of Conduct.

One section of the Code of Conduct concerns the import and export of high activity radioactive sources. In this respect, additional details are provided for in the Code of Conduct on the Safety and Security of Radioactive Sources: Guidance on the Import and Export of Radioactive Sources (the Guidance), which was endorsed by the General Conference in 2004 and published as Guidance supplementary to the Code of Conduct. Work has continued throughout 2005 to facilitate the implementation of the Guidance and by the end

\(^{413}\)  For the Summary Report of the third Review Meeting, see CNS-RM-2005/08 Final.

of 2005, 17 countries had written to the Director General, further to General Conference resolution GC(48)/RES/10.D, indicating their commitment to follow the Guidance.

Noting the findings of the International Conference on Safety and Security of Radioactive Sources, Towards a Global System for Continuous Control throughout their Life Cycle in Bordeaux, the Agency held a meeting at IAEA Headquarters, in Vienna, in December 2005, for countries to share experiences in implementing the Guidance. At the meeting, participants noted the multilateral nature of the Guidance and recognized the importance of States making a political commitment to implement it in a harmonized manner. In this context, a number of future challenges were identified that will need to be addressed if the Guidance is to be implemented in a harmonized manner.

(v) Code of Conduct on the Safety of Research Reactors

The Code of Conduct on the Safety of Research Reactors was approved by the IAEA Board of Governors in March 2004 and subsequently endorsed by the IAEA General Conference in September 2004.

In response to the request of the third Review Meeting of the Contracting parties to the Convention on Nuclear Safety, the Agency convened an open-ended meeting on the effective application of the Code of Conduct on the Safety of Research Reactors at IAEA Headquarters in Vienna, in December 2005. The meeting recommended, inter alia, that the Agency organize triennial meetings to exchange experience and lessons learned, identify good practices and discuss plans, difficulties and assistance needed in applying the Code. To prepare for the triennial meetings, the IAEA Secretariat will organize one or more regional meetings. The first meeting is planned to be held in Morocco in November 2006 for member States from Africa to provide a forum for participants to present and share their experience on the management of research reactor safety and the application of the Code of Conduct. The open-ended meeting also called for an Internet site on which documents related to the periodic meetings can be posted to facilitate exchange of information.

Finally, the meeting recognized the benefits of the Code of Conduct on the Safety of Research Reactors towards enhancing research reactors safety worldwide and there was a call for the Code of Conduct to be integrated into all Agency safety assistance and review activities, and for consideration to be given to updating the Project and Supply Agreements to reflect the provisions of the Code.

(vi) Safeguards Agreements

During 2005, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT) with Marshall Islands, Niger, Palau and Tanzania

415 GC(48)/7.
416 GC(48)/RES/10, A.8.
entered into force. In addition, Estonia\textsuperscript{421} and Slovakia\textsuperscript{422} acceded to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear weapon States of the European Community. Safeguards Agreements pursuant to the NPT were signed by Benin, Cape Verde, Comoros, Saudi Arabia, Turkmenistan and Uganda, but had not entered into force as of December 2005. In addition, a Safeguards Agreement with Botswana pursuant to the NPT was approved by the IAEA Board of Governors.

In 2005, Protocols Additional to the Safeguards Agreements between the IAEA and Afghanistan,\textsuperscript{423} Malta,\textsuperscript{424} Marshall Islands,\textsuperscript{425} Nicaragua,\textsuperscript{426} Palau,\textsuperscript{427} Switzerland,\textsuperscript{428} Tanzania\textsuperscript{429} and the former Yugoslav Republic of Macedonia\textsuperscript{430} entered into force. In addition, Estonia\textsuperscript{431} and Slovakia\textsuperscript{432} acceded to the Protocol Additional to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear weapon States of the European Community. Additional Protocols were signed by Belarus, Benin, Cape Verde, Colombia, Comoros, Gabon, Honduras, Malaysia, Singapore, Thailand, Turkmenistan, Tunisia and Uganda, but had not entered into force as of December 2005. Additional Protocols with Botswana, Fiji, Liechtenstein and Senegal were approved by the IAEA Board of Governors in 2005.

9. **United Nations Industrial Development Organization**

\textit{(a) Agreements with States\textsuperscript{433}}

**Argentina**


\textsuperscript{421} Reproduced in IAEA Document: INFCIRC/193/Add.11.
\textsuperscript{422} Reproduced in IAEA Document: INFCIRC/193/Add.9.
\textsuperscript{423} Reproduced in IAEA Document: INFCIRC/257/Add.1.
\textsuperscript{424} Reproduced in IAEA Document: INFCIRC/387/Add.1.
\textsuperscript{425} Reproduced in IAEA Document: INFCIRC/653/Add.1.
\textsuperscript{426} Reproduced in IAEA Document: INFCIRC/246/Add.1.
\textsuperscript{427} Reproduced in IAEA Document: INFCIRC/650/Add.1.
\textsuperscript{428} Reproduced in IAEA Document: INFCIRC/264/Add.1.
\textsuperscript{429} Reproduced in IAEA Document: INFCIRC/643/Add.1.
\textsuperscript{430} Reproduced in IAEA Document: INFCIRC/610/Add.1.
\textsuperscript{431} Reproduced in IAEA Document: INFCIRC/193/Add.12.
\textsuperscript{432} Reproduced in IAEA Document: INFCIRC/193/Add.10.
\textsuperscript{433} This list contains signed Agreements deposited with the Legal Service of United Nations Industrial Development Organization for safekeeping.
Chapter III

Azerbaijan


Burundi


Congo


Germany

Arrangement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Germany for the purpose of supporting the project “Strengthening the Local Production of Generic Drugs in Least Developed Countries (LDCs), through the Promotion of SMEs, Business Partnerships, Investment Promotion and South-South Co-operation”, signed on 15 and 28 September 2005.

Haiti


Italy


Lebanon

Madagascar


Mozambique and the Association for Development of People for People


Netherlands

Trust fund agreement between the United Nations Industrial Development Organization and the Netherlands Minister for Development Cooperation regarding the implementation of a project in Malakal, Sudan, entitled “Vocational Technical Training for Youth Entrepreneurial Development in Malakal, Sudan”, signed on 16 October 2005.

Slovakia


Slovenia

Cooperation agreement and administrative arrangement between the United Nations Industrial Development Organization and the Government of the Republic of Slovenia with regard to special-purpose contributions to the Industrial Development Fund, signed on 22 June 2005.

Turkey

Exchange of letters extending the Agreement between the Republic of Turkey and the United Nations Industrial Development Organization regarding the establishment of the Centre for Regional Cooperation in Turkey, signed on 23 March and 21 April 2005.

(b) Agreements within the United Nations system

International Labour Organization

International Maritime Organization


United Nations


United Nations Development Programme, the Food and Agriculture Organization of the United Nations and the World Food Programme

Memorandum of understanding between the United Nations Industrial Development Organization, the United Nations Development Programme, the Food and Agriculture Organization and the World Food Programme regarding the operational aspects of the joint programme “Strengthening Human Security through Sustainable Human Development in North-western Tanzania”, signed on 23 August, 29 August and 11 November 2005.

United Nations Office for the Coordination of Humanitarian Affairs


United Nations Office on Drugs and Crime


(c) Agreements with intergovernmental organizations

Common Fund for Commodities and the Intergovernmental Group on Hard Fibres represented by the Food and Agriculture Organization of the United Nations

Agreement between the United Nations Industrial Development Organization, the Common Fund for Commodities and the Intergovernmental Group on Hard Fibres represented by the Food and Agriculture Organization of the United Nations for the implementation of the project “Operationalization of a Pilot Facility for a Continuous Sisal Fibre Extraction/Production Process”, signed on 19 and 30 May, and 20 June 2005.

Common Fund for Commodities and the International Network for Bamboo and Rattan

Project agreement between the United Nations Industrial Development Organization, the Common Fund for Commodities and the International Network for Bamboo and Rattan regarding the market based development of bamboo in Eastern Africa—employment and income generation for poverty alleviation, signed on 22 June, 12 July and 5 August 2005.

General Secretariat of the Organization of American States


Inter-American Investment Corporation


(d) Agreements with other entities

Bahrain Development Bank


Beijing Housing Service Corporation for Diplomatic Missions

Canadian International Development Agency

Trust fund agreement between the United Nations Industrial Development Organization and the Canadian International Development Agency/Gender Equity Support Project Phase II regarding the implementation of a project in Kenya, entitled “Assistance to Women Entrepreneurs (WEs) in Kenya for Increased Market Access and Institutional Capacity-Building”, signed on 8 and 15 August 2005.

Export Promotion Bureau, Government of Pakistan


Iran Small Industries and Industrial Parks Organization (ISIPO)

Trust fund agreement between the United Nations Industrial Development Organization and the Iran Small Industries and Industrial Parks Organization of the Islamic Republic of Iran regarding the implementation of a project in the Islamic Republic of Iran, entitled “Development of Industrial SME Clusters for Enhanced Productivity and Export Growth”, signed on 12 April and 8 May 2005.

Istanbul Chamber of Commerce


Tanzania Sisal Board (TSB) and Katani Limited (Katani)

Project implementation agreement between the United Nations Industrial Development Organization, the Tanzania Sisal Board and Katani Limited for the implementation of the project “Cleaner Integral Utilization of Sisal Waste for Biogas and Biofertilizers”, signed on 10 and 15 November 2005.

Complutense University

Amendment No. 1 to the memorandum of understanding between the United Nations Industrial Development Organization and Universidad Complutense-Istituto Complutense de Estudios Internacionales, Madrid, Spain, signed on 22 and 27 July 2005.
10. World Intellectual Property Organization

(a) Introduction

In the year 2005, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States; international registration of intellectual property rights; and intellectual property treaty formulation and normative development.

(b) Cooperation for development activities

In 2005, WIPO’s Cooperation with Developing Countries focused on activities enabling Governments and other institutions of beneficiary countries to realize the full potential of their intellectual property assets. Providing traditional legal and technical assistance, WIPO encouraged and supported member States to develop and implement nationally focused strategies aimed at creating, owning and exploiting intellectual property for economic, social and cultural development.

Legislative advice was frequently requested from WIPO, particularly by least developing countries as they prepare to comply with the obligations of the Agreement on Trade Related Aspects of Intellectual Property Rights by 2013 or by those developing countries preparing for accession to the World Trade Organization. In this regard, substantive legislative and technical assistance was provided in different areas, such as: institution building; human resources development; information technology; genetic resources; traditional knowledge and folklore and protection of traditional cultural expressions; Small and Medium-Sized Enterprises (SMEs); and establishment of collective management societies.

The WIPO Worldwide Academy continued its efforts to provide developing countries and countries in transition with significant activities focused on policy development, professional training and distance learning programs. The introductory “Primer on Intellectual Property”, accessible on line with no registration requirements or time limitation, was accessed by 852 participants. The Distance Learning Program initiated two additional advanced online distance learning courses on “Traditional Knowledge and Biotechnology” and a specialized course on the “Protection of New Plant Varieties”.

(c) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States through the progressive development of international approaches in the protection and administration of intellectual property rights. In this respect, three WIPO Standing Committees on legal matters—one dealing with copyright and related rights, one dealing with patents and one dealing
with trademarks, industrial designs and geographical indications—help member States to centralize the discussions, coordinate efforts and establish priorities in these areas.

(i)  **Standing Committee on the Law of Patents (SCP)**

At the eleventh session of SCP, which took place in June 2005, discussions were mainly devoted to the consideration of options for the future work plan of the Committee in respect to the draft Substantive Patent Law Treaty.

In this respect, at their forty-first series of meetings in September 2005, the Assemblies of WIPO member States decided to hold an informal open forum in the first quarter of 2006. The objective of the open forum will be to focus on all the issues that have been raised in the draft Substantive Patent Law Treaty, including those issues proposed by the member States. Additionally, it was agreed that SCP would meet in a three-day informal meeting before its ordinary session in order to finalize the future work program of the Committee by taking into account the outcome of the open forum discussions.

(ii)  **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)**

In line with its intensive work for the progressive development of international law, at its fourteenth session in April 2005, SCT approved the text of a basic proposal for the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty, to be held in 2006.

SCT worked in particular on provisions concerning communications, relief measures in respect of time limits, trademark licenses and administrative provisions of the draft revised Trademark Law Treaty and made significant progress approving by consensus a text to go forward as the basic proposal for the Diplomatic Conference.

(iii)  **Standing Committee on Copyright and Related Rights (SCCR)**

In preparation of a possible diplomatic conference on the protection of broadcasting organizations, SCCR discussed extensively a “Second Revised Consolidated Text” during its thirteenth session held in November 2005. On this occasion, it was agreed that a new revised consolidated text would be prepared and submitted to the next session of the SCCR in May 2006.

The new revised document will be presented in the form of a Draft Basic Proposal and will contain “a clean text” of a draft treaty without presentation of alternative provisions, including only a draft solution in relation to webcasting, in the form of a draft appendix, without presenting different options.

However, to enable the Assemblies of WIPO member States to recommend the convening of a diplomatic conference, either in December 2006 or at an appropriate date in 2007, the Committee additionally prepared a "Working Paper on Alternative and Non-Mandatory Solutions on the Protection in Relation to Webcasting" to accompany the Draft Basic Proposal.

434  SCCR/12/5 PROV.
(iv) **Standing Committee on Information Technologies**

The Standards and Documentation Working Group of the Standing Committee on Information Technologies held its sixth session from 19 to 22 September 2005 and adopted certain revisions to WIPO standards, facilitating access to and use of publicly available industrial property information associated with the grant of patents, trademarks and industrial designs. 435

(d) **International registration activities**

(i) **Patents**

The year 2005 was significantly marked by the entry into force on 28 April 2005, of the Patent Law Treaty 436 concluded in 2000 and aiming to harmonize and streamline formal procedures in respect of national and regional patent applications and patents.

The amendments to the Patent Cooperation Treaty (PCT) Regulations, adopted by the PCT Assembly in September 2004 and implemented in April 2005, required, inter alia, a revision of the PCT Applicant’s Guide in English and French and a publication of the revised version of the PCT Regulations in various languages together with the updating of PCT indexes and revision of reference resources.

During the period under review, 134,504 international patent applications filed worldwide were received, representing a growth of 9.7 per cent.

Furthermore, four new States adhered in 2005 to the PCT, namely Comoros, the Libyan Arab Jamahiriya, Nigeria and Saint Kitts and Nevis, bringing the total number of Contracting parties to 128.

(ii) **Trademarks**

The use of the international trademark registration system continued to grow in 2005. During the year 2005, 33,169 new international trademark registrations were filed and 7,496 renewals were processed together with 10,227 subsequent designations.

With the adherence of Bahrain to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in 2005, the number of Contracting parties rose to 67 and the total number of member States of the Madrid Union to 78.

(iii) **Industrial designs**

In 2005, the International Bureau registered 1,135 deposits of international industrial designs and 3,884 renewals for a total of 5,019.

During the same year, the former Yugoslav Republic of Macedonia, Latvia and Singapore became party to the Geneva Act of the Hague Agreement, bringing the total number of Contracting parties to 19.

435 For the report of the Working Group, see SCIT/SDWG/6/11.

(iv) Appellations of Origin

During the year under review, the International Bureau received five new applications, which brought to 854 the total number of appellations of origin registered under the Lisbon Agreement for the Protection of Appellations of Origins and their International Registration (Lisbon Agreement), 781 of which are still in force. Further, as of February 2005, the database “Lisbon express” became available to all applicants.

The adherence of Iran (Islamic Republic of) and Peru to the Lisbon Agreement brought the total number of Contracting parties to 24.

(e) Intellectual property and global issues

(i) Genetic resources, traditional knowledge and folklore

At its eighth session, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore made solid progress towards a strong international framework through a range of practical initiatives for capacity building, legal and policy guidance and defensive protection against illegitimate patenting of Traditional Knowledge. In particular, the work of the Committee focused mainly on cooperation with other international and regional organizations, national authorities and other stakeholders.

The Intergovernmental Committee reviewed the international dimension of the legal protection of Traditional Knowledge and expressions of folklore and Traditional Cultural Expressions against misuse and misappropriation. The Intergovernmental Committee also agreed to recommend to the Assemblies of member States of WIPO the extension of its mandate in order to continue its work on Traditional Knowledge, Traditional Cultural Expressions, folklore and genetic resources.

(ii) SMEs and intellectual property

Activities concerning the SMEs included two major events held in 2005 aiming at broadening the scope of understanding and the level of use of the intellectual property system in connection with SMEs. The first one, the “Training Program on Intellectual Property Management of Innovation in SMEs” organized in cooperation with the International Network of Small and Medium Sized Enterprises, aimed at enhancing the knowledge of the use of tools of the intellectual property system for promoting innovation. The second one, the “Third Annual WIPO Forum on Intellectual Property and SMEs for Intellectual Property Offices and other relevant Institutions in the Organisation for Economic Cooperation and Development and the South Mediterranean Basin Countries” had as the objective to provide an interactive platform for more than 40 participants to share policies, practices and experiences in their respective outreach activities.
(iii) **WIPO Arbitration and Mediation Center**

In June 2005, the WIPO Arbitration and Mediation Center received its 7,500th case under the Uniform Domain Name Dispute Resolution Policy.

The Center continued its tasks as the leading Internet domain name dispute resolution provider. The core domain name policy administered by the Center remained the Uniform Domain Name Dispute Resolution Policy with procedures administered in 12 languages involving parties from 124 countries. In addition to its work in the generic top-level domains in 2005, the Center administered 38 cases involving names registered in country code top-level domains. The total number of country code top-level domains registration authorities designating the Center as a dispute resolution provider rose in 2005 to 45, 2 more than in 2004.

The Center has also developed the program Electronic Case Facility to further enhance the efficient administration of WIPO mediation and arbitration proceedings.

(iv) **New members and new accessions**

In 2005, 45 new instruments of ratification and accession were received and processed in respect of WIPO-administered treaties, representing a significant increase of accessions or ratifications deposited by developing countries. 70 per cent of accessions or ratifications came from developing countries, 24 per cent from countries in transition to a market economy and 6 percent from developed countries.

The following figures show the new country adherences to the treaties, with the second figure in brackets being the total number of States party to the corresponding treaty by the end of 2005.437

(a) Convention Establishing the World Intellectual Property Organization, 1967: 2 (183);
(b) Paris Convention for the Protection of Industrial Property, 1883: 1 (169);
(c) Berne Convention for the Protection of Literary and Artistic Works, 1886: 3 (160);
(d) Patent Cooperation Treaty, 1970: 4 (128);
(e) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: 1 (67);
(f) Trademark Law Treaty, 1994: 1 (34);
(g) Patent Law Treaty, 2000: 4 (13);
(h) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: 4 (78);
(i) Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: 1 (45);
(j) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973: 1 (21);

437 For the texts and status of the conventions listed in this section, see under “Treaties” at http://www.wipo.int.
(k) WIPO Copyright Treaty, 1996: 6 (56);
(l) WIPO Performances and Phonograms Treaty, 1996: 7 (55);
(m) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958: 2 (24);
(n) Nairobi Treaty on the Protection of the Olympic Symbol, 1981: 1 (44);
(o) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: 1 (61);
(p) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: 3 (82); and

11. International Fund for Agricultural Development

(a) Membership

At its twenty-eighth session, on 16 February 2005, the Governing Council of the International Fund for Agricultural Development (IFAD) approved the non-original membership in the Organization of Kiribati and decided to classify this State as member of List C (former category III) in accordance with articles 32 (b) and 131 (c) of the Agreement Establishing IFAD and section 10 of the By-laws for the Conduct of the Business of IFAD.

(b) Legal developments and other

At its twenty-eighth session, on 16 and 17 February 2005, the Governing Council, acting upon the proposal for the appointment of President, decided to appoint Mr. Lennart Båge of Sweden as President of IFAD for a second term of office of four years, effective from 1 April 2005.

In addition, in accordance with article 4.3 of the Agreement Establishing IFAD, which provides that in order to assure continuity in the operations of the Organization, the Governing Council shall periodically review the adequacy of the resources available to IFAD, the Governing Council approved the Establishment of a Consultation on the seventh Replenishment of IFAD’s Resources.

The Cooperation Agreement with the Organization for Economic Cooperation and Development that IFAD had been authorized to establish by the Executive Board during its eighty-third session, was signed on 28 July 2005 and submitted to the Executive Board for information at its eighty-fifth session held from 6 to 8 September 2005.

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438 Resolution 135/XXVIII.
441 In accordance with article 6, section 8 (a), of the Agreement Establishing IFAD.
442 Resolution 137/XXVIII.
At the same session, the Executive Board considered the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations.\footnote{EB 2005/85/R.5.} Further elaborations and clarifications were sought at that session on some aspects of the document and it was agreed that the policy would be amended and circulated to all Executive Board Directors for approval on a no-objection basis. The amended Policy was so circulated and no objections were raised. It was thus considered approved by the Executive Board and submitted to it at its eighty-sixth session for information.\footnote{EB 2005/86/INF 8.} The IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations aims at affirming and communicating the resolve of IFAD to prevent and combat fraud and corruption in its activities and operations, as well as describing its ongoing efforts in this area and outlining actions that will be taken in implementing the Policy.

12. World Trade Organization

(a) Membership

During 2005, Saudi Arabia became a member of the World Trade Organization (WTO), making the total membership at the end of the year 149.

(b) Amendment to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS agreement)

On 6 December 2005, WTO members approved changes to the Agreement on Trade-related Aspects of Intellectual Property Rights,\footnote{United Nations, Treaty Series, vol. 1869, p. 299 (annex I C).} making permanent a decision on patents and public health originally adopted in 2003. This General Council decision\footnote{WT/L/641.} means that for the first time a core WTO agreement has been amended.

(c) Dispute settlement

During 2005, 11 requests for consultation were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.\footnote{United Nations, Treaty Series, vol. 1869, p. 401 (annex 2).} The Dispute Settlement Body established panels in the following cases:

(i) European Communities—Selected customs matters (complaint by the United States) WT/DS315;

(ii) European Communities and certain member States—Measures affecting trade in large civil aircraft (complaint by the United States) WT/DS316;

(iii) United States—Measures affecting trade in large civil aircraft (complaint by the European Communities) WT/DS317;
(iv) United States—Continued suspension of obligations in the European Communities—Hormones dispute (complaint by the European Communities) WT/DS320;

(v) Canada—Continued suspension of obligations in the European Communities—Hormones dispute (complaint by the European Communities) WT/DS321;

(vi) United States—Measures relating to zeroing and sunset reviews, (complaint by Japan) WT/DS322;

(vii) Japan—Import quotas on dried laver and seasoned laver (complaint by the Republic of Korea) WT/DS323;

(viii) Egypt—Anti-dumping duties on matches from Pakistan (complaint by Pakistan) WT/DS327).

During 2005, the Dispute Settlement Body adopted panel and Appellate Body reports on the following cases:

(i) European Communities—Protection of trademarks and geographical indications for agricultural products and foodstuffs, complaints by the United States (WT/DS174) and Australia (WT/DS290) (panel reports);

(ii) European Communities—Export subsidies on sugar, complaints by Australia (WT/DS265), Brazil (WT/DS266) and Thailand (WT/DS283) (panel and Appellate Body reports);

(iii) United States—Subsidies on upland cotton, complaint by Brazil (WT/DS267) (panel and Appellate Body reports);

(iv) European Communities—Customs classification of frozen boneless chicken cuts, complaints by Brazil (WT/DS269) and Thailand (WT/DS286) (panel and Appellate Body reports);

(v) Republic of Korea—Measures affecting trade in commercial vessels, complaint by the European Communities (WT/DS273) (panel report);

(vi) United States—Anti-dumping measures on oil country tubular goods from Mexico, complaint by Mexico (WT/DS282) (panel and Appellate Body reports);

(vii) United States—Measures affecting cross-border supply of gambling and betting services, complaint by Antigua and Barbuda (WT/DS285) (panel and Appellate Body reports);

(viii) Mexico—Definitive anti-dumping measures on beef and rice, complaint with respect to rice, complaint by the United States (WT/DS295) (panel and Appellate Body reports);

(ix) United States—Countervailing duty investigation on dynamic random access memory semiconductors from Korea, complaint by the Republic of Korea (WT/DS296) (panel and Appellate Body reports);

(x) European Communities—Countervailing measures on dynamic random access memory chips from Korea, complaint by the Republic of Korea (WT/DS299) (panel report);

(xi) European Communities—Measures affecting trade in commercial vessels, complaint by the Republic of Korea (WT/DS301) (panel report);
Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS

1. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM. NEW YORK, 13 APRIL 2005

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

* Adopted during the 91st plenary meeting of the General Assembly by resolution 59/290 of 13 April 2005.
Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

   Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. “Nuclear facility” means:

   (a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

   (b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. “Device” means:
(a) Any nuclear explosive device; or

(b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

   (a) Possesses radioactive material or makes or possesses a device:
       (i) With the intent to cause death or serious bodily injury; or
       (ii) With the intent to cause substantial damage to property or to the environment;

   (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:
       (i) With the intent to cause death or serious bodily injury; or
       (ii) With the intent to cause substantial damage to property or to the environment;

   (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

   (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or

   (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

   (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

   (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or
(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

**Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

**Article 4**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

**Article 5**

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its national law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

**Article 6**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.
Article 7

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;

(b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis.

Article 8

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or
(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:
   (a) The offence is committed against a national of that State; or
   (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
   (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
   (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
   (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

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**Article 10**

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person’s presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

   (a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person’s rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
(b) To be visited by a representative of that State;

(c) To be informed of that person’s rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When, a State Party, pursuant to the present article, has taken a person into custody, it, shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person’s detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.
Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention; States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 15

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds
for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

   (a) The person freely gives his or her informed consent; and
   (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

   (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
   (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
   (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
   (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:

   (a) Take steps to render harmless the radioactive material, device or nuclear facility;
   (b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and
(c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3 (b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;

(b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.
Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

Article 21

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

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

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

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued.

3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.
2. **Memorandum of Understanding on Maritime Transport Cooperation in the Arab Mashreq, Damascus, 9 May 2005**

The parties to this Memorandum of Understanding,

Guided by Economic and Social Council resolution 1818 (LV) of 9 August 1973, pursuant to which the Economic Commission for Western Asia (ECWA) was established and its duties determined, and its subsequent amendment by resolution 1985/69 of 26 July 1985, whereby the name and duties of the Commission were expanded to include the social aspect; guided also by the goals of cooperation that were laid down in both resolutions;

In an endeavour to establish cooperation and integration between members of the Economic and Social Commission for Western Asia (ESCWA) in the Arab Mashreq region;

Recognizing that maritime transport plays an important role in strengthening intraregional and foreign trade and promotes the economic and social integration of the ESCWA region and the Arab region in general;

Believing in the need to ensure the systematic development of the national merchant fleets of the region and the balanced development of maritime transport and seaports;

Taking into consideration what is consonant with and does not contradict the agreements, resolutions and arrangements previously agreed upon by the parties to the Memorandum of Understanding in the framework of the League of Arab States concerning coordination, cooperation and integration between the Arab countries in the field of transport;

Ensuring that the Memorandum of Understanding does not conflict with the regional and international agreements or conventions to which the parties have acceded;

With the desire of strengthening cooperation and harmonizing and coordinating policies in high priority fields in the maritime transport and port sector, as part of the relationship between the parties to the Memorandum of Understanding and with other countries;

In accordance with the recommendation made by the Committee on Transport at its third session, which was held in Beirut from 5 to 7 March 2002, to the effect that greater support should be given to maritime transport, in order to ensure that it keeps abreast of the progress made in the land transport field, and for studies and projects to be prepared on the matter, including a draft agreement between the parties to the Memorandum of Understanding on maritime transport; and that the appropriate means should be made available for that purpose;

Pursuant to resolution 309 of 23 March 2005, which was passed by the Council of the League of Arab States at the Summit level, at its seventeenth ministerial session in Algeria and which aimed at establishing a legal framework for Arab cooperation in various areas of maritime transport and with a view to ensuring the integration and full exploitation of the potentials of the private Arab maritime transport sector;

Have agreed as follows:

* Adopted during the twenty-third ministerial session of the Economic and Social Commission for Western Asia (ESCWA) at Damascus on 9 May 2005 (E/ESCWA/23/RES/L.254).
Article 1. Definitions

The terms used in the Memorandum of Understanding shall have the meanings set forth below:

*National merchant fleets*

Vessels belonging to national public and private sector companies or jointly owned with other members, or companies or individuals from other members and flying the flag of a party to the Memorandum of Understanding.

*Seaports and harbours*

All the commercial seaports and harbours of the region, regardless of their capacity or size or the commercial purposes to which they are dedicated.

*Coastal transportation*

Maritime transport between the seaports and harbours of the region, giving due consideration to the systems and legislation of each party concerning coastal transportation.

*International multimodal transport*

The term shall have the meaning set forth in the United Nations Convention on the International Multimodal Transport of Goods, namely, “the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country”.

*Port State Control*

The mechanism for the inspection and control of foreign vessels visiting ports of the region, which is known internationally as Port State Control (PSC).

*Marine protection and indemnity club*

The club which covers insurance risks for cargo, ships’ appurtenances, crew and the losses sustained by a third party which are not covered by insurance companies.

*Ship classification*

Control over technical and quality standards by means of the application of the international principles and rules governing the building of ships, alterations to their design and their maintenance, and the issuance of certificates and reports relating thereto.

Article 2. The principles and goals of the Memorandum of Understanding

1. The parties to this Memorandum of Understanding shall observe the following basic principles for cooperation in the field of maritime transport:

(a) Action to standardize and coordinate the policies of the parties to this Memorandum of Understanding in fields relating to regional and international maritime transport, seaports and harbours;

(b) With a view to strengthening economic and social development, increase the efficiency and effectiveness of maritime transport-related activities and services and of seaports and harbours. (See attached annex for a map of the network of seaports and
harbours and shipping routes in the Arab Mashreq, which does not constitute part of this Memorandum of Understanding and is purely for reference*).

2. The parties to this Memorandum of Understanding shall respect the following goals for cooperation in the field of maritime transport:

(a) To determine and execute harmonized maritime policies that are capable of realizing the sustainable development of the merchant fleets, and to firmly establish cooperation between the parties to the Memorandum of Understanding at the regional and subregional levels and with all regions and areas;

(b) To hold regular consultations aimed at reaching unified positions at the regional and international levels with regard to maritime transport policies, decision-making and the finding of solutions to specific problems and obstacles in respect of maritime transport policies;

(c) To harmonize the aspirations and positions of the parties to the Memorandum of Understanding with regard to accession to and implementation of the regional and international agreements and conventions on maritime transport to which they are parties;

(d) To strengthen bilateral and multilateral cooperation between maritime transport or maritime departments;

(e) To prepare studies that will promote strengthened cooperation in the field of maritime transport and seaport and harbour operations and with all regions;

(f) To take action to strengthen and activate the role of national maritime transport institutions; encourage the activities of transport councils and unions and representative agencies, national shipping lines, national and Arab maritime cooperatives, unions and institutions, and training and scientific research institutes in the maritime field.

Article 3. National merchant fleets

The parties to this Memorandum of Understanding have agreed as follows:

(a) To carry out and exchange studies and periodic follow-up on the status of national shipping companies, with a view to their development;

(b) To encourage funding institutions within and beyond the region to support the parties to the Memorandum of Understanding in policies aimed at improving, employing and developing national fleets; to urge the establishment of a special fund to finance the purchase and building of modern vessels, thereby developing national fleets;

(c) To encourage the national shipping companies of the parties to the Memorandum of Understanding to enter into mutual agreements, covenants and mergers; and to promote the liberalization of comprehensive and effective transport services, including international multimodal transport;

(d) To promote the transportation of goods by national fleets whenever possible, including those involved in trade that is the result of Government assistance and of bilat-

* The annex is not published herein.
eral and multilateral trade agreements, while ensuring the high standard and competitiveness of services;

(e) To coordinate and integrate the national fleets of the parties to the Memorandum of Understanding with respect to the transport of commodities, the exchange of slots and partnerships to ensure the optimal use of fleets; to encourage the establishment of joint marketing networks for maritime transport services at the regional and international levels, by activating the role of such existing specialist unions as the Arab Federation of Shipping and any such unions that are established in the future;

(f) To consolidate and coordinate efforts in following up new developments in the field and the application of international maritime requirements and standards;

(g) To strengthen cooperation with regard to the building, maintenance and repair of vessels.

Article 4. Seaports and harbours

The parties to this Memorandum of Understanding have agreed as follows:

(a) To simplify and standardize the laws, regulations and procedures that govern the operation of seaports and harbours, including customs, health and administrative procedures, in order to reduce the time spent by vessels in their ports, in accordance with the Convention on Facilitation of International Maritime Traffic and its amendments;

(b) To develop and update the institutional frameworks for seaport and harbour management with a view to achieving greater efficiency;

(c) To standardize tariff, dues and charges structures and statistical systems relating to maritime transport and ports;

(d) To establish cooperation between the parties to the Memorandum of Understanding with respect to the exchange of expertise in the management and operation of seaports and harbours;

(e) To raise standards of performance and efficiency in seaports and harbours and increase their competitive capabilities;

(f) To diversify the activities of seaports and harbours to include, inter alia, the industrial, commercial and logistical fields and regional and international distribution services;

(g) To exchange information, using electronic data interchange systems, on the shipping lines and vessels operating between seaports and harbours, and the available capacity of national fleets, in order to achieve coordination and integration;

(h) To prepare periodic studies and strategic plans for the development of seaports and harbours.

Article 5. Coastal transportation between the seaports of the parties to this Memorandum of Understanding

The parties to this Memorandum of Understanding have agreed to develop coastal transportation between their seaports, with a view to increasing the volume of intraregional trade, using the following methods:
(a) By encouraging coastal transportation movements between seaports and harbours and providing facilities and support for national coastal transport companies;

(b) By providing and developing coastal transport services and according them appropriate capacities and facilities;

(c) By facilitating the reception of coastal transport ships and vessels and providing them with the appropriate services and facilities in seaports and harbours;

(d) To simplify and facilitate port and customs procedures and all other procedures relating to vessels and commodities involved in coastal transportation in ports and harbours.

Article 6. *Port State Control*

The parties to this Memorandum of Understanding have agreed as follows:

(a) To take action to apply Port State Control to the ships in their seaports and to cooperate in the electronic interchange of data relating to certificates and other documents on those ships;

(b) To establish control centres in ports, standardize the procedures applied and employ specialized, experienced controllers and inspectors, in accordance with the provisions of the relevant international agreements in force.

Article 7. *The marine labour force, education and training*

The parties to this Memorandum of Understanding shall observe the following:

(a) Compliance with regional and international laws and standards concerning the marine labour force, living and working conditions on board ship and maritime education, training and qualification;

(b) Accession to regional and international agreements and conventions concerning the marine labour force and education, training and qualification and, in particular, those of the International Labour Organization and the International Maritime Organization;

(c) The employment in national fleets of a marine labour force comprised of their nationals with the necessary qualifications provided for under the international conventions in force. Priority should be given to the national work force through a system for the exchange of marine labourers;

(d) The need to provide practical maritime training opportunities on the vessels of the parties to this Memorandum of Understanding for student trainees, officers and marine engineers who are nationals of the parties to the Memorandum and, in particular, of those who do not possess any vessels, to carry out marine service;

(e) The need to establish and support centres and institutions for education, research, training and information on the maritime transport sector, by means of the following:

(i) Establishing a maritime databank in order to store information and permit the parties to the Memorandum of Understanding to exchange such information electronically;
(ii) Formulating and developing curriculums and systems for maritime training, coordinating training programmes and exchanging training expertise between the parties to the Memorandum of Understanding.

**Article 8. Marine safety and security and the protection of the marine environment**

The parties to this Memorandum of Understanding have agreed as follows:

(a) To comply with the regional and international laws and standards relating to marine safety;

(b) To comply with the regional and international laws and standards relating to the security of ports and vessels;

(c) To comply with the regional and international laws and standards relating to the prohibition, prevention and eradication of the pollution of the marine environment and the preservation of that environment;

(d) To cooperate with the parties to the Memorandum of Understanding in respect of the fields referred to above;

(e) To exchange, using electronic means, information on security procedures at ports and on board ship;

(f) To exchange, using electronic means, information on rapid intervention plans for the prevention of marine pollution within ports;

(g) To undertake on a periodic and regular basis joint exercises in the prevention of marine pollution;

(h) To coordinate and cooperate in combating marine pollution;

(i) To establish and support marine and environmental safety and security education and training centres.

**Article 9. Regional and international conferences**

The parties to this Memorandum of Understanding have agreed as follows:

(a) To coordinate with a view to reaching uniform stances at the regional and international levels;

(b) To participate effectively in international conferences on maritime transport and seaports, in order to be involved in the formulation of regional and international policies and legislation on those issues, while reserving the rights and future of the maritime sector and ports.

**Article 10. Maritime protection and indemnity**

The parties to this Memorandum of Understanding have agreed to urge national shipping companies to coordinate with maritime protection and indemnity clubs in respect of the insurance of goods and vessels, with a view to gaining relative advantages from such cooperation, and to consider joining the maritime protection and indemnity club of the Association of Islamic Shipowners, with a view to insuring the ships of the companies of the parties to the Memorandum of Understanding.
Article 11. Marine insurance

The parties to this Memorandum of Understanding have agreed to encourage dealings with national ship insurance companies.

Article 12. Vessel classification

The parties to this Memorandum of Understanding have agreed to take action to activate the Arab Organization for the Classification of Vessels and to urge those countries that have not yet done so to accede to the agreement concerning the establishment of that Organization.

Article 13. International multimodal transport

The parties to this Memorandum of Understanding have agreed to call for the application of international multimodal transport as part of the Integrated Transport System in the Arab Mashreq (ITSAM) and in accordance with the internationally recognized procedures and instruments concerning the operations of that type of transport; and to accede to the United Nations Multimodal Transport Convention and other relevant conventions.

Article 14. Legislation and procedures

The parties to this Memorandum of Understanding have agreed to develop existing maritime legislation with a view to achieving the goals of developing maritime transport and ports in keeping with the relevant international agreements and conventions.

Article 15. Executive mechanisms

The parties to this Memorandum of Understanding have agreed to assign responsibility for follow-up and activation of the Memorandum of Understanding to the ESCWA Committee on Transport.

Article 16. Signature, ratification, acceptance, approval and accession

1. This Memorandum of Understanding shall be open for signature by members of the Economic and Social Commission for Western Asia in Damascus, from 9 to 12 May 2005 and thereafter at United Nations Headquarters in New York until 31 December 2005.

2. The members referred to in paragraph 1 above shall become parties to this Memorandum of Understanding by one of the following means:

   (a) Definitive signature, namely, signature without ratification, acceptance or approval;
   (b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval;
   (c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of the required instrument with the depositary.
4. States other than members of ESCWA may accede to this Memorandum of Understanding upon approval by all ESCWA members parties thereto, by depositing an instrument of accession with the depositary. The ESCWA secretariat shall distribute the applications for accession of non-members of ESCWA to members of ESCWA parties to the Memorandum of Understanding for their approval. Once notifications approving such applications are received from all members of ESCWA parties to the Memorandum of Understanding, the application for accession shall be deemed approved. The secretariat shall notify the depositary of such approval.

Article 17. Entry into force

1. This Memorandum of Understanding shall enter into force ninety (90) days after five (5) members of ESCWA have put their definitive signature thereto, or deposited an instrument of ratification, acceptance, approval or accession.

2. With respect to any member of ESCWA that puts its definitive signature to the Memorandum of Understanding or deposits the instrument of ratification, acceptance, approval or accession after the date on which five (5) members of ESCWA have put their definitive signature thereto or deposited an instrument of ratification, acceptance, approval or accession, the Memorandum of Understanding shall enter into force ninety (90) days after that member has put thereto its definitive signature or deposited the instrument of ratification, acceptance, approval or accession. With respect to any non-member of ESCWA that deposits an instrument of ratification, the Memorandum of Understanding shall enter into force ninety (90) days after that member has deposited that instrument.

Article 18. Amendments

1. Once the Memorandum of Understanding has entered into force, any party thereto may propose amendments thereto.

2. Any proposed amendments to the Memorandum of Understanding shall be submitted to the ESCWA Committee on Transport.

3. Amendments shall be adopted if they are approved by two thirds of the parties to the Memorandum of Understanding that are present at a meeting to be called for that purpose which includes the parties directly concerned with the proposed amendment.

4. The ESCWA Committee on Transport shall inform the depositary of amendments that are adopted in accordance with paragraph 3 of this article no later than forty-five (45) days after the adoption of those amendments.

5. The depositary shall inform all parties to the Memorandum of Understanding of amendments thereto that are adopted. Such amendments shall enter into force with respect to all parties three (3) months after those parties have been informed thereof, unless the depositary receives objections thereto from more than one third of the parties to the Memorandum of Understanding within three (3) months of the date on which they were informed of the amendments.

6. No amendment may be made to this Memorandum of Understanding during the period specified in article 19 below if, upon the withdrawal of one party, the number of parties to the Memorandum of Understanding becomes fewer than five (5).
Article 19. Withdrawal

Any party may withdraw from the Memorandum of Understanding by giving written notice to that effect to the depositary. Withdrawal shall be effective twelve (12) months after that notice has been deposited, unless revoked by the party before the expiration of that period.

Article 20. Termination

This Memorandum of Understanding shall cease to be in force if the number of parties thereto falls to fewer than five (5) in any successive period of twelve (12) months.

Article 21. Scope of the Memorandum of Understanding

1. No party to the Memorandum of Understanding shall be prevented by any part of the text thereof from taking any measures it considers necessary for its internal or external security or in its interests.

2. Information on such measures, which should be temporary, and on the nature thereof, must be notified to the depositary as soon as they are taken.

3. No party to this Memorandum of Understanding shall be prevented thereby from concluding agreements or treaties on maritime transport, seaports and harbours, guided by the principles and goals of this Memorandum of Understanding whenever possible.

Article 22. The depositary

The Secretary-General of the United Nations shall be the depositary of this Memorandum of Understanding.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Memorandum of Understanding.

Done at Damascus on the ninth day of May 2005, in the Arabic and English languages, which are equally authentic.


The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Noting that the increased use of electronic communications improves the efficiency of commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

* Adopted during the 53rd plenary meeting of the General Assembly by resolution 60/21 of 23 November 2005.
Considering that problems created by uncertainty as to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and help States gain access to modern trade routes,

Being of the opinion that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law,

Desiring to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems,

Have agreed as follows:

Chapter I. Sphere of application

Article 1. Scope of application

1. This Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States.

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between the parties or from information disclosed by the parties at any time before or at the conclusion of the contract.

3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2. Exclusions

1. This Convention does not apply to electronic communications relating to any of the following:

(a) Contracts concluded for personal, family or household purposes;

(b) (i) Transactions on a regulated exchange; (ii) foreign exchange transactions; (iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; (iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.

2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.
Article 3. Party autonomy

The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

Chapter II. General provisions

Article 4. Definitions

For the purposes of this Convention:

(a) “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;

(b) “Electronic communication” means any communication that the parties make by means of data messages;

(c) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

(d) “Originator” of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;

(e) “Addressee” of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;

(f) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages;

(g) “Automated message system” means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;

(h) “Place of business” means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

Article 5. Interpretation

1. 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 international trade.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.
Article 6. Location of the parties

1. For the purposes of this Convention, a party’s place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.

2. If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.

3. If a natural person does not have a place of business, reference is to be made to the person’s habitual residence.

4. A location is not a place of business merely because that is: (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or (b) where the information system may be accessed by other parties.

5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

Article 7. Information requirements

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

Chapter III. Use of electronic communications in international contracts

Article 8. Legal recognition of electronic communications

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

2. Nothing in this Convention requires a party to use or accept electronic communications, but a party’s agreement to do so may be inferred from the party’s conduct.

Article 9. Form requirements

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.
3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:

(a) A method is used to identify the party and to indicate that party’s intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10. Time and place of dispatch and receipt of electronic communications

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee’s electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.
4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

Article 11. Invitations to make offers

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Article 12. Use of automated message systems for contract formation

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

Article 13. Availability of contract terms

Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of its failure to do so.

Article 14. Error in electronic communications

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

   (a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

   (b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.
Chapter IV. Final provisions

Article 15. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 16. Signature, ratification, acceptance or approval

1. This Convention is open for signature by all States at United Nations Headquarters in New York from 16 January 2006 to 16 January 2008.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States that 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 17. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over any conflicting rules of any regional economic integration organization as applicable to parties whose respective places of business are located in States members of any such organization, as set out by declaration made in accordance with article 21.

Article 18. Effect in domestic territorial units

1. If a Contracting 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, declare that this Conven-
tion is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

4. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 19. Declarations on the scope of application

1. Any Contracting State may declare, in accordance with article 21, that it will apply this Convention only:

(a) When the States referred to in article 1, paragraph 1, are Contracting States to this Convention; or

(b) When the parties have agreed that it applies.

2. Any Contracting State may exclude from the scope of application of this Convention the matters it specifies in a declaration made in accordance with article 21.

Article 20. Communications exchanged under other international conventions

1. The provisions of this Convention apply to the use of electronic communications in connection with the formation or performance of a contract to which any of the following international conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:

   - Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);
   - Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);
   - United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);
   - United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);
   - United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);

2. The provisions of this Convention apply further to electronic communications in connection with the formation or performance of a contract to which another international convention, treaty or agreement not specifically referred to in paragraph 1 of this article, and to which a Contracting State to this Convention is or may become a Contract-
ing State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph.

3. A State that makes a declaration pursuant to paragraph 2 of this article may also declare that it will nevertheless apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of any contract to which a specified international convention, treaty or agreement applies to which the State is or may become a Contracting State.

4. Any State may declare that it will not apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of a contract to which any international convention, treaty or agreement specified in that State’s declaration, to which the State is or may become a Contracting State, applies, including any of the conventions referred to in paragraph 1 of this article, even if such State has not excluded the application of paragraph 2 of this article by a declaration made in accordance with article 21.

Article 21. Procedure and effects of declarations

1. Declarations under article 17, paragraph 4, article 19, paragraphs 1 and 2, and article 20, paragraphs 2, 3 and 4, may be made at any time. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations 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 that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal is to take 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 22. Reservations

No reservations may be made under this Convention.

Article 23. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
Article 24. Time of application

This Convention and any declaration apply only to electronic communications that are made after the date when the Convention or the declaration enters into force or takes effect in respect of each Contracting State.

Article 25. Denunciations

1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect 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 twenty-third day of November two thousand and five, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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


The States Parties to this Protocol,

Recalling the terms of the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994,

Deeply concerned over the continuing pattern of attacks against United Nations and associated personnel,

Recognizing that United Nations operations conducted for the purposes of delivering humanitarian, political or development assistance in peacebuilding and of delivering emergency humanitarian assistance which entail particular risks for United Nations and associated personnel require the extension of the scope of legal protection under the Convention to such personnel,

Convinced of the need to have in place an effective regime to ensure that the perpetrators of attacks against United Nations and associated personnel engaged in United Nations operations are brought to justice,

Have agreed as follows:

Article I. Relationships

This Protocol supplements the Convention on the Safety of United Nations and Associated Personnel, done at New York on 9 December 1994 (hereinafter referred to as “the
Convention”), and as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as a single instrument.

**Article II. Application of the Convention to United Nations operations**

1. The Parties to this Protocol shall, in addition to those operations as defined in article 1 (c) of the Convention, apply the Convention in respect of all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purposes of:

(a) Delivering humanitarian, political or development assistance in peacebuilding, or

(b) Delivering emergency humanitarian assistance.

2. Paragraph 1 does not apply to any permanent United Nations office, such as headquarters of the Organization or its specialized agencies established under an agreement with the United Nations.

3. A host State may make a declaration to the Secretary-General of the United Nations that it shall not apply the provisions of this Protocol with respect to an operation under article II (1) (b) which is conducted for the sole purpose of responding to a natural disaster. Such a declaration shall be made prior to the deployment of the operation.

**Article III. Duty of a State Party with respect to article 8 of the Convention**

The duty of a State Party to this Protocol with respect to the application of article 8 of the Convention to United Nations operations defined in article II of this Protocol shall be without prejudice to its right to take action in the exercise of its national jurisdiction over any United Nations or associated personnel who violates the laws and regulations of that State, provided that such action is not in violation of any other international law obligation of the State Party.

**Article IV. Signature**

This Protocol shall be open for signature by all States at United Nations Headquarters for twelve months, from 16 January 2006 to 16 January 2007.

**Article V. Consent to be bound**

1. This Protocol shall be subject to ratification, acceptance or approval by the signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

2. This Protocol shall, after 16 January 2007, be open for accession by any non-signatory State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

3. Any State that is not a State Party to the Convention may ratify, accept, approve or accede to this Protocol if at the same time it ratifies, accepts, approves or accedes to the Convention in accordance with articles 25 and 26 thereof.
Article VI. Entry into force

1. This Protocol shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

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

Article VII. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article VIII. Authentic texts

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

Done at New York this eighth day of December two thousand and five.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

United Nations Educational, Scientific and Cultural Organization

1. International Convention Against Doping in Sport.

Paris, 19 October 2005*

The General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as “UNESCO”, meeting in Paris, from 3 to 21 October 2005, at its 33rd session,

Considering that the aim of UNESCO is to contribute to peace and security by promoting collaboration among nations through education, science and culture,

Referring to existing international instruments relating to human rights,

Aware of resolution 58/5 adopted by the General Assembly of the United Nations on 3 November 2003, concerning sport as a means to promote education, health, development and peace, notably its paragraph 7,

* Adopted during the 33rd session of the General Conference of the United Nations Educational, Scientific and Cultural Organization, on 19 October 2005.
Conscious that sport should play an important role in the protection of health, in moral, cultural and physical education and in promoting international understanding and peace,

Noting the need to encourage and coordinate international cooperation towards the elimination of doping in sport,

Concerned by the use of doping by athletes in sport and the consequences thereof for their health, the principle of fair play, the elimination of cheating and the future of sport,

Mindful that doping puts at risk the ethical principles and educational values embodied in the International Charter of Physical Education and Sport of UNESCO and in the Olympic Charter,

Recalling that the Anti-Doping Convention and its Additional Protocol adopted within the framework of the Council of Europe are the public international law tools which are at the origin of national anti-doping policies and of intergovernmental cooperation,

Recalling the recommendations on doping adopted by the second, third and fourth International Conferences of Ministers and Senior Officials Responsible for Physical Education and Sport organized by UNESCO at Moscow (1988), Punta del Este (1999) and Athens (2004) and 32 C Resolution 9 adopted by the General Conference of UNESCO at its 32nd session (2003),

Bearing in mind the World Anti-Doping Code adopted by the World Anti-Doping Agency at the World Conference on Doping in Sport, Copenhagen, 5 March 2003, and the Copenhagen Declaration on Anti-Doping in Sport,

Mindful also of the influence that elite athletes have on youth,

Aware of the ongoing need to conduct and promote research with the objectives of improving detection of doping and better understanding of the factors affecting use in order for prevention strategies to be most effective,

Aware also of the importance of ongoing education of athletes, athlete support personnel and the community at large in preventing doping,

Mindful of the need to build the capacity of States Parties to implement anti-doping programmes,

Aware that public authorities and the organizations responsible for sport have complementary responsibilities to prevent and combat doping in sport, notably to ensure the proper conduct, on the basis of the principle of fair play, of sports events and to protect the health of those that take part in them,

Recognizing that these authorities and organizations must work together for these purposes, ensuring the highest degree of independence and transparency at all appropriate levels,

Determined to take further and stronger cooperative action aimed at the elimination of doping in sport,

Recognizing that the elimination of doping in sport is dependent in part upon progressive harmonization of anti-doping standards and practices in sport and cooperation at the national and global levels,

Adopts this Convention on this nineteenth day of October 2005.
I. Scope

Article 1. Purpose of the Convention

The purpose of this Convention, within the framework of the strategy and programme of activities of UNESCO in the area of physical education and sport, is to promote the prevention of and the fight against doping in sport, with a view to its elimination.

Article 2. Definitions

These definitions are to be understood within the context of the World Anti-Doping Code. However, in case of conflict the provisions of the Convention will prevail.

For the purposes of this Convention:


2. “Anti-doping organization” means an entity that is responsible for adopting rules for initiating, implementing or enforcing any part of the doping control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other major event organizations that conduct testing at their events, the World Anti-Doping Agency, international federations and national anti-doping organizations.

3. “Anti-doping rule violation” in sport means one or more of the following:
   
   (a) The presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen;
   
   (b) Use or attempted use of a prohibited substance or a prohibited method;
   
   (c) Refusing, or failing without compelling justification, to submit to sample collection after notification as authorized in applicable anti-doping rules or otherwise evading sample collection;
   
   (d) Violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules;
   
   (e) Tampering, or attempting to tamper, with any part of doping control;
   
   (f) Possession of prohibited substances or methods;
   
   (g) Trafficking in any prohibited substance or prohibited method;
   
   (h) Administration or attempted administration of a prohibited substance or prohibited method to any athlete, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation.

4. “Athlete” means, for the purposes of doping control, any person who participates in sport at the international or national level as defined by each national anti-doping organization and accepted by States Parties and any additional person who participates in a sport or event at a lower level accepted by States Parties. For the purposes of education and training programmes, “athlete” means any person who participates in sport under the authority of a sports organization.
5. “Athlete support personnel” means any coach, trainer, manager, agent, team staff, official, medical or paramedical personnel working with or treating athletes participating in or preparing for sports competition.


7. “Competition” means a single race, match, game or singular athletic contest.

8. “Doping control” means the process including test distribution planning, sample collection and handling, laboratory analysis, results management, hearings and appeals.


10. “Duly authorized doping control teams” means doping control teams operating under the authority of international or national anti-doping organizations.

11. “In-competition” testing means, for purposes of differentiating between in-competition and out-of-competition testing, unless provided otherwise in the rules of an international federation or other relevant anti-doping organization, a test where an athlete is selected for testing in connection with a specific competition.

12. “International Standard for Laboratories” means the standard which is attached as Appendix 2 to this Convention.

13. “International Standard for Testing” means the standard which is attached as Appendix 3 to this Convention.

14. “No advance notice” means a doping control which takes place with no advance warning to the athlete and where the athlete is continuously chaperoned from the moment of notification through sample provision.

15. “Olympic Movement” means all those who agree to be guided by the Olympic Charter and who recognize the authority of the International Olympic Committee, namely the international federations of sports on the programme of the Olympic Games, the National Olympic Committees, the Organizing Committees of the Olympic Games, athletes, judges and referees, associations and clubs, as well as all the organizations and institutions recognized by the International Olympic Committee.

16. “Out-of-competition” doping control means any doping control which is not conducted in competition.

17. “Prohibited List” means the list which appears in Annex I to this Convention identifying the prohibited substances and prohibited methods.

18. “Prohibited method” means any method so described on the Prohibited List, which appears in Annex I to this Convention.

19. “Prohibited substance” means any substance so described on the Prohibited List, which appears in Annex I to this Convention.

20. “Sports organization” means any organization that serves as the ruling body for an event for one or several sports.

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* The Appendix is not published herein. For the text, see www.wada-ama.org/en/.

22. “Testing” means the parts of the doping control process involving test distribution planning, sample collection, sample handling and sample transport to the laboratory.

23. “Therapeutic use exemption” means an exemption granted in accordance with Standards for Granting Therapeutic Use Exemptions.

24. “Use” means the application, ingestion, injection or consumption by any means whatsoever of any prohibited substance or prohibited method.


**Article 3. Means to achieve the purpose of the Convention**

In order to achieve the purpose of the Convention, States Parties undertake to:

(a) Adopt appropriate measures at the national and international levels which are consistent with the principles of the Code;

(b) Encourage all forms of international cooperation aimed at protecting athletes and ethics in sport and at sharing the results of research;

(c) Foster international cooperation between States Parties and leading organizations in the fight against doping in sport, in particular with the World Anti-Doping Agency.

**Article 4. Relationship of the Convention to the Code**

1. In order to coordinate the implementation, at the national and international levels, of the fight against doping in sport, States Parties commit themselves to the principles of the Code as the basis for the measures provided for in Article 5 of this Convention. Nothing in this Convention prevents States Parties from adopting additional measures complementary to the Code.

2. The Code and the most current version of Appendices 2 and 3 are reproduced for information purposes and are not an integral part of this Convention. The Appendices as such do not create any binding obligations under international law for States Parties.

3. The Annexes are an integral part of this Convention.

**Article 5. Measures to achieve the objectives of the Convention**

In abiding by the obligations contained in this Convention, each State Party undertakes to adopt appropriate measures. Such measures may include legislation, regulation, policies or administrative practices.

**Article 6. Relationship to other international instruments**

This Convention shall not alter the rights and obligations of States Parties which arise from other agreements previously concluded and consistent with the object and purpose of this Convention. This does not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
II. Anti-doping activities at the national level

Article 7. Domestic coordination

States Parties shall ensure the application of the present Convention, notably through domestic coordination. To meet their obligations under this Convention, States Parties may rely on anti-doping organizations as well as sports authorities and organizations.

Article 8. Restricting the availability and use in sport of prohibited substances and methods

1. States Parties shall, where appropriate, adopt measures to restrict the availability of prohibited substances and methods in order to restrict their use in sport by athletes, unless the use is based upon a therapeutic use exemption. These include measures against trafficking to athletes and, to this end, measures to control production, movement, importation, distribution and sale.

2. States Parties shall adopt, or encourage, where appropriate, the relevant entities within their jurisdictions to adopt measures to prevent and to restrict the use and possession of prohibited substances and methods by athletes in sport, unless the use is based upon a therapeutic use exemption.

3. No measures taken pursuant to this Convention will impede the availability for legitimate purposes of substances and methods otherwise prohibited or controlled in sport.

Article 9. Measures against athlete support personnel

States Parties shall themselves take measures or encourage sports organizations and anti-doping organizations to adopt measures, including sanctions or penalties, aimed at athlete support personnel who commit an anti-doping rule violation or other offence connected with doping in sport.

Article 10. Nutritional supplements

States Parties, where appropriate, shall encourage producers and distributors of nutritional supplements to establish best practices in the marketing and distribution of nutritional supplements, including information regarding their analytic composition and quality assurance.

Article 11. Financial measures

States Parties shall, where appropriate:

(a) Provide funding within their respective budgets to support a national testing programme across all sports or assist sports organizations and anti-doping organizations in financing doping controls either by direct subsidies or grants, or by recognizing the costs of such controls when determining the overall subsidies or grants to be awarded to those organizations;

(b) Take steps to withhold sport-related financial support to individual athletes or athlete support personnel who have been suspended following an anti-doping rule violation, during the period of their suspension;
(c) Withhold some or all financial or other sport-related support from any sports organization or anti-doping organization not in compliance with the Code or applicable anti-doping rules adopted pursuant to the Code.

**Article 12. Measures to facilitate doping control**

States Parties shall, where appropriate:

(a) Encourage and facilitate the implementation by sports organizations and anti-doping organizations within their jurisdiction of doping controls in a manner consistent with the Code, including no-advance notice, out-of-competition and in-competition testing;

(b) Encourage and facilitate the negotiation by sports organizations and anti-doping organizations of agreements permitting their members to be tested by duly authorized doping control teams from other countries;

(c) Undertake to assist the sports organizations and anti-doping organizations within their jurisdiction in gaining access to an accredited doping control laboratory for the purposes of doping control analysis.

**III. International cooperation**

**Article 13. Cooperation between anti-doping organizations and sports organizations**

States Parties shall encourage cooperation between anti-doping organizations, public authorities and sports organizations within their jurisdiction and those within the jurisdiction of other States Parties in order to achieve, at the international level, the purpose of this Convention.

**Article 14. Supporting the mission of the World Anti-Doping Agency**

States Parties undertake to support the important mission of the World Anti-Doping Agency in the international fight against doping.

**Article 15. Equal funding of the World Anti-Doping Agency**

States Parties support the principle of equal funding of the World Anti-Doping Agency’s approved annual core budget by public authorities and the Olympic Movement.

**Article 16. International cooperation in doping control**

Recognizing that the fight against doping in sport can only be effective when athletes can be tested with no advance notice and samples can be transported in a timely manner to laboratories for analysis, States Parties shall, where appropriate and in accordance with domestic law and procedures:

(a) Facilitate the task of the World Anti-Doping Agency and anti-doping organizations operating in compliance with the Code, subject to relevant host countries’ regulations, of conducting in- or out-of-competition doping controls on their athletes, whether on their territory or elsewhere;

(b) Facilitate the timely movement of duly authorized doping control teams across borders when conducting doping control activities;
(c) Cooperate to expedite the timely shipping or carrying across borders of samples in such a way as to maintain their security and integrity;

(d) Assist in the international coordination of doping controls by various anti-doping organizations, and cooperate to this end with the World Anti-Doping Agency;

(e) Promote cooperation between doping control laboratories within their jurisdiction and those within the jurisdiction of other States Parties. In particular, States Parties with accredited doping control laboratories should encourage laboratories within their jurisdiction to assist other States Parties in enabling them to acquire the experience, skills and techniques necessary to establish their own laboratories should they wish to do so;

(f) Encourage and support reciprocal testing arrangements between designated anti-doping organizations, in conformity with the Code;

(g) Mutually recognize the doping control procedures and test results management, including the sport sanctions thereof, of any anti-doping organization that are consistent with the Code.

Article 17. Voluntary Fund

1. A “Fund for the Elimination of Doping in Sport”, hereinafter referred to as “the Voluntary Fund”, is hereby established. The Voluntary Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO. All contributions by States Parties and other actors shall be voluntary.

2. The resources of the Voluntary Fund shall consist of:

(a) Contributions made by States Parties;

(b) Contributions, gifts or bequests which may be made by:

(i) Other States;

(ii) Organizations and programmes of the United Nations system, particularly the United Nations Development Programme, as well as other international organizations;

(iii) Public or private bodies or individuals;

(c) Any interest due on the resources of the Voluntary Fund;

(d) Funds raised through collections, and receipts from events organized for the benefit of the Voluntary Fund;

(e) Any other resources authorized by the Voluntary Fund’s regulations, to be drawn up by the Conference of Parties.

3. Contributions into the Voluntary Fund by States Parties shall not be considered to be a replacement for States Parties’ commitment to pay their share of the World Anti-Doping Agency’s annual budget.

Article 18. Use and governance of the Voluntary Fund

Resources in the Voluntary Fund shall be allocated by the Conference of Parties for the financing of activities approved by it, notably to assist States Parties in developing and implementing anti-doping programmes, in accordance with the provisions of this Convention, taking into consideration the goals of the World Anti-Doping Agency, and
may serve to cover functioning costs of this Convention. No political, economic or other conditions may be attached to contributions made to the Voluntary Fund.

IV. Education and training

Article 19. General education and training principles

1. States Parties shall undertake, within their means, to support, devise or implement education and training programmes on anti-doping. For the sporting community in general, these programmes should aim to provide updated and accurate information on:

(a) The harm of doping to the ethical values of sport;
(b) The health consequences of doping.

2. For athletes and athlete support personnel, in particular in their initial training, education and training programmes should, in addition to the above, aim to provide updated and accurate information on:

(a) Doping control procedures;
(b) Athletes’ rights and responsibilities in regard to anti-doping, including information about the Code and the anti-doping policies of the relevant sports and anti-doping organizations. Such information shall include the consequences of committing an anti-doping rule violation;
(c) The list of prohibited substances and methods and therapeutic use exemptions;
(d) Nutritional supplements.

Article 20. Professional codes of conduct

States Parties shall encourage relevant competent professional associations and institutions to develop and implement appropriate codes of conduct, good practice and ethics related to anti-doping in sport that are consistent with the Code.

Article 21. Involvement of athletes and athlete support personnel

States Parties shall promote and, within their means, support active participation by athletes and athlete support personnel in all facets of the anti-doping work of sports and other relevant organizations and encourage sports organizations within their jurisdiction to do likewise.

Article 22. Sports organizations and ongoing education and training on anti-doping

States Parties shall encourage sports organizations and anti-doping organizations to implement ongoing education and training programmes for all athletes and athlete support personnel on the subjects identified in Article 19.

Article 23. Cooperation in education and training

States Parties shall cooperate mutually and with the relevant organizations to share, where appropriate, information, expertise and experience on effective anti-doping programmes.
CHAPTER IV

V. Research

Article 24. Promotion of research in anti-doping

States Parties undertake, within their means, to encourage and promote anti-doping research in cooperation with sports and other relevant organizations on:

(a) Prevention, detection methods, behavioural and social aspects, and the health consequences of doping;
(b) Ways and means of devising scientifically-based physiological and psychological training programmes respectful of the integrity of the person;
(c) The use of all emerging substances and methods resulting from scientific developments.

Article 25. Nature of anti-doping research

When promoting anti-doping research, as set out in Article 24, States Parties shall ensure that such research will:

(a) Comply with internationally recognized ethical practices;
(b) Avoid the administration to athletes of prohibited substances and methods;
(c) Be undertaken only with adequate precautions in place to prevent the results of anti-doping research being misused and applied for doping.

Article 26. Sharing the results of anti-doping research

Subject to compliance with applicable national and international law, States Parties shall, where appropriate, share the results of available anti-doping research with other States Parties and the World Anti-Doping Agency.

Article 27. Sport science research

States Parties shall encourage:

(a) Members of the scientific and medical communities to carry out sport science research in accordance with the principles of the Code;
(b) Sports organizations and athlete support personnel within their jurisdiction to implement sport science research that is consistent with the principles of the Code.

VI. Monitoring of the Convention

Article 28. Conference of Parties

1. A Conference of Parties is hereby established. The Conference of Parties shall be the sovereign body of this Convention.

2. The Conference of Parties shall meet in ordinary session in principle every two years. It may meet in extraordinary session if it so decides or at the request of at least one third of the States Parties.

3. Each State Party shall have one vote at the Conference of Parties.

**Article 29. Advisory organization and observers to the Conference of Parties**

The World Anti-Doping Agency shall be invited as an advisory organization to the Conference of Parties. The International Olympic Committee, the International Paralympic Committee, the Council of Europe and the Intergovernmental Committee for Physical Education and Sport (CIGEPS) shall be invited as observers. The Conference of Parties may decide to invite other relevant organizations as observers.

**Article 30. Functions of the Conference of Parties**

1. Besides those set forth in other provisions of this Convention, the functions of the Conference of Parties shall be to:
   
   (a) Promote the purpose of this Convention;
   
   (b) Discuss the relationship with the World Anti-Doping Agency and study the mechanisms of funding of the Agency’s annual core budget. States non-Parties may be invited to the discussion;
   
   (c) Adopt a plan for the use of the resources of the Voluntary Fund, in accordance with Article 18;
   
   (d) Examine the reports submitted by States Parties in accordance with Article 31;
   
   (e) Examine, on an ongoing basis, the monitoring of compliance with this Convention in response to the development of anti-doping systems, in accordance with Article 31. Any monitoring mechanism or measure that goes beyond Article 31 shall be funded through the Voluntary Fund established under Article 17;
   
   (f) Examine draft amendments to this Convention for adoption;
   
   (g) Examine for approval, in accordance with Article 34 of the Convention, modifications to the Prohibited List and to the Standards for Granting Therapeutic Use Exemptions adopted by the World Anti-Doping Agency;
   
   (h) Define and implement cooperation between States Parties and the World Anti-Doping Agency within the framework of this Convention;
   
   (i) Request a report from the World Anti-Doping Agency on the implementation of the Code to each of its sessions for examination.

2. The Conference of Parties, in fulfilling its functions, may cooperate with other intergovernmental bodies.

**Article 31. National reports to the Conference of Parties**

States Parties shall forward every two years to the Conference of Parties through the Secretariat, in one of the official languages of UNESCO, all relevant information concerning measures taken by them for the purpose of complying with the provisions of this Convention.

**Article 32. Secretariat of the Conference of Parties**

1. The secretariat of the Conference of Parties shall be provided by the Director-General of UNESCO.
2. At the request of the Conference of Parties, the Director-General of UNESCO shall use to the fullest extent possible the services of the World Anti-Doping Agency on terms agreed upon by the Conference of Parties.

3. Functioning costs related to the Convention will be funded from the regular budget of UNESCO within existing resources at an appropriate level, the Voluntary Fund established under Article 17 or an appropriate combination thereof as determined every two years. The financing for the secretariat from the regular budget shall be done on a strictly minimal basis, it being understood that voluntary funding should also be provided to support the Convention.

4. The secretariat shall prepare the documentation of the Conference of Parties, as well as the draft agenda of its meetings, and shall ensure the implementation of its decisions.

**Article 33. Amendments**

1. Each State Party may, by written communication addressed to the Director-General of UNESCO, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, at least one half of the States Parties give their consent, the Director-General shall present such proposals to the following session of the Conference of Parties.

2. Amendments shall be adopted by the Conference of Parties with a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be submitted for ratification, acceptance, approval or accession to States Parties.

4. With respect to the States Parties that have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the date of deposit of the instruments referred to in paragraph 3 of this Article by two thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.

5. A State that becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered:

   (a) A Party to this Convention as so amended;

   (b) A Party to the unamended Convention in relation to any State Party not bound by the amendments.

**Article 34. Specific amendment procedure for the Annexes to the Convention**

1. If the World Anti-Doping Agency modifies the Prohibited List or the Standards for Granting Therapeutic Use Exemptions, it may, by written communication addressed to the Director-General of UNESCO, inform her/him of those changes. The Director-General shall notify such changes as proposed amendments to the relevant Annexes to this Convention to all States Parties expeditiously. Amendments to the Annexes shall be approved by the Conference of Parties either at one of its sessions or through a written consultation.
2. States Parties have 45 days from the Director-General’s notification within which to express their objection to the proposed amendment either in writing, in case of written consultation, to the Director-General or at a session of the Conference of Parties. Unless two thirds of the States Parties express their objection, the proposed amendment shall be deemed to be approved by the Conference of Parties.

3. Amendments approved by the Conference of Parties shall be notified to States Parties by the Director-General. They shall enter into force 45 days after that notification, except for any State Party that has previously notified the Director-General that it does not accept these amendments.

4. A State Party having notified the Director-General that it does not accept an amendment approved according to the preceding paragraphs remains bound by the Annexes as not amended.

VII. Final clauses

Article 35. Federal or non-unitary constitutional systems

The following provisions shall apply to States Parties that have a federal or non-unitary constitutional system:

(a) With regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) With regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, counties, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, counties, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 36. Ratification, acceptance, approval or accession

This Convention shall be subject to ratification, acceptance, approval or accession by States Members of UNESCO in accordance with their respective constitutional procedures. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.

Article 37. Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

2. For any State that subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of its instrument of ratification, acceptance, approval or accession.
Article 38. Territorial extension of the Convention

1. Any State may, when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible and to which this Convention shall apply.

2. Any State Party may, at any later date, by a declaration addressed to UNESCO, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of receipt of such declaration by the depositary.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to UNESCO. Such withdrawal shall become effective on the first day of the month following the expiration of a period of one month after the date of receipt of such a notification by the depositary.

Article 39. Denunciation

Any State Party may denounce this Convention. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of UNESCO. The denunciation shall take effect on the first day of the month following the expiration of a period of six months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the State Party concerned until the date on which the withdrawal takes effect.

Article 40. Depositary

The Director-General of UNESCO shall be the Depositary of this Convention and amendments thereto. As the Depositary, the Director-General of UNESCO shall inform the States Parties to this Convention, as well as the other States Members of the Organization of:

(a) The deposit of any instrument of ratification, acceptance, approval or accession;
(b) The date of entry into force of this Convention in accordance with Article 37;
(c) Any report prepared in pursuance of the provisions of Article 31;
(d) Any amendment to the Convention or to the Annexes adopted in accordance with Articles 33 and 34 and the date on which the amendment comes into force;
(e) Any declaration or notification made under the provisions of Article 38;
(f) Any notification made under the provisions of Article 39 and the date on which the denunciation takes effect;
(g) Any other act, notification or communication relating to this Convention.

Article 41. Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.
Article 42. Authoritative texts

1. This Convention, including its Annexes, has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

2. The Appendices to this Convention are provided in Arabic, Chinese, English, French, Russian and Spanish.

Article 43. Reservations

No reservations that are incompatible with the object and purpose of the present Convention shall be permitted.

ANNEX I

THE WORLD ANTI-DOPING CODE

THE 2005 PROHIBITED LIST

INTERNATIONAL STANDARD

The official text of the Prohibited List shall be maintained by the World Anti-Doping Agency (WADA) and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

This List shall come into effect on 1 January 2005.

The use of any drug should be limited to medically justified indications

Substances and methods prohibited at all times
(in- and out-of-competition)

Prohibited substances

S1. Anabolic agents

Anabolic agents are prohibited.

1. Anabolic Androgenic Steroids (AAS)

(a) Exogenous* AAS, including:
18α-homo-17β-hydroxyestr-4-en-3-one; bolasterone; boldenone; boldione; calusterone; clostebol; danazol; dehydrochloromethyl-testosterone; delta1-androstene-3,17-dione; delta1-androstenediol; delta1-dihydro-testosterone; drostanolone; ethylestrenol; fluoxymesterone; formebolone; furazabol; gestrinone; 4-hydroxytestosterone; 4-hydroxy-19-nortestosterone; mesterolone; mesterolone; metenolone; methandienone; methandriol; methylidenolone; methyltrienolone; methyltestosterone; nandrolone; nandrolone; oxabolone; oxandrolone; oxymetholone; quinbolone; stanozolol; stenbolone; tetrahydrogestrinone; trenbolone and other substances with a similar chemical structure or similar biological effect(s).
(b) Endogenous** AAS:
androstenediol (androst-5-ene-3β,17β-diol); androstenedione (androst-4-ene-3,17-dione); dehydroepiandrosterone (DHEA); dihydro-testosterone; testosterone and the following metabolites and isomers: 5α-androstane-3α,17α-diol; 5α-androstane-3α,17β-diol; 5α-androstane-3β,17α-diol; 5α-androstane-3β,17β-diol; androst-4-ene-3α,17α-diol; androst-4-ene-3α,17β-diol; androst-4-ene-3β,17α-diol; androst-5-ene-3α,17α-diol; androst-5-ene-3α,17β-diol; androst-5-ene-3β,17α-diol; 4-androstenediul (androst-4-ene-3β,17β-diol); 5 androstenedione (androst-5-ene-3,17-dione); epi-dihydrotestosterone; 3α-hydroxy-5α-androstan-17-one; 3β-hydroxy-5α-androstan-17-one; 19-norandro-sterone;19-noretiocholanolone.

Where a Prohibited Substance (as listed above) is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete’s Sample so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the Athlete proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or the relevant ratio(s) in the Athlete’s Sample is attributable to a physiological or pathological condition. In all cases, and at any concentration, the laboratory will report an Adverse Analytical Finding if, based on any reliable analytical method, it can show that the Prohibited Substance is of exogenous origin.

If the laboratory result is not conclusive and no concentration as referred to in the above paragraph is found, the relevant Anti-Doping Organization shall conduct a further investigation if there are serious indications, such as a comparison to reference steroid profiles, for a possible Use of a Prohibited Substance.

If the laboratory has reported the presence of a T/E ratio greater than four (4) to one (1) in the urine, further investigation is obligatory in order to determine whether the ratio is due to a physiological or pathological condition, except if the laboratory reports an Adverse Analytical Finding based on any reliable analytical method, showing that the Prohibited Substance is of exogenous origin.

In case of an investigation, it will include a review of any previous and/or subsequent tests. If previous tests are not available, the Athlete shall be tested unannounced at least three times within a three month period.

Should an Athlete fail to cooperate in the investigations, the Athlete’s Sample shall be deemed to contain a Prohibited Substance.

2. Other Anabolic Agents, including but not limited to:

Clenbuterol, zeranol, zilpaterol.

For the purposes of this section:
* “exogenous” refers to a substance which is not capable of being produced by the body naturally.
** “endogenous” refers to a substance which is capable of being produced by the body naturally.
S2. HORMONES AND RELATED SUBSTANCES

The following substances, including other substances with a similar chemical structure or similar biological effect(s), and their releasing factors are prohibited:

1. Erythropoietin (EPO);
2. Growth Hormone (hGH), Insulin-like Growth Factor (IGF-1), Mechano Growth Factors (MGFs);
3. Gonadotrophins (LH, hCG);
4. Insulin;
5. Corticotrophins.

Unless the Athlete can demonstrate that the concentration was due to a physiological or pathological condition, a Sample will be deemed to contain a Prohibited Substance (as listed above) where the concentration of the Prohibited Substance or its metabolites and/or relevant ratios or markers in the Athlete’s Sample so exceeds the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production.

The presence of other substances with a similar chemical structure or similar biological effect(s), diagnostic marker(s) or releasing factors of a hormone listed above or of any other finding which indicate(s) that the substance detected is of exogenous origin, will be reported as an Adverse Analytical Finding.

S3. BETA-2 AGONISTS

All beta-2 agonists including their D- and L-isomers are prohibited. Their use requires a Therapeutic Use Exemption.

As an exception, formoterol, salbutamol, salmeterol and terbutaline, when administered by inhalation to prevent and/or treat asthma and exercise-induced asthma/bronchoconstriction require an abbreviated Therapeutic Use Exemption.

Despite the granting of a Therapeutic Use Exemption, when the Laboratory has reported a concentration of salbutamol (free plus glucuronide) greater than 1000 ng/mL, this will be considered to be an Adverse Analytical Finding unless the athlete proves that the abnormal result was the consequence of the therapeutic use of inhaled salbutamol.

S4. AGENTS WITH ANTI-ESTROGENIC ACTIVITY

The following classes of anti-estrogenic substances are prohibited.

1. Aromatase inhibitors including, but not limited to, anastrozole, letrozole, aminogluthetimide, exemestane, formestane, testolactone.
2. Selective Estrogen Receptor Modulators (SERMs) including, but not limited to, raloxifene, tamoxifen, toremifene.

Other anti-estrogenic substances including, but not limited to, clomiphene, cyclofenil, fulvestrant.
S5. DIURETICS AND OTHER MASKING AGENTS

Diuretics and other masking agents are prohibited. Masking agents include but are not limited to:

- diuretics*, epitestosterone, probenecid, alpha-reductase inhibitors (e.g. finasteride, dutasteride), plasma expanders (e.g. albumin, dextran, hydroxyethyl starch).

Diuretics include:

- acetazolamide, amiloride, bumetanide, canrenone, chlortalidone, etacrylic acid, furosemide, indapamide, metolazone, spironolactone, thiazides (e.g. bendroflumethiazide, chlorothiazide, hydrochlorothiazide), triamterene and other substances with a similar chemical structure or similar biological effect(s).

* A Therapeutic Use Exemption is not valid if an Athlete’s urine contains a diuretic in association with threshold or sub-threshold levels of a Prohibited Substance(s).
PROHIBITED SUBSTANCES

S6. STIMULANTS

The following stimulants are prohibited, including both their optical (D- and L-) isomers where relevant:

adrafinil, amfepramone, amiphenazole, amphetamine, amphetaminil, benzphetamine, bromantan, carphedon, cathine*, clobenzorex, cocaine, dimethylamphetamine, ephedrine**, etilamphetamine, etilefrine, famprofazone, fencamfamin, fencamine, fenetylline, fenfluramine, fenproporex, furfenorex, mefenorex, mephentermine, mesocarb, methamphetamine, methylamphetamine, methylenedioxymethamphetamine, methylephedrine**, methylphenidate, modafinil, nikethamide, nortriptyline, parahydroxyamphetamine, pemoline, phenmetrazine, phentermine, prolintane, selegiline, strychnine and other substances with a similar chemical structure or similar biological effect(s)***.

* Cathine is prohibited when its concentration in urine is greater than 5 micrograms per milliliter.

** Each of ephedrine and methylephedrine is prohibited when its concentration in urine is greater than 10 micrograms per milliliter.

*** The substances included in the 2005 Monitoring Programme (bupropion, caffeine, phenylephrine, phenylpropanolamine, pipradrol, pseudoephedrine, synephrine) are not considered as Prohibited Substances.

NOTE: Adrenaline associated with local anaesthetic agents or by local administration (e.g. nasal, ophthalmologic) is not prohibited.

S7. NARCOTICS

The following narcotics are prohibited:

buprenorphine, dextromoramide, diamorphine (heroin), fentanyl and its derivatives, hydromorphone, methadone, morphine, oxycodone, oxymorphone, pentazocine, pethidine.

S8. CANNABINOIDS

Cannabinoids (e.g. hashish, marijuana) are prohibited.

S9. GLUCOCORTICOSTEROIDS

All glucocorticosteroids are prohibited when administered orally, rectally, intravenously or intramuscularly. Their use requires a Therapeutic Use Exemption approval.

All other routes of administration require an abbreviated Therapeutic Use Exemption. Dermatological preparations are not prohibited.
SUBSTANCES PROHIBITED IN PARTICULAR SPORTS

P1. ALCOHOL

Alcohol (ethanol) is prohibited in-competition only, in the following sports. Detection will be conducted by analysis of breath and/or blood. The doping violation threshold for each Federation is reported in parenthesis.

- Aeronautic (FAI) (0.20 g/L)
- Archery (FITA) (0.10 g/L)
- Automobile (FIA) (0.10 g/L)
- Billiards (WCBS) (0.20 g/L)
- Boules (CMSB) (0.10 g/L)
- Karate (WKF) (0.10 g/L)
- Modern Pentathlon (UIPM) (0.10 g/L) for disciplines involving shooting
- Motorcycling (FIM) (0.00 g/L)
- Skiing (FIS) (0.10 g/L)

P2. BETA-BLOCKERS

Unless otherwise specified, beta-blockers are prohibited in-competition only, in the following sports.

- Aeronautic (FAI)
- Archery (FITA) (also prohibited out-of-competition)
- Automobile (FIA)
- Billiards (WCBS)
- Bobsleigh (FIBT)
- Boules (CMSB)
- Bridge (FMB)
- Chess (FIDE)
- Curling (WCF)
- Gymnastics (FIG)
- Motorcycling (FIM)
- Modern Pentathlon (UIPM) for disciplines involving shooting
- Nine-pin bowling (FIQ)
- Sailing (ISAF) for match race helms only
- Shooting (ISSF) (also prohibited out-of-competition)
- Skiing (FIS) in ski jumping and free style snow board
- Swimming (FINA) in diving and synchronized swimming
- Wrestling (FILA)

Beta-blockers include, but are not limited to, the following:
acebutolol, alprenolol, atenolol, betaxolol, bisoprolol, bunolol, carteolol, carvedilol, celiprolol, esmolol, labetalol, levobunolol, metipranolol, metoprolol, nadolol, oxprenolol, pindolol, propranolol, sotalol, timolol.

**SPECIFIED SUBSTANCES***

“Specified Substances”* are listed below:
ephedrine, L-methylamphetamine, methylephedrine;
cannabinoids;
all inhaled Beta-2 Agonists, except clenbuterol;
probenecid;
all Glucocorticosteroids;
all Beta Blockers;
alcohol.

* “The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents.” A doping violation involving such substances may result in a reduced sanction provided that the “... Athlete can establish that the Use of such a specified substance was not intended to enhance sport performance...”

ANNEX II

STANDARDS FOR GRANTING THERAPEUTIC USE EXEMPTIONS

Extract from “International Standard for Therapeutic Use Exemptions” of the World Anti-Doping Agency (WADA); in force 1 January 2005

4.0 Criteria for granting a therapeutic use exemption

A Therapeutic Use Exemption (TUE) may be granted to an Athlete permitting the use of a Prohibited Substance or Prohibited Method contained in the Prohibited List. An application for a TUE will be reviewed by a Therapeutic Use Exemption Committee (TUEC). The TUEC will be appointed by an Anti-Doping Organization. An exemption will be granted only in strict accordance with the following criteria:

[Comment: This standard applies to all Athletes as defined by and subject to the Code i.e. able-bodied athletes and athletes with disabilities. This Standard will be applied according to an individual’s circumstances. For example, an exemption that is appropriate for an athlete with a disability may be inappropriate for other athletes.]

4.1 The Athlete should submit an application for a TUE no less than 21 days before participating in an Event.

4.2 The Athlete would experience a significant impairment to health if the Prohibited Substance or Prohibited Method were to be withheld in the course of treating an acute or chronic medical condition.
4.3 The therapeutic use of the Prohibited Substance or Prohibited Method would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition. The use of any Prohibited Substance or Prohibited Method to increase “low-normal” levels of any endogenous hormone is not considered an acceptable therapeutic intervention.

4.4 There is no reasonable therapeutic alternative to the use of the otherwise Prohibited Substance or Prohibited Method.

4.5 The necessity for the use of the otherwise Prohibited Substance or Prohibited Method cannot be a consequence, wholly or in part, of prior non-therapeutic use of any substance from the Prohibited List.

4.6 The TUE will be cancelled by the granting body, if

(a) The Athlete does not promptly comply with any requirements or conditions imposed by the Anti-Doping Organization granting the exemption;

(b) The term for which the TUE was granted has expired;

(c) The Athlete is advised that the TUE has been withdrawn by the Anti-Doping Organization.

[Comment: Each TUE will have a specified duration as decided upon by the TUEC. There may be cases when a TUE has expired or has been withdrawn and the Prohibited Substance subject to the TUE is still present in the Athlete’s body. In such cases, the Anti-Doping Organization conducting the initial review of an adverse finding will consider whether the finding is consistent with expiry or withdrawal of the TUE.]

4.7 An application for a TUE will not be considered for retroactive approval except in cases where:

(a) Emergency treatment or treatment of an acute medical condition was necessary; or

(b) Due to exceptional circumstances, there was insufficient time or opportunity for an applicant to submit, or a TUEC to consider, an application prior to Doping Control.

[Comment: Medical Emergencies or acute medical situations requiring administration of an otherwise Prohibited Substance or Prohibited Method before an application for a TUE can be made, are uncommon. Similarly, circumstances requiring expedited consideration of an application for a TUE due to imminent competition are infrequent. Anti-Doping Organizations granting TUEs should have internal procedures which permit such situations to be addressed.]

5.0 Confidentiality of information

5.1 The applicant must provide written consent for the transmission of all information pertaining to the application to members of the TUEC and, as required, other independent medical or scientific experts, or to all necessary staff involved in the management, review or appeal of TUEs.

Should the assistance of external, independent experts be required, all details of the application will be circulated without identifying the Athlete involved in the Athlete’s care.
The applicant must also provide written consent for the decisions of the TUEC to be distributed to other relevant Anti-Doping Organizations under the provisions of the Code.

5.2 The members of the TUECs and the administration of the Anti-Doping Organization involved will conduct all of their activities in strict confidence. All members of a TUEC and all staff involved will sign confidentiality agreements. In particular they will keep the following information confidential:

(a) All medical information and data provided by the Athlete and physician(s) involved in the Athlete’s care;

(b) All details of the application including the name of the physician(s) involved in the process.

Should the Athlete wish to revoke the right of the TUEC or the WADA TUEC to obtain any health information on his/her behalf, the Athlete must notify his/her medical practitioner in writing of the fact. As a consequence of such a decision, the Athlete will not receive approval for a TUE or renewal of an existing TUE.

6.0 Therapeutic use exemption committees (TUECs)

TUECs shall be constituted and act in accordance with the following guidelines:

6.1 TUECs should include at least three physicians with experience in the care and treatment of Athletes and a sound knowledge of clinical, sports and exercise medicine. In order to ensure a level of independence of decisions, a majority of the members of the TUEC should not have any official responsibility in the Anti-Doping Organization. All members of a TUEC will sign a conflict of interest agreement. In applications involving Athletes with disabilities, at least one TUEC member must possess specific experience with the care and treatment of Athletes with disabilities.

6.2 TUECs may seek whatever medical or scientific expertise they deem appropriate in reviewing the circumstances of any application for a TUE.

6.3 The WADA TUEC shall be composed following the criteria set out in Article 6.1. The WADA TUEC is established to review on its own initiative TUE decisions granted by Anti-Doping Organizations. As specified in Article 4.4 of the Code, the WADA TUEC, upon request by Athletes who have been denied TUEs by an Anti-Doping Organization will review such decisions with the power to reverse them.

7.0 Therapeutic use exemption (TUE) application process

7.1 A TUE will only be considered following the receipt of a completed application form that must include all relevant documents (see Appendix 1—TUE form). The application process must be dealt with in accordance with the principles of strict medical confidentiality.

7.2 The TUE application form(s), as set out in Appendix 1, can be modified by Anti-Doping Organizations to include additional requests for information, but no sections or items shall be removed.

7.3 The TUE application form(s) may be translated into other language(s) by Anti-Doping Organizations, but English or French must remain on the application form(s).
7.4 An Athlete may not apply to more than one Anti-Doping Organization for a TUE. The application must identify the Athlete’s sport and, where appropriate, discipline and specific position or role.

7.5 The application must list any previous and/or current requests for permission to use an otherwise Prohibited Substance or Prohibited Method, the body to whom that request was made, and the decision of that body.

7.6 The application must include a comprehensive medical history and the results of all examinations, laboratory investigations and imaging studies relevant to the application.

7.7 Any additional relevant investigations, examinations or imaging studies requested by the TUEC of the Anti-Doping Organization will be undertaken at the expense of the applicant or his/her national sport governing body.

7.8 The application must include a statement by an appropriately qualified physician attesting to the necessity of the otherwise Prohibited Substance or Prohibited Method in the treatment of the Athlete and describing why an alternative, permitted medication cannot, or could not, be used in the treatment of this condition.

7.9 The dose, frequency, route and duration of administration of the otherwise Prohibited Substance or Prohibited Method in question must be specified.

7.10 Decisions of the TUEC, should be completed within 30 days of receipt of all relevant documentation and will be conveyed in writing to the Athlete by the relevant Anti-Doping Organization. Where a TUE has been granted to an Athlete in the Anti-Doping Organization Registered Testing Pool, the Athlete and WADA will be provided promptly with an approval which includes information pertaining to the duration of the exemption and any conditions associated with the TUE.

7.11 (a) Upon receiving a request by an Athlete for review, as specified in Article 4.4 of the Code, the WADA TUEC will, as specified in Article 4.4 of the Code, be able to reverse a decision on a TUE granted by an Anti-Doping Organization. The Athlete shall provide to the WADA TUEC all the information for a TUE as submitted initially to the Anti-Doping Organization accompanied by an application fee. Until the review process has been completed, the original decision remains in effect. The process should not take longer than 30 days following receipt of the information by WADA.

(b) WADA can undertake a review at any time. The WADA TUEC will complete its review within 30 days.

7.12 If the decision regarding the granting of a TUE is reversed on review, the reversal shall not apply retroactively and shall not disqualify the Athlete’s results during the period that the TUE had been granted and shall take effect no later than 14 days following notification of the decision to the Athlete.

8.0 Abbreviated therapeutic use exemption (ATUE) application process

8.1 It is acknowledged that some substances included on the List of Prohibited Substances are used to treat medical conditions frequently encountered in the Athlete population. In such cases, a full application as detailed in section 4 and section 7 is unnecessary. Accordingly an abbreviated process of the TUE is established.
8.2 The Prohibited Substances or Prohibited Methods which may be permitted by this abbreviated process are strictly limited to the following:

Beta-2 agonists (formoterol, salbutamol, salmeterol and terbutaline) by inhalation, and glucocorticosteroids by non-systemic routes.

8.3 To use one of the substances above, the Athlete shall provide to the Anti-Doping Organization a medical notification justifying the therapeutic necessity. Such medical notification, as contained in Appendix 2, shall describe the diagnosis, name of the drug, dosage, route of administration and duration of the treatment. When applicable any tests undertaken in order to establish the diagnosis should be included (without the actual results or details).

8.4 The abbreviated process includes:

(a) Approval for use of Prohibited Substances subject to the abbreviated process is effective upon receipt of a complete notification by the Anti-Doping Organization. Incomplete notifications must be returned to the applicant;

(b) On receipt of a complete notification, the Anti-Doping Organization shall promptly advise the Athlete. As appropriate, the Athlete’s IF, NF and NADO shall also be advised. The Anti-Doping Organization shall advise WADA only upon receipt of a notification from an International-level Athlete;

(c) A notification for an ATUE will not be considered for retroactive approval except:

- If emergency treatment or treatment of an acute medical condition was necessary; or
- Due to exceptional circumstances, there was insufficient time or opportunity for an applicant to submit, or a TUEC to receive, an application prior to Doping Control.

8.5 (a) A review by the TUEC or the WADA TUEC can be initiated at any time during the duration of an ATUE.

(b) If an Athlete requests a review of a subsequent denial of an ATUE, the WADA TUEC will have the ability to request from the Athlete additional medical information as deemed necessary, the expenses of which should be met by the Athlete.

8.6 An ATUE may be cancelled by the TUEC or WADA TUEC at any time. The Athlete, his/her IF and all relevant Anti-Doping Organizations shall be notified immediately.

8.7 The cancellation shall take effect immediately following notification of the decision to the Athlete. The Athlete will nevertheless be able to apply under section 7 for a TUE.

9.0 Clearing house

9.1 Anti-Doping Organizations are required to provide WADA with all TUEs, and all supporting documentation, issued under section 7.

9.2 With respect to ATUEs, Anti-Doping Organizations shall provide WADA with medical applications submitted by International-level Athletes issued under section 8.4.

9.3 The Clearing house shall guarantee strict confidentiality of all the medical information.
Done at Paris, this eighteenth day of November 2005, in two authentic copies bearing the signature of the President of the General Conference of UNESCO at its 33rd session and of the Director-General of UNESCO, which shall be deposited in the archives of UNESCO.

The above text is the authentic text of the Convention hereby duly adopted by the General Conference of UNESCO at its 33rd session, held in Paris and declared closed on the twenty-first day of October 2005.


The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 3 to 21 October 2005 at its 33rd session,

**Affirming** that cultural diversity is a defining characteristic of humanity,

**Conscious** that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all,

**Being aware** that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a main-spring for sustainable development for communities, peoples and nations,

**Recalling** that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,

**Celebrating** the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,

**Emphasizing** the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,

**Taking into account** that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,

**Recognizing** the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,

**Recognizing** the need to take measures to protect the diversity of cultural expressions, including their contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,

**Emphasizing** the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,

Being aware that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,

Reaffirming that freedom of thought, expression and information, as well as diversity of the media, enable cultural expressions to flourish within societies,

Recognizing that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values,

Recalling that linguistic diversity is a fundamental element of cultural diversity, and reaffirming the fundamental role that education plays in the protection and promotion of cultural expressions,

Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development,

Emphasizing the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large,

Recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity,

Being convinced that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,

Noting that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,

Being aware of UNESCO’s specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,

Referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,

Adopts this Convention on 20 October 2005.

I. Objectives and guiding principles

Article 1. Objectives

The objectives of this Convention are:

(a) To protect and promote the diversity of cultural expressions;

(b) To create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;

(c) To encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
(d) To foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;

(e) To promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;

(f) To reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;

(g) To give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;

(h) To reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;

(i) To strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

Article 2. Guiding principles

1. Principle of respect for human rights and fundamental freedoms

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

2. Principle of sovereignty

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

3. Principle of equal dignity of and respect for all cultures

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.

4. Principle of international solidarity and cooperation

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.

5. Principle of the complementarity of economic and cultural aspects of development
Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.

6. Principle of sustainable development

Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.

7. Principle of equitable access

Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

8. Principle of openness and balance

When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

II. Scope of application

Article 3. Scope of application

This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.

III. Definitions

Article 4. Definitions

For the purposes of this Convention, it is understood that:

1. Cultural diversity

“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

2. Cultural content

“Cultural content” refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

3. Cultural expressions

“Cultural expressions” are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

4. Cultural activities, goods and services
“Cultural activities, goods and services” refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.

5. Cultural industries

“Cultural industries” refers to industries producing and distributing cultural goods or services as defined in paragraph 4 above.

6. Cultural policies and measures

“Cultural policies and measures” refers to those policies and measures relating to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services.

7. Protection

“Protection” means the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions.

“Protect” means to adopt such measures.

8. Interculturality

“Interculturality” refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.

IV. RIGHTS AND OBLIGATIONS OF PARTIES

Article 5. General rule regarding rights and obligations

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.

2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

Article 6. Rights of parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

(a) Regulatory measures aimed at protecting and promoting diversity of cultural expressions;
(b) Measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;

(c) Measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services;

(d) Measures aimed at providing public financial assistance;

(e) Measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

(f) Measures aimed at establishing and supporting public institutions, as appropriate;

(g) Measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions;

(h) Measures aimed at enhancing diversity of the media, including through public service broadcasting.

Article 7. Measures to promote cultural expressions

1. Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:

(a) To create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;

(b) To have access to diverse cultural expressions from within their territory as well as from other countries of the world.

2. Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

Article 8. Measures to protect cultural expressions

1. Without prejudice to the provisions of Articles 5 and 6, a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.

2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.
3. Parties shall report to the Intergovernmental Committee referred to in Article 23 all measures taken to meet the exigencies of the situation, and the Committee may make appropriate recommendations.

Article 9. Information sharing and transparency

Parties shall:

(a) Provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level;

(b) Designate a point of contact responsible for information sharing in relation to this Convention;

(c) Share and exchange information relating to the protection and promotion of the diversity of cultural expressions.

Article 10. Education and public awareness

Parties shall:

(a) Encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes;

(b) Cooperate with other Parties and international and regional organizations in achieving the purpose of this article;

(c) Endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner which does not have a negative impact on traditional forms of production.

Article 11. Participation of civil society

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.

Article 12. Promotion of international cooperation

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to:

(a) Facilitate dialogue among Parties on cultural policy;

(b) Enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;

(c) Reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
(d) Promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
(e) Encourage the conclusion of co-production and co-distribution agreements.

Article 13. Integration of culture in sustainable development

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

Article 14. Cooperation for development

Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, inter alia, the following means:

(a) The strengthening of the cultural industries in developing countries through:
   (i) Creating and strengthening cultural production and distribution capacities in developing countries;
   (ii) Facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;
   (iii) Enabling the emergence of viable local and regional markets;
   (iv) Adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;
   (v) Providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;
   (vi) Encouraging appropriate collaboration between developed and developing countries in the areas, inter alia, of music and film;

(b) Capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;

(c) Technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;

(d) Financial support through:
   (i) The establishment of an International Fund for Cultural Diversity as provided in Article 18;
   (ii) The provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
(iii) Other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

**Article 15. Collaborative arrangements**

Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services.

**Article 16. Preferential treatment for developing countries**

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

**Article 17. International cooperation in situations of serious threat to cultural expressions**

Parties shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.

**Article 18. International Fund for Cultural Diversity**

1. An International Fund for Cultural Diversity, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:
   (a) Voluntary contributions made by Parties;
   (b) Funds appropriated for this purpose by the General Conference of UNESCO;
   (c) Contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;
   (d) Any interest due on resources of the Fund;
   (e) Funds raised through collections and receipts from events organized for the benefit of the Fund;
   (f) Any other resources authorized by the Fund’s regulations.
4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.
5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.

6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

**Article 19. Exchange, analysis and dissemination of information**

1. Parties agree to exchange information and share expertise concerning data collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.

2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.

3. UNESCO shall also establish and update a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions.

4. To facilitate the collection of data, UNESCO shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance.

5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

**V. Relationship to other instruments**

**Article 20. Relationship to other treaties: mutual supportiveness, complementarity and non-subordination**

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,

   (a) They shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and

   (b) When interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.

2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

**Article 21. International consultation and coordination**

Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.
VI. Organs of the Convention

Article 22. Conference of Parties

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary and supreme body of this Convention.

2. The Conference of Parties shall meet in ordinary session every two years, as far as possible, in conjunction with the General Conference of UNESCO. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of the Parties.

3. The Conference of Parties shall adopt its own rules of procedure.

4. The functions of the Conference of Parties shall be, inter alia:
   (a) To elect the Members of the Intergovernmental Committee;
   (b) To receive and examine reports of the Parties to this Convention transmitted by the Intergovernmental Committee;
   (c) To approve the operational guidelines prepared upon its request by the Intergovernmental Committee;
   (d) To take whatever other measures it may consider necessary to further the objectives of this Convention.

Article 23. Intergovernmental Committee

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, hereinafter referred to as “the Intergovernmental Committee”, shall be established within UNESCO. It shall be composed of representatives of 18 States Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.

2. The Intergovernmental Committee shall meet annually.

3. The Intergovernmental Committee shall function under the authority and guidance of and be accountable to the Conference of Parties.

4. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.

5. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.

6. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental Committee shall be:
   (a) To promote the objectives of this Convention and to encourage and monitor the implementation thereof;
   (b) To prepare and submit for approval by the Conference of Parties, upon its request, the operational guidelines for the implementation and application of the provisions of the Convention;
   (c) To transmit to the Conference of Parties reports from Parties to the Convention, together with its comments and a summary of their contents;
(d) To make appropriate recommendations to be taken in situations brought to its attention by Parties to the Convention in accordance with relevant provisions of the Convention, in particular Article 8;

(e) To establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums;

(f) To perform any other tasks as may be requested by the Conference of Parties.

7. The Intergovernmental Committee, in accordance with its Rules of Procedure, may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.

8. The Intergovernmental Committee shall prepare and submit to the Conference of Parties, for approval, its own Rules of Procedure.

Article 24. UNESCO Secretariat

1. The organs of the Convention shall be assisted by the UNESCO Secretariat.

2. The Secretariat shall prepare the documentation of the Conference of Parties and the Intergovernmental Committee as well as the agenda of their meetings and shall assist in and report on the implementation of their decisions.

VII. Final clauses

Article 25. Settlement of disputes

1. In the event of a dispute between Parties to this Convention concerning the interpretation or the application of the Convention, the Parties shall seek a solution by negotiation.

2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, a Party may have recourse to conciliation in accordance with the procedure laid down in the Annex of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

4. Each Party may, at the time of ratification, acceptance, approval or accession, declare that it does not recognize the conciliation procedure provided for above. Any Party having made such a declaration may, at any time, withdraw this declaration by notification to the Director-General of UNESCO.

Article 26. Ratification, acceptance, approval or accession by Member States

1. This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.
Article 27. Accession

1. This Convention shall be open to accession by all States not Members of UNESCO but members of the United Nations, or of any of its specialized agencies, that are invited by the General Conference of UNESCO to accede to it.

2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The following provisions apply to regional economic integration organizations:

   (a) This Convention shall also be open to accession by any regional economic integration organization, which shall, except as provided below, be fully bound by the provisions of the Convention in the same manner as States Parties;

   (b) In the event that one or more Member States of such an organization is also Party to this Convention, the organization and such Member State or States shall decide on their responsibility for the performance of their obligations under this Convention. Such distribution of responsibility shall take effect following completion of the notification procedure described in subparagraph (c). The organization and the Member States shall not be entitled to exercise rights under this Convention concurrently. In addition, regional economic integration organizations, in matters within their competence, shall exercise their rights to vote with a number of votes equal to the number of their Member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice-versa;

   (c) A regional economic integration organization and its Member State or States which have agreed on a distribution of responsibilities as provided in subparagraph (b) shall inform the Parties of any such proposed distribution of responsibilities in the following manner:

      (i) In their instrument of accession, such organization shall declare with specificity, the distribution of their responsibilities with respect to matters governed by the Convention;

      (ii) In the event of any later modification of their respective responsibilities, the regional economic integration organization shall inform the depositary of any such proposed modification of their respective responsibilities; the depositary shall in turn inform the Parties of such modification;

   (d) Member States of a regional economic integration organization which become Parties to this Convention shall be presumed to retain competence over all matters in respect of which transfers of competence to the organization have not been specifically declared or informed to the depositary;

   (e) “Regional economic integration organization” means an organization constituted by sovereign States, members of the United Nations or of any of its specialized agencies, to which those States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to become a Party to it.
4. The instrument of accession shall be deposited with the Director-General of UNESCO.

**Article 28. Point of contact**

Upon becoming Parties to this Convention, each Party shall designate a point of contact as referred to in Article 9.

**Article 29. Entry into force**

1. This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

2. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of the organization.

**Article 30. Federal or non-unitary constitutional systems**

Recognizing that international agreements are equally binding on Parties regardless of their constitutional systems, the following provisions shall apply to Parties which have a federal or non-unitary constitutional system:

(a) With regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those Parties which are not federal States;

(b) With regard to the provisions of the Convention, the implementation of which comes under the jurisdiction of individual constituent units such as States, counties, provinces, or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform, as necessary, the competent authorities of constituent units such as States, counties, provinces or cantons of the said provisions, with its recommendation for their adoption.

**Article 31. Denunciation**

1. Any Party to this Convention may denounce this Convention.

2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.

3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the Party denouncing the Convention until the date on which the withdrawal takes effect.
Article 32. Depositary functions

The Director-General of UNESCO, as the depositary of this Convention, shall inform the Member States of the Organization, the States not members of the Organization and regional economic integration organizations referred to in Article 27, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 26 and 27, and of the denunciations provided for in Article 31.

Article 33. Amendments

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.

3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.

4. For Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the Parties. Thereafter, for each Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.

5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.

6. A State or a regional economic integration organization referred to in Article 27 which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:

(a) Party to this Convention as so amended; and

(b) A Party to the unamended Convention in relation to any Party not bound by the amendments.

Article 34. Authoritative texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

Article 35. Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.
ANNEX

Conciliation procedure

Article 1. Conciliation Commission

A Conciliation Commission shall be created upon the request of one of the Parties to the dispute. The Commission shall, unless the Parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2. Members of the Commission

In disputes between more than two Parties, Parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more Parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3. Appointments

If any appointments by the Parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the Party that made the request, make those appointments within a further two-month period.

Article 4. President of the Commission

If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a Party, designate a President within a further two-month period.

Article 5. Decisions

The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the Parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the Parties shall consider in good faith.

Article 6. Disagreement

A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.
Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. DECISIONS OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

1. Judgement No. 1231 (22 July 2005): Applicant v. the Secretary-General of the United Nations

Terms and conditions of employment—Decision to arm security officer is a policy decision within the discretion of the Secretary-General—Limited review of discretionary decisions—Burden of proof in discrimination claims—Transfer and conversion of status of employment

The Applicant entered the service of the Organization as a Security Officer at the S-1 level on 19 September 1983. Her contract was subsequently extended and, on 1 October 1985, she was granted a permanent appointment. At the time of the events which gave

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1 In view of the large number of judgements which were rendered in 2005 by the administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which address significant issues of United Nations administrative law or are otherwise of general interest have been summarized in the present edition of the Yearbook. For the full text of the complete series of judgements rendered by the tribunals, namely, Judgements Nos. 1223 to 1281 of the United Nations Administrative Tribunal, Judgements Nos. 2375 to 2479 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 330 to 344 of the World Bank Administrative Tribunal, and Judgements No. 2005–1 to 2005–4 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1223 to AT/DEC/1281; Judgments of the Administrative Tribunal of the International Labour Organization: 98th and 99th Sessions; World Bank Administrative Tribunal Reports, 2005; and International Monetary Fund Administrative Tribunal Reports, Judgments No. 2005–1 to 2005–4.

2 The Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of their terms of appointment. In addition, the Tribunal’s competence extends to the United Nations Joint Staff Pension Fund (including cases from all specialized agencies that participate in the Fund and which have accepted the jurisdiction of the Tribunal in Pension Fund cases), the United Nations Programmes and Funds, such specialized agencies and related organizations that have accepted the competence of the Tribunal (the International Maritime Organization and the International Civil Aviation Organization), the staff of the Registries of the International Court of Justice, the International Tribunal for the Law of the Sea, and the staff of the International Seabed Authority. For more information about the United Nations Administrative Tribunal and the full texts of its judgements, see http://untreaty.un.org/UNAT/main_page.htm.

3 Spyridon Flogaitis, Vice-President, presiding; and Jacqueline R. Scott and Goh Joon Seng, Members.
rise to her Application, she held the S-3 position of Security Officer, Security and Safety Service (SSS).

The Applicant had expressed religious objections to carrying a firearm in 1989, but was subsequently able to overcome them and carried a weapon for some years. On 15 August 1997, however, she informed her supervisor that she could no longer reconcile carrying firearms with her religious convictions. On 23 November 1999, the Applicant, who had completed the training to be a Fire Officer, submitted a request for assignment to the Fire Unit. It would appear that no action was taken on this request.

On 9 November 2000, the Office of Human Resources Management prepared a “Note for the File” documenting various efforts made to resolve the Applicant’s case, including a conciliation session and an offer of either “exceptional terms of agreed termination” or a transfer outside the SSS, subject to conversion of her status to General Service and a review of her status after one year. Thereafter, on 17 January 2001, the Applicant was furnished with a draft Memorandum of Understanding which set out the terms for her transfer to the General Service category and indicated that the resulting loss in income would be borne by her.

On 29 August 2001, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In a majority report dated 29 August 2002, the JAB recommended that, in the event of a transfer to the General Service category, the Applicant should be paid a personal transitional allowance, decreasing progressively from US$ 540 a month to zero over a period of three years, and that the review of her contractual status should take place after at least two years of service. The dissenting member of the JAB recommended that she be transferred or reassigned to the Fire Unit. On 23 September 2002, the Applicant was informed that the Secretary-General was not in agreement with the recommendations of either the majority or the dissenting member of the JAB, but would permit her “a final opportunity” to elect one of the options offered to her in November 2000. She was cautioned that, in the absence of a decision from her within one month, the Administration would “commence the procedures for terminating [her] appointment for failure to meet the performance standards required of a Security Officer”. On 30 October, the Applicant opted for a transfer to the General Service category, “in order to protect [her] employment with the Organization”. On 30 June 2003, she filed her Application with the Tribunal.

In its consideration of the case, the Tribunal recalled its jurisprudence that the terms and conditions of employment with the United Nations “are not necessarily limited to those set out in writing” but “may be expressed or implied and . . . gathered from correspondence and surrounding facts and circumstances”. It found that the terms and conditions of the Applicant’s employment, including the requirement that she be willing and able to bear firearms when required, were set forth both in writing and in the “surrounding facts and circumstances”.

With respect to the written terms of the Applicant’s employment, the Tribunal took note of the following provisions of the Handbook of the SSS, a copy of which was provided to the Applicant upon recruitment:

“Section 5.06—Firearms—Issue and Control Procedures

(a) Authority to Carry Firearms—Personnel of the [SSS] who are authorized by the United Nations and who are issued firearms will carry such weapons only when they are on duty. Under normal circumstances, firearms will be carried by senior supervisory
personnel, by investigators, by personnel on special assignment, and by security officers manning posts specially designated as armed posts.”

The Tribunal considered that the use of the word “will” in the first sentence of section 5.06 made it apparent that the Applicant could be required to carry a firearm, subject to the limitations of the clause. Moreover, it found that the inclusion of the phrase “under normal circumstances” implied that in other, less normal circumstances other officers would be called upon to carry a weapon. Finally, as it fell within the reasonable discretion of the Respondent to designate posts as armed posts, the Tribunal determined that every officer, including the Applicant, might be called upon to bear arms.

With respect to the surrounding circumstances of her employment, the Tribunal held that based on the very nature of her position as a Security Officer, the Applicant knew, or should have known, that carrying a firearm, when required, was a condition of her employment. Rejecting the Applicant’s argument that carrying a firearm ought not to be a pre-requisite to performing security functions, the Tribunal found that the decision to arm security officers is a policy decision, within the discretionary authority of the Secretary-General, and that it was not the Tribunal’s role to substitute its views for those of the Secretary-General or the General Assembly on how best to manage the Organization.

Insofar as the Applicant’s claims that the Respondent’s decision had been arbitrary and discriminatory were concerned, the Tribunal recalled its longstanding jurisprudence that it would not substitute its judgement for that of the Secretary-General in personnel matters unless his discretion was shown to have been vitiated. The onus probandi is on the staff member making such allegations and, in this case, the Applicant had not provided the necessary proof in order to meet her burden.

Accordingly, the Tribunal rejected the Application in its entirety.

2. Judgement No. 1234 (22 July 2005): Applicant v. the Secretary-General of the United Nations

Appointments of limited duration (ALD)—No right of renewal of ALD—No requirement of notice of termination under ALD except in countervailing circumstances—Creation of legitimate expectation of continued employment—Disguised disciplinary sanction—Burden of proof in claiming harassment and discrimination—Responsibility of Organization for acts taken by individual staff members—Privilege of the Organization to consider disciplinary process against staff members

The Applicant entered the service of the United Nations at the G-3 level as a clerk in the Finance Service, United Nations Office in Geneva (UNOG), in September 1990. His contract was subsequently extended until March 1996. In August 1997, he entered the service of the Office of the United Nations High Commissioner for Human Rights (OHCHR). At the time of the events which gave rise to his Application, he held the P-2 level position of Administrative Officer in the Office for Human Rights Field Operation in the Former Yugoslavia in Zagreb. His employment was governed by a series of appointments of limited duration, with an ultimate expiry date of 31 December 2000.

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4 Julio Barboza, President; Kevin Haugh, Vice-President; and Dayendra Sena Wijewardane, Member.
In 2000, the Applicant and his supervisor, the Chief of OHCHR Croatia, disagreed on a number of matters. On 23 August, the Applicant submitted a formal complaint, accusing his supervisor of harassment and mismanagement and requesting that an investigation be carried out by an independent panel or internal auditors. On 20 September, the Chief a.i., OHCHR Administration, offered to transfer the Applicant to the Administration Section in Geneva for the remainder of his ALD. She also offered him a general temporary assistance (GTA) post at the GL-6 level as of 1 January 2001. The Applicant accepted her offer and was reassigned to Geneva with effect from 19 October.

In October and November 2000, two investigators from the Office of Internal Oversight Services (OIOS) conducted an investigation at the Zagreb Office and at the OHCHR headquarters in Geneva. Thereafter, on 11 December, the Applicant was informed that his ALD would not be extended and that, for budgetary reasons, he would not be offered a contract in 2001. He separated from service on 31 December 2000. On 8 February 2001, the Applicant requested administrative review of the decisions taken by the Chief of OHCHR Croatia and the Chief a.i., OHCHR Administration.

In its report dated 26 April 2001, OIOS noted that the Applicant had not acted in accordance with his general obligations as an international civil servant and recommended that a copy of the report be placed in his official status file “in order to prevent any future recruitment with the Organization”.

On 1 May 2001, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In its report of 14 April 2003, the JAB found that the non-renewal of the Applicant’s ALD had not been a retaliatory measure, nor was it tainted with prejudice or motivated by extraneous factors, as it formed part of the arrangement agreed upon by the Applicant and OHCHR. However, the JAB held that the offer of the new GTA contract, that had not been clearly presented as being contingent upon the receipt of necessary funding, had created for the Applicant a legitimate expectation for continued employment. Whilst it did not find documentary evidence of a link between the on-going OIOS investigation and the withdrawal of the offer of GTA employment, the JAB found that the reason given to justify the withdrawal of the offer was not supported by evidence. Accordingly, the JAB concluded that the Administration had violated the Applicant’s right to fair and equitable treatment and recommended that he be paid compensation of two months’ net base salary. The JAB also concluded that it was not competent to address the complaints of harassment.

On 30 July, the Applicant was informed that the Secretary-General had accepted the JAB’s conclusion and recommendation. On 17 September, he filed his Application with the Tribunal.

In its consideration of the case, the Tribunal first addressed the Applicant’s contention that the decision not to renew his ALD was an act of reprisal, vitiating by prejudice and arbitrariness. The Tribunal recalled its longstanding position that while fixed-term contracts carry no right of renewal and require no notice of termination, exceptions to this rule may be found in countervailing circumstances. In the Applicant’s case, however, the Tribunal did not need to investigate the existence of such countervailing circumstances, as it found it evident from the file that he had agreed to transfer to Geneva “on the promise of a new, different appointment upon the expiration of his existing contract”. The Tribunal noted that it found the Applicant’s case “peculiar”, as he simultaneously protested “both the non-renewal of his ALD and the rescission of the express offer of a GTA post . . .
options [which] were mutually exclusive”. In sum, the Tribunal agreed with the JAB that the Applicant had implicitly agreed to the non-renewal of his ALD.

Likewise, the Tribunal agreed with the JAB that the Applicant did enjoy “a legitimate expectation of continued employment”, by virtue of the Administration’s express promise of a GTA position. The Tribunal remarked upon the fact that this promise was unusually well-documented and that it was clear that there was a meeting of the minds of all parties concerned. The Tribunal considered that the most likely reason for the Administration’s decision to renge upon its express promise was related to the initial findings or approach taken during the OIOS investigation, a hypothesis more persuasive than a sudden, unexpected lack of funding, especially as the Respondent did not substantiate his allegation regarding the unavailability of funds with any evidence at all. It considered such action on the part of the Administration to be clearly improper, denying the staff member of his rights of due process and effectively imposing a disguised disciplinary sanction upon him. In view of the circumstances of the case, the Tribunal determined that a larger award of compensation than that recommended by the JAB was warranted, and awarded the Applicant an additional four months’ net base salary.

With respect to the Applicant’s claims that he was a victim of harassment and discrimination, the Tribunal recalled its consistent jurisprudence that the person making such allegations bears the burden of proving his case, and held that the Applicant had not succeeded in discharging this burden. The Tribunal also rejected the Applicant’s pleas to “establish the personal liability and individual accountability” and to “consider disciplinary process” against OHCHR staff members, as well as to “create an investigative panel . . . to determine the professional and personal accountability and individual liability” of the OIOS investigators involved in the case. The Tribunal recalled that such action was the privilege of the Organization and that the Applicant had no legal right to have such action initiated. Moreover, it held that the Applicant’s injury was imputed to the Organization, which is responsible for the actions taken by individual staff members, and that the Judgement of the Tribunal had provided him with sufficient satisfaction.

3. Judgement No. 1236 (22 July 2005): Applicant v. the Secretary-General of the International Maritime Organization (IMO)\(^5\)

Withdrawal of request for early retirement—Creation of legitimate expectation—Failure of IMO to act in good faith—Relevant date of receipt of communications—Discrimination and unfair treatment

The Applicant entered the service of IMO at the P-3 level as a Translator in the Spanish Translation Section, Conference Division, on 14 April 1986. His contract was subsequently extended and he was granted a permanent appointment. At the time of the events which gave rise to his Application, he held the P-4 position of Senior Translator/Reviser.

On 4 May 2001, the Applicant gave notice to the Organization, indicating that he would like to take early retirement with effect from 1 September. On 9 May, the Personnel Section confirmed that separation procedures had been initiated and that his last day in office would be 31 August. On 30 May, however, the Applicant responded that his request

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\(^5\) Julio Barboza, President; Spyridon Flogaitis, Vice-President; and Jacqueline R. Scott, Member.
had been motivated by his desire to relocate to Spain with his daughters, which was conditional upon his receipt of judicial approval to take the children out of English jurisdiction. He noted that, if he did not receive such approval, he would have to consider staying longer in London and would “request to postpone the date of [his] separation from service to 31 December 2001”, his normal date of retirement. On 5 July, the Director, Conference Division, telephoned the Applicant asking him to indicate his decision. On 6 July, the Applicant wrote to the Personnel Section, requesting that his retirement date be 31 December 2001 but, on 19 July, he was informed that his separation date had been confirmed to be 31 August.

On 20 July 2001, the Applicant requested review of IMO’s refusal to permit him to rescind his request for early retirement. On 30 August, he lodged an appeal with the IMO Joint Appeals Board (JAB). In its report, the JAB concluded that, in view of the fact that his 30 May memorandum did not receive a response, the Administration’s telephone call of 5 July could be considered a recognition that he was still entitled to choose which date he wished to retire. However, the JAB found that the lack of communication between 30 May and 6 July fell short of expectation and both parties should have sought clarification, and concluded that, taking into account the respective responsibilities of the Applicant and the Personnel Section, and given the facts presented, it could not support the Applicant’s appeal. On 19 July 2002, the Secretary-General of IMO transmitted a copy of the report to the Applicant and informed him that he agreed with the JAB’s conclusion and had decided to accept its unanimous recommendation. On 31 October 2003, the Applicant filed his Application with the Tribunal.

In its consideration of the case, the Tribunal took note of the Applicant’s claim that staff members in similar situations had been dealt with more benevolently by the Administration. The Respondent had attempted to distinguish those cases from that of the Applicant on the basis that “the separation process and consequential measures taken by the Administration affecting other members of staff had not yet started”. The Tribunal found that the Respondent had proven neither the veracity of this statement with respect to the other cases, nor that any measures taken in the Applicant’s case were irreversible. It held that, if the Administration had intended to adopt a more rigorous position regarding the Applicant’s case, in apparent contrast with others, it should have immediately responded to his 30 May memorandum, indicating that it was—or would soon be—too late to halt his early retirement. Moreover, the Tribunal found that the 5 July telephone call supported the conclusion that there was an apparent understanding among staff members that IMO exercised a flexible approach towards the withdrawal of requests for early retirement. Finally, the Tribunal was concerned by the fact that the Applicant’s letter of 6 July did not receive an immediate response and was apparently not forwarded to the necessary decision-makers for some days. The Tribunal took the opportunity to recall that, as a general principle, it has decided that the relevant date for receipt is the date of first reception of the communication by the Organization, rather than the date upon which the decision-making party or specific unit may open the letter.

In conclusion, the Tribunal distinguished the Applicant’s case from the more general situation addressed in Judgement No. 990, Abu Sirdaneh (2000), in which it held that as a “notice period is in favour of the Agency”, it did not accommodate “a unilateral right to withdraw a resignation at any time within the notice period”. In view of the specific circumstances of the Applicant’s case, the Tribunal held that IMO had proceeded in such a
manner as to give him a legitimate expectation that he could withdraw his request for early retirement and that it failed to act in good faith towards him. Accordingly, the Tribunal awarded the Applicant three months’ net base salary as compensation for the unfair and discriminatory way in which he was treated.

4. Judgement No. 1239 (22 July 2005): Applicant v. the Secretary-General of the United Nations

Launch and withdrawal of a procedure for termination of permanent appointment for unsatisfactory performance—Abolition of post on the basis of cost reduction exercise—Applicant’s rights violated by failure to finalize the procedure for termination of appointment

The Applicant entered the service of the United Nations Development Programme (UNDP) in Nairobi as an Accounts Clerk at the GS-6 level on 1 October 1981. Her contract was subsequently extended and, effective 1 April 1986, she received a permanent appointment.

Between 1994 and 1999, the Applicant’s performance evaluations deteriorated. On several occasions, her supervisor’s ratings, which ranged from “2” to “3”, were downgraded by the UNDP Management Review Group. On 31 December 1999, the UNDP Resident Representative informed her that he intended to propose termination of her permanent appointment for unsatisfactory service. A Joint Review Board (JRB) was constituted to consider her case but, on 25 May 2001, the Chairperson of the JRB advised UNDP that the Board considered the matter to be one of attitude or behavioural issues rather than professional under-performance, and suggested that an alternative to full JRB proceedings be pursued. Subsequently, the Senior Legal Adviser, Office of Legal and Procurement Services, UNDP, recommended that the JRB process be completed in accordance with the Personnel Manual. However, no further action was taken in this regard.

In the interim, on 29 January 2001, the Applicant was notified that UNDP intended to abolish the post she encumbered, under a Country Office cost reduction exercise. On 15 June, she was advised that her appointment would be terminated within three months but that she was expected to submit her name for any available and suitable posts and that UNDP would assist in identifying possible opportunities. On 5 July, the Applicant requested administrative review of the proposal to terminate her permanent appointment for unsatisfactory service and the decision to terminate her appointment on the basis of the cost reduction exercise.

On 13 September 2001, the Applicant was notified that her permanent appointment would be terminated on 30 September under the auspices of the cost reduction exercise and that, as the efforts made to terminate her appointment for unsatisfactory service had thus been overtaken, UNDP was considering withdrawing its recommendation for such termination.

On 16 November 2001, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In its report of 21 July 2003, the JAB found that the cost reduction exercise “was undertaken in a fully transparent manner with the full participation of the Staff Union”

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6 Spyridon Flogaitis, Vice-President, presiding; and Brigitte Stern and Goh Joon Seng, Members.
and there was no evidence that the Applicant “was treated differently from the other eleven staff members whose contracts were terminated”. Moreover, the JAB found that the actions of UNDP had not violated the Applicant’s rights under staff rule 109.1 (c) (i). However, the panel felt that the Applicant’s rights had been seriously violated by the Respondent’s failures with respect to the JRB proceedings which it considered should have been finalized expeditiously. Accordingly, the JAB recommended that she be paid compensation in the amount of nine months’ net base salary. On 10 September, the Applicant was informed that the Secretary-General had accepted the reasoning and conclusion of JAB, and had decided to pay her the recommended compensation. On 26 November, the Applicant filed her Application with the Tribunal.

In its consideration of the case, the Tribunal established that the Applicant had two principal claims: first, that UNDP had manipulated the cost reduction exercise in order to “get rid of her” after its attempt to do so on the basis of unsatisfactory performance had failed; and, second, that the decision not to conclude the JRB review violated her rights and left a “black cloud” hanging over her head affecting her future employment.

The Tribunal held that the Applicant had not provided sufficient evidence to support her claim that the decision to terminate her appointment for abolition of post was motivated by prejudice, discrimination or improper motive, and recalled that she bore the burden of proving such allegations. Moreover, the Tribunal was not persuaded that the cost reduction exercise itself was motivated by improper or collateral motives, noting that the Applicant was one of a number of affected staff members.

Nonetheless, the Tribunal took note of the Senior Legal Adviser’s assessment of the situation with respect to the JRB proceedings and agreed with the JAB that, in failing to finalize the JRB review, UNDP had violated the Applicant’s rights. The Tribunal held that the Applicant had received sufficient compensation for this violation but ordered that the adverse reports placed before the JRB be expunged from her personnel files. The Tribunal rejected all remaining pleas.

5. Judgement No. 1242 (22 July 2005): Applicant v. the Secretary-General of the United Nations

Summary dismissal—Investigation of abuse of power and sexual harassment allegations during an investigation of procurement fraud—Rights of due process in investigations and disciplinary proceedings—Right to be informed of charges—Right to be involved in proceedings—Right to test the credibility of incriminating evidence—UNDP/ADM/97/17 of 12 March 1997—UNDP/ADM/93/26 of 18 May 1993

The Applicant Mwantuke entered the service of the United Nations Development Programme/World Food Programme (UNDP/WFP) as an Accounts Clerk on 1 April 1995. At the time of the events which gave rise to his Application, he held the G-4 level position of Finance Clerk, WFP Tanzania Country Office in Dar es Salaam. The Applicant Mkini entered the service of UNDP/WFP as a Clerk/Typist on 2 May 1983. At the time of the

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7 Kevin Haugh, Vice-President, presiding; and Brigitte Stern and Dayendra Sena Wijewardane, Members.
events which gave rise to his Application, he held a permanent contract and occupied the G-6 level position of Finance Examiner in the same Country Office.

In February 1999, a preliminary investigation undertaken by the Office of the Inspector and Investigations (OEDI), WFP, uncovered evidence of procurement fraud and allegations of sexual harassment by the Applicants. In April, a second investigation undertaken by the Inspector General of WFP revealed additional allegations of abuse of power. By letters dated 23 and 24 February 1999, the Applicants were informed that they should “stay away from the office premises until further notice”. On 27 May 1999, OEDI issued a report entitled “Investigation of Allegations of Procurement Fraud, Sexual Harassment and Abuse of Power—Country Office Tanzania” which set out details of the procurement fraud in which the Applicants were implicated and cited the owner of a private company as having admitted his role in bribing the Applicants. In addition, it concluded that a number of female employees, the identity of whom was not revealed, had been sexually harassed by the Applicants and that the Applicants had abused their power in relation to their colleagues. As a result, OEDI recommended that “appropriate action” be taken. On 18 June 1999, the Applicants were provided with a copy of the OEDI report and informed that it constituted prima facie evidence of serious misconduct and that they were summarily dismissed with immediate effect.

The Applicants subsequently requested that their cases be reviewed by a United Nations Development Programme/United Nations Population Fund/United Nations Office for Projects Services Disciplinary Committee. In separate reports, both dated 11 June 2002, the Disciplinary Committee upheld the findings of procurement fraud and abuse of power on the basis that the record contained “sufficient corroborative evidence”, and found that the allegations of sexual harassment were serious enough to warrant consideration within the totality of the evidence which the Administration had to consider in summarily dismissing the Applicants. It noted that even though the allegations of sexual harassment were not investigated according to the sexual harassment policy, in view of the fact that the allegations came up during the investigation of the procurement fraud, this did not amount to a violation of due process. The Disciplinary Committee agreed with Counsel for the Administration that the Administration has discretion to summarily dismiss a staff member without bringing formal charges. Accordingly, it recommended that the decisions to summarily dismiss the Applicants be maintained. On 11 July 2002, the Applicants were provided with the Disciplinary Committee’s reports and informed that the Officer-in-Charge of UNDP had decided to accept its recommendations and to take no further action on their appeals. On 27 January 2004, the Applicants filed their respective Applications with the Tribunal.

In its consideration of the cases, the Tribunal determined that the Applications were sufficiently related as to merit joinder and thus proceeded to consider both cases in one judgement. It did not address the substance of the allegations against the Applicants but focused its attention on the rights of due process in investigations and disciplinary proceedings. It recalled that much of its jurisprudence has been devoted to ensuring that what is generally termed as due process is safeguarded in respect of staff at all levels and locations, noting that

“[c]oncern for, and principles of, due process as a basic requirement is reflected in every system of law and constitutes a theme which runs through the whole of the United Nations system from General Assembly resolutions, Declarations and Covenants at the
highest level, through the Staff Regulations and Rules which set out the standards to be observed in an international civil service, to the more particular and focused policy statements and administrative issuances which lay down the procedures to be observed within individual organizations”.

The Tribunal reviewed the relevant provisions of UNDP/ADM/97/17, of 12 March 1997, entitled “Accountability, Disciplinary Measures and Procedures”, which contains, inter alia, an outline of the basic requirements of due process to be afforded to a staff member who is the subject of allegations of unsatisfactory conduct. It found that, from the earliest stages, the Applicants’ rights under this Circular were violated as it is required that a staff member “shall be informed of the reason for [his] suspension”, but the Applicants were given no information whatsoever at the time they were suspended or the reasons why, even though the preliminary investigation was well under way.

Moreover, whilst UNDP/ADM/97/17 distinguishes investigations which are administrative in nature from those which are disciplinary, providing for due process only in the latter, the Tribunal found it clear that once a particular staff member or staff members become identifiable, disciplinary investigations should be initiated by a formal letter setting out the specific allegation or allegations and the staff involved has to be accorded necessary due process protections. Paragraph 2.2 provides that:

“All procedures and actions relating to investigation must respect the rights and interest of the Organization and potential victims, as well as of any staff member subject to or implicated by an allegation of misconduct. Allegations, investigative activities and all documents relating to the action shall be handled in a confidential manner. If an allegation of misconduct is made, an affected staff member shall be notified in writing of all allegations and of his/her right to respond, provided with copies of all documentary evidence of the alleged misconduct and advised of his/her right to the advice of another staff member or retired staff member as counsel to assist in preparing his or her responses.”

Holding that these basic requirements of due process apply to all investigations of a disciplinary nature, the Tribunal concluded that the Applicants had not been afforded such protection.

With respect to witness statements, the Tribunal remarked that whilst the report of the first, preliminary investigation did not form part of the record, it was clear that the second investigation report had relied largely upon the testimony of several individuals. The Tribunal noted that when the Applicants were interviewed by the investigators, it appeared they had not been provided with written notification of the charges against them let alone any specificity as to detail said to be connected with these charges or with any of the evidence alleged to implicate them and that there was no evidence on record that, prior to their dismissal, they were given any meaningful opportunity to present their cases or to question the credibility of the evidence that had been collected. The Tribunal held that the failure to provide an opportunity for the Applicants to be meaningfully involved, and to participate, in these proceedings resulted in a fundamental defect which must vitiate the decision of summary dismissal based thereon. Moreover, this fundamental unfairness was not capable of being rectified by the Disciplinary Committee which was an exercise merely of reviewing the record of the earlier investigation so that the opportunity which had been denied to the Applicants was never made good. The Tribunal also registered other criticisms of the Disciplinary Committee review: delay in the proceedings; it was held in New York with neither Applicant present; and it made findings which were essentially ones of
credibility when the Applicants had never enjoyed a proper opportunity of putting their case forward.

With respect to evidence provided by the witnesses, the Tribunal pointed out that as witness statements were not kept, the record merely reflected the investigators’ accounts of such testimony. It rejected the Respondent’s contention that witnesses’ identities were withheld out of concern for their safety, finding that the circumstances did not justify the exceptional waiver of such a fundamental requirement as to be given the chance to test the credibility of incriminating evidence.

Finally, the Tribunal took note of the fact that the Applicants’ cases were not referred to the Grievance Panel on Sexual Harassment in accordance with the terms of UNDP/ADM/93/26 of 18 May 1993.

Having clarified that it was not in a position to consider the merits of the serious allegations made against the Applicants but had proceeded solely on the inadequacy of the procedures which had been adopted, the Tribunal ordered the rescission of the decisions to summarily dismiss the Applicants, awarding, in the alternative, compensation in the event the Secretary-General would decide to compensate each Applicant without taking further action, of one year’s net base salary.

6. Judgement No. 1244 (22 July 2005): Applicant v. the Secretary-General of the United Nations*

Disciplinary measure for improper tax reimbursement—Discrepancy between findings of negligence by the Joint Disciplinary Committee (JDC) and findings of misconduct by the Secretary-General—Serious misconduct within the meaning of staff rule 110.1—Discretion of the Secretary-General in disciplinary matters—Abuse of discretion—Conclusions not supported by evidence—Proportionality between the disciplinary measure and the offence

The Applicant entered the service of the Organization as a Messenger, Mail Operations Section, at the G-1 level on 20 September 1991. His contract was subsequently extended. At the time of the events which gave rise to his Application, he held the TC-2 level position of Mover.

For the tax years 1996 to 1998, the Applicant, who was required to pay United States income tax, claimed reimbursement from the Organization and submitted to the Income Tax Unit copies of tax returns which made use of the standard deduction. On the returns filed with the United States Internal Revenue Service (IRS), however, he itemized his deductions, thereby decreasing his overall tax liability. For the tax year 1999, he submitted the same returns to the Income Tax Unit and to the IRS but failed to report the fact that the IRS subsequently adjusted the return, reducing his tax liability. The Applicant received refunds for each of these tax years, totalling US$ 10,132, but did not notify the Income Tax Unit accordingly. Upon enquiry, it became apparent that the discrepancies had occurred after the Applicant bought a house as he had been advised by his accountant that the Organization was not entitled to receive the benefit of the itemized deductions he could claim for mortgage interest and real estate taxes.

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* Julio Barboza, President; and Jacqueline R. Scott and Dayendra Sena Wijewardane, Members.
On 27 July 2001, the matter was referred to the *ad hoc* Joint Disciplinary Committee on Tax Cases. In its report of 20 December, the JDC concluded that the Applicant and his accountant lacked understanding of the United States tax law and of the United Nations’ tax reimbursement system, and that the Applicant had never intentionally “double filed” his tax returns for the purpose of defrauding the Organization. Nonetheless, the JDC noted that he had a personal, non-transferable responsibility to comply with the provisions governing tax reimbursement by the United Nations in addition to an obligation to comply with certifications and undertakings made by him in seeking reimbursement, and that he was responsible for choosing and relying upon the advice of others, and for the negligent manner in which he handled his claims for tax reimbursement. Accordingly, the JDC recommended that the Applicant be fined US$ 500 and issued a one-year written censure for his lack of due care in carrying out his responsibilities in filing tax reimbursement claims for the years 1996 to 1999.

On 26 March 2002, the Applicant was informed that the Secretary-General did not agree with the finding of the JDC that he had not intended to defraud the Organization and found his non-compliance with his obligations to be “inexcusable”. The Secretary-General, having concluded that the Applicant’s conduct fell short of the standard of conduct expected of an international civil servant and amounted to serious misconduct within the meaning of staff rule 110.1, warranting disciplinary action, had decided to impose the disciplinary measure of demotion by one grade with no possibility for promotion. On 30 January 2004, the Applicant filed his Application with the Tribunal.

In its consideration of the case, the Tribunal recalled that it has consistently upheld the Secretary-General’s broad discretion in disciplinary matters; specifically, in determining what actions constitute serious misconduct and what attendant disciplinary measures may be imposed, but that the exercise of such discretion is subject to review by the Tribunal based upon the unique facts and circumstances of each particular case.

In the Applicant’s case, the Tribunal found that the JDC had thoroughly investigated the matter and that its findings of fact—including its finding that the Applicant did not have the intent to defraud but that he was negligent in exercising due care—were borne out by the evidence. As a result, the Tribunal found the Respondent’s disagreement with the JDC on this matter “especially perplexing”, noting that this JDC was a specialized body whose sole purpose was to adjudicate tax cases. The Tribunal concluded that the fact of intent, as found by the Respondent, was not reasonably justified or supported by the evidence and that, therefore, his characterization of the Applicant’s conduct as serious misconduct was legally incorrect and amounted to abuse of his discretion.

The Tribunal agreed with the JDC that the Applicant had a personal and non-transferable responsibility with respect to the filing of his taxes and the certifications relating thereto, but held that demotion without the possibility of promotion was disproportionate to the Applicant’s offence and that the imposition of such an extreme disciplinary measure amounted to further abuse of the Respondent’s discretion. In this regard, the Tribunal found that the Applicant’s unconditional agreement to reimburse the Organization, without availing himself of the tax amnesty programme, supported the conclusion that he had been genuinely unaware of his wrongdoing.

Having found the decision of the Respondent to demote the Applicant with no possibility of promotion disproportionate, the Tribunal specified that it took the view and
expected that the Applicant should be put back in a position to continue with his career with reasonable prospects as to his future and made its order on that basis. Accordingly, it ordered the rescission of the decision of the Secretary-General to demote the Applicant with no possibility of promotion, fixing the amount of compensation payable, in the event the Secretary-General would decide that the Applicant should be compensated without further action being taken in his case, at two years’ net base salary at the rate in effect at the date of Judgement.

7. Judgement No. 1246 (22 July 2005): Applicant v. the Secretary-General of the United Nations

**Rights of due process in investigations and disciplinary proceedings**—**Requirement of written notification of all allegations of misconduct and documentary evidence**—**Right to counsel**—**Administrative investigation different from disciplinary investigation**—**Administrative investigation when no specific allegation of misconduct is reported or staff member is identified**—**General Assembly resolution 44/218B of 29 July 1994—undp/adm/97/17**

The Applicant, who had served with the United Nations for 15 years, transferred to the United Nation Population Fund (UNFPA) on a one-year fixed-term appointment at the P-5 level as the UNFPA Representative of Uzbekistan and concurrent Country Director for the five Kattuk countries on 1 March 1999. His fixed-term contract with UNFPA was subsequently renewed.

On 10 October 2000, four female staff members signed a note for the file in which they alleged that the Applicant had acted inappropriately at a party held during an official trip to Kazakhstan in August 1999.

In December 2001, an informal panel was sent to Uzbekistan to investigate an alleged theft from the office safe. When the panel produced its report, an attached “Addendum” thereto referred to “a widespread atmosphere of intimidation”, possible sexual harassment and open conflict. At his request, the Applicant was provided with a copy of the report but he was not given a copy of the Addendum.

On 5 June 2002, the Applicant was summoned to New York to discuss the content of the Addendum. He was offered an agreed separation package which he declined. On 21 June, he was informed that he was being suspended with full pay pending an investigation into allegations of sexual and other harassment and insubordination. On 22 July, he was advised that he had 48 hours to leave Uzbekistan.

In September 2002, a fact-finding team established to investigate the matter travelled to Tashkent and then Paris, where the Applicant was located. The team later alleged that he had refused to cooperate; the Applicant responded that his rights of due process had not been respected. In its report, the team concluded that the Applicant had

“created an intimidating, hostile or offensive work environment . . . ; that this behaviour both in and out of the office was completely inappropriate in a professional environment, constituted an abuse of authority, and tended to bring the Organization into disrepute,

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9 Spyridon Flogaitis, Vice-President, presiding; and Jacqueline R. Scott and Dayendra Sena Wijewardane, Members.
contrary to the requirements of the Staff Regulations and the United Nations Standards of Conduct for the International Civil Service”.

The Applicant was provided with the report on 26 November.

On 10 February 2003, the Applicant was charged with four counts of misconduct: harassment, including sexual harassment, of three female colleagues; creation of a hostile work environment; conduct unbecoming a senior international official; and insubordination. On 22 April, the case was referred to the United Nations Development Programme/United Nations Population Fund/United Nations Office for Projects Services Disciplinary Committee as a matter of serious misconduct and, on 9 June, the Applicant was so advised. In its report of 24 October, the Disciplinary Committee concluded that the first three charges were well founded but that the charge of insubordination was not. It recommended that the Applicant be separated from service in accordance with staff rule 110.3 (vii), without notice or compensation in lieu thereof. On 3 November, the Applicant was informed that the Administrator of UNDP considered his “actions and attitudes” to constitute misconduct and that he had decided to accept the Disciplinary Committee’s recommendation and to separate the Applicant accordingly. On 28 January 2004, the Applicant filed his Application with the Tribunal.

In its consideration of the case, the Tribunal did not address the substance of the allegations against the Applicant, but focused its attention on rights of due process in investigations and disciplinary proceedings. Recalling that it has repeatedly demonstrated its concern about the importance of procedure, due process and fairness to all, the Tribunal reviewed the relevant legal provisions and noted that General Assembly resolution 48/218 B of 29 July 1994 requests the Secretary-General, inter alia, “to ensure that procedures are . . . in place that protect . . . due process for all parties concerned and fairness during any investigations, [and] that falsely accused staff members are fully cleared”. In the Applicant’s case, this resolution was further developed by UNDP/ADM/97/17 of 12 March 1997, entitled “Accountability, Disciplinary Measures and Procedures”, paragraph 2.1.a of which states:

“The Organization shall investigate the circumstances of any losses, damage or apparent impropriety where no specific allegation of misconduct is reported or individual staff member(s) identified. . . . Such investigations are administrative in nature and distinguished from disciplinary investigations initiated by a formal letter of allegation and where staff participating in or otherwise involved shall be accorded necessary due process protections.”

Thereafter, paragraph 2.2 provides:

“All procedures and actions relating to investigation must respect the rights and interest of the Organization and potential victims as well as of any staff member subject to or implicated by an allegation of misconduct. . . . If an allegation of misconduct is made, an affected staff member shall be notified in writing of all allegations and of his/her right to respond, provided with copies of all documentary evidence of the alleged misconduct and advised of his/her right to the advice of another staff member or retired staff member as counsel to assist in preparing his or her responses.”

In the Applicant’s case, allegations regarding his behaviour were first expressed when the note for the file was signed in October 2000. The informal panel investigating a possible theft in late 2001 extended its investigation to other matters, including complaints about
the Applicant. Not only was he not advised of this turn of events, the Addendum detailing the panel’s findings and concern was kept from him. The Tribunal noted that it was only after the Applicant had refused an agreed separation package and had been required to leave Tashkent at very short notice that a formal investigation into his possible misconduct was initiated and that, even thenceforth, he was denied due process. The Tribunal considered it peculiar that the Applicant was pressed to leave office before the investigation was ever conducted and, more generally, found that the Applicant was deprived of his rights of due process.

In the opinion of the Tribunal, as soon as a person is identified, or reasonably concludes that he has been identified, as a possible wrongdoer in any investigation procedure and at any stage, he has the right to invoke due process with everything that this guarantees. It found that the Applicant was probably identified as a possible wrongdoer as early as October 2000 and was certainly identified as such upon the release of the Addendum to the investigation report. From that point onwards, he was entitled to rely upon the provisions of UNDP/ADM/97/17, which states that investigations are administrative only when no specific allegation of misconduct is reported or individual staff member identified. The Tribunal held that the Applicant’s rights of due process included being notified of allegations in writing; provided with all documentary evidence; and, permitted to have counsel. Recalling its jurisprudence that, in some cases, procedural irregularities at an early stage have an inevitable direct impact on the decisions in the following stages and may not be retroactively cured, the Tribunal held that the Applicant’s was such a case. Accordingly, it awarded him compensation of six months’ net base salary at the rate in effect at the time of his separation from service.

8. **Judgement No. 1249 (22 July 2005): Applicant v. the Secretary-General of the United Nations**

Terms and condition of employment—Tacit renewal of appointment of limited duration—Refusal of resignation simultaneous to a summary dismissal

The Applicant entered the service of the United Nations Interim Administration in Kosovo (UNMIK) as a Civil Affairs Officer at the P-3 level on 3 March 2000. His appointment of limited duration (ALD) was renewed until 31 October 2000 when, pending an investigation of alleged financial irregularities, he was suspended with pay. Thereafter, his appointment was extended on a monthly basis until 28 February 2001.

In a note to the file dated 4 March 2001, the Chief Civilian Personnel Officer, UNMIK, stated that, the previous day, he had been notified that the Secretary-General had decided to summarily dismiss the Applicant. According to the note, the Applicant was informed of this decision on 4 March. On 5 March, however, the Applicant hand-delivered a memorandum dated 1 March to the Chief Civilian Personnel Officer, which stated that his contract extension had expired on 28 February and he did not wish to accept further extensions. The Chief Civilian Personnel Officer indicated that he could not accept the Applicant’s resignation as he had been summarily dismissed. Thereafter, on 1 April, UNMIK reiterated that the Applicant was still a staff member when he was summarily dismissed on 4 March.

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10 Julio Barboza, President; and Jacqueline R. Scott and Goh Joon Seng, Members.
and that his emoluments would be paid through that date. The Applicant subsequently returned the Organization’s check for the period in dispute.

On 18 April 2001, the Applicant requested administrative review of the decision by UNMIK that his appointment had not expired on 28 February. On 25 June, he lodged an appeal with the Joint Appeals Board (JAB). In its report dated 10 December 2003, the JAB “recognized that in practice . . . signatures of letters of appointment do not usually coincide with the effective date of appointment . . . [and] noted that the [Applicant’s] letters of appointment were never signed on the actual date of appointment”. It agreed with the Respondent that the Applicant’s resignation was invalid as, whilst the memorandum was dated 1 March 2001, it was received on 5 March and in that intervening period the Applicant had been notified of his summary dismissal. The JAB questioned the timing of the Applicant’s resignation and noted that, in any event, he could not reasonably nor legally submit a resignation letter as that supposed the existence of an appointment, which he claimed not to have as of 28 February 2001. Accordingly, the JAB made no recommendation in support of the appeal. On 19 December 2003, the Applicant was informed that the Secretary-General accepted the finding and conclusion of the JAB. On 22 January 2004, he filed his Application with the Tribunal.

In its consideration of the case, the Tribunal acknowledged that the contractual period specified in the Applicant’s final letter of appointment ended on 28 February 2001 and that ALDs carry no expectations of renewal or conversion, and require no notice to be given by either party. However, whilst the Tribunal considered that “[t]he letter of appointment is the best proof of employment and its terms establish the obligations of each of the parties”, it recalled its jurisprudence that “the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances”. (Judgement No. 95, Sikand (1965)) The circumstances of the Applicant’s employment made it apparent that, for the duration of the investigation into his potential misconduct, he had been suspended with pay and given monthly contracts. The Tribunal was satisfied that “both the Applicant and the Administration considered at the date of expiration of the Applicant’s contract on 28 February that that contract was going to be renewed”, noting that his monthly letters of appointment were regularly signed after the date of expiration of the prior contract and at least one letter of appointment appeared never to have been signed.

Thus, the Tribunal was satisfied that the Applicant’s appointment was renewed on 28 February for another one-month period under the same terms, “and that such inference [could] be drawn, not only by the practice established between the Applicant and the Administration . . . , but also by the fact that both parties considered that action was required to terminate their relationship”—the Administration in summarily dismissing the Applicant and the Applicant in tendering his resignation.

Having determined that the Applicant was, indeed, employed at the time of his summary dismissal, the Tribunal found that the only reason he purported to refuse further employment beyond 28 February “was to avoid the consequences of the negative outcome of [the] investigation”. Accordingly, it rejected the Application in its entirety.

Acquired rights to a pension—Retroactivity of amendments to the United Nations Joint Staff Pension Fund (UNJSPF) regulations—Assistance in implementing family support court orders—Reasonable exercise of discretion regarding the amount deducted

The Applicant entered the service of the International Civil Aviation Organization (ICAO), thereby becoming a participant in the UNJSPF, on 1 November 1972. On 10 September 1999, he took early retirement from ICAO, electing to receive a partial lump-sum commutation of his pension and correspondingly reduced monthly pension benefits.

On 9 March 2001, UNJSPF was notified that the Applicant had not provided financial support to his ex-wife or their son since his divorce in 1987 and was supplied with a series of orders of support against the Applicant from the Québec Superior Court as well as a judgement holding him in contempt of court for non-payment thereof. On 4 May, the Applicant was asked to submit his comments as to why the Chief Executive Officer (CEO) of the Fund ought not to exercise his discretion pursuant to the amended article 45 of the UNJSPF Regulations in assisting in the implementation of the aforementioned court orders. The Applicant responded that as the current article 45 was not in existence when he retired, his acquired rights protected him against changes in the regulations which would adversely impact upon his pension. On 19 March 2002, the CEO advised him that, with effect from 1 May, 50 per cent of his monthly UNJSPF benefit would be remitted to his ex-wife, in order to satisfy his legal obligation to pay alimony and child support. On 1 April, the Deputy CEO reiterated these arrangements but repeated an earlier offer made by the Fund

“to consider sympathetically a . . . request . . . to change [the Applicant’s] UNJSPF benefit election from an early retirement benefit, with partial lump-sum commutation, into a one-time withdrawal settlement (that would sever [his] links to the UNJSPF and eliminate all other possible UNJSPF benefit entitlements”).

The Applicant did not accept this offer.

On 22 August 2002, the Applicant appealed the decision to remit 50 per cent of his monthly pension to his ex-wife to the Standing Committee of the UNJSPB. The Standing Committee considered the case and, in its report of 11 July 2003, upheld the CEO’s decision, finding that it represented reasonable exercise of his discretion under article 45. On 24 July, the Applicant was advised accordingly. On 18 December 2003, he filed his Application with the Tribunal.

In its consideration of the case, the Tribunal first noted that article 45 of the UNJSPF Regulations had been amended in 1998 to enable a portion of a participant’s pension benefit to be paid directly to a former spouse or otherwise satisfy court-ordered or court-approved family obligations, where the participant requested that such action be taken. Article 45 was then further amended in 2000, to provide that

11 Spyridon Flogaitis, Vice-President, presiding; and Brigitte Stern and Goh Joon Seng, Members.
“a. . . the Fund may, to satisfy a legal obligation on the part of a participant or former participant, arising from a marital or parental relationship and evidenced by an order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit payable by the Fund to such participant for life to one or more former spouses . . .

b. To be acted upon, the requirement under the court order must be consistent with the Regulations of the Fund, as determined by the [CEO] of the Fund to be beyond any reasonable doubt, and on the basis of the available evidence.”

The Tribunal rejected the Applicant’s contention that he had an acquired right to a life-long non-assignable pension, finding that his acquired right was to a pension and that article 45 did not take, or purport to take, away the pension rights that accrued to him on his retirement. It noted that the pension systems of public international organizations operate under statutory rules which may change at the discretion of the Administration and held that

“[i]nsofar as the right to the pension obtained by the retired staff member is not touched, the acquired right of the participant is not infringed, especially when the measures taken are in order to accommodate outstanding family obligations of the retired staff member and they constitute a fair portion of the pension which does not overly deplete his monthly pension”.

Accordingly, the Tribunal held that UNJSPF had not violated the Applicant’s acquired right to a monthly pension payment.

With respect to the Applicant’s secondary contention that a 50 per cent deduction was arbitrary and capricious and, thus, not a reasonable exercise of the discretion conferred upon the CEO of the Fund, the Tribunal remarked upon the Applicant’s contumacious disregard for the court orders regarding his obligation to pay maintenance going back to 1987 and held that, in view of such disregard as well as his decision to commute a portion of his entitlements upon retirement, it was not persuaded that the decision of the CEO to remit 50 per cent of his reduced monthly pension entitlement was vitiated by arbitrariness, caprice or abuse of discretion.

Accordingly, the Tribunal rejected the Application in its entirety.

10. Judgement No. 1268 (23 November 2005): Applicant v. the Secretary-General of the United Nations

Delays in administration of justice—Adequacy of compensation—Harm caused by the Administration to a staff member’s professional reputation—Issuance of Certificate of Service—Proportional compensation

The Applicant entered the service of the International Criminal Tribunal for the former Yugoslavia (ICTY) as Forensic Project Officer for Bosnia and Croatia at the P-4 level on 1 May 2000. Prior to his appointment, he served with the Royal Canadian Mounted Police, leading the Canadian Forensic Team which participated in the 1999 Kosovo Exhumation Program of ICTY.

12 Kevin Haugh, First Vice-President, presiding; Spyridon Flogaitis, Second Vice-President; and Dayendra Sena Wijewardane, Member.
On 8 February 2001, the Applicant’s supervisors signed his Performance Evaluation Review (PER) for the period May through December 2000, giving him an overall rating of a “very good performance”. Thereafter, his fixed-term appointment was extended until 1 November by letter of appointment dated 3 May. On 16 May, however, he was notified that his contract would be terminated thirty days hence. The next day, the Applicant requested administrative review of the decision to terminate his appointment. Thereafter, he requested suspension of action and, on 12 June, the Joint Appeals Board (JAB) recommended in his favour. As the Secretary-General accepted this recommendation and suspended implementation of the contested decision, the Applicant was paid his salary for the duration of his fixed-term appointment.

On 28 June 2001, the Acting Chief of Investigations, ICTY, produced a four-page memorandum purporting to provide a detailed account of the Applicant’s shortcomings. Notwithstanding his positive PER, he had allegedly been “discovered to be unreliable, not trustworthy, not a team player and . . . found to be causing problems for the scientific work of the team”. No documentation was provided either to substantiate these allegations or to indicate that the Applicant had been offered any guidance or the opportunity to correct his performance.

On 4 September 2001, the Applicant lodged an appeal on the merits of his case with the JAB. In an “Interim report” dated 14 May 2002, the JAB rejected the Respondent’s argument that because the administrative decision had been suspended, the Applicant suffered no injury, finding that it would be naive to believe that his professional reputation and opportunities for employment had not been harmed. It concluded that the Applicant had been denied due process in the decision to terminate his performance and stated that it

“could not exclude the possibility of a more reprehensible action by the ICTY Administration, that is, that the termination of [the Applicant’s] appointment [was] intended to silence [him] or sully his reputation as part of an attempt to cover up an embarrassing situation—or, perhaps, scandal—in the exhumation projects”.

JAB recommended that a Certificate of Service be issued to the Applicant; that he be paid three months’ net base salary for the denial of his rights of due process; that the case file and its report be sent to the Under-Secretary-General, Office for Internal Oversight Services (OIOS) for appropriate action; and, upon receipt of the OIOS report or six months from the date of signature of the report, whichever was earlier, the Panel be reconvened so that it could make further informed recommendations on a number of additional issues raised. On 2 December, the Under-Secretary-General for Management responded to the Secretary of the JAB:

“Since the Secretary-General takes decisions based on final reports by the JAB, no decision is taken at this time regarding the recommendations for the issuance of a Certificate of Service and the payment of compensation. . . . While the same considerations apply to the recommendation for an OIOS investigation, . . . it is further noted that the OIOS, under its mandate, ultimately decides for itself whether to investigate a matter, including in circumstances where the particular project has finished since November 2001 and the project personnel are no longer in the service of [ICTY]. The Board may wish to bear these issues in mind when considering its final report in this case.”

On 13 May 2003, the JAB issued its “Final report”, stating that it had no doubt that the treatment by ICTY of the Applicant was reprehensible and that the memorandum
of the Under-Secretary-General for Management, coming after six months and 16 days and repeated requests from the JAB Secretariat, was unacceptable. Accordingly, the JAB reiterated its recommendation that a Certificate of Service be issued to the Applicant and that he be paid three months’ net base salary as compensation, and further recommended that he be paid compensation equivalent to three years’ net base salary for the damage to his professional reputation which had been exacerbated by the delays in dealing with his case. On 21 July, the Applicant was informed that the Secretary-General had taken note of the conclusion made by JAB that his due process rights had been violated by the contested decision and had decided to accept its recommendation to pay him three months’ net base salary. However, he had not accepted the recommendation to pay three years’ compensation, but had decided to pay the Applicant an additional US$ 3,000 in compensation for the delays in his case. Finally, as a Certificate of Service was an “entitlement” under staff rule 109.11, and did not require legal action, the Applicant was informed that such a certificate would be issued upon his request. On 28 April 2004, the Applicant filed his Application with the Tribunal.

In its consideration of the case, the Tribunal observed the “general principle of administrative law [that] any administrative decision must be judged upon its legality on the basis of evidence and documentation pre-existing its issuance, and therefore, any ex post facto elements cannot offer a basis for legalizing the impugned act”.

Insofar as the Administration had accepted responsibility, at least in part, and had paid compensation for the violation of the Applicant’s rights of due process and the delays in his case, the Tribunal clarified that “[f]or the Administration to be liable to pay further compensation, that is for having damaged the Applicant’s reputation by ending his contract prematurely, it needs to be proven that the Applicant suffered damage, that this is the responsibility of the Administration, and what the value of the reparation of that damage would be”.

The Tribunal noted the Applicant’s contention that his reputation was harmed because the news of his separation from service immediately circulated world-wide, but found that he had failed to prove that the Administration did anything to divulge that information to the general public, or that it participated in any public debate about those facts. In this regard, the Tribunal accepted that his termination could have harmed the Applicant’s reputation and considered that it was most important for a Certificate of Service to be issued to the Applicant. In addition, the Tribunal ordered the Respondent to remove any adverse material inserted after the decision to terminate the Applicant’s appointment from his Official Status file.

Finally, the Tribunal held that the only truly harmful action taken by the Administration was in the delays in dealing with this case, as for a period of more than four years the Applicant’s scientific reputation was “imprisoned” in the late proceedings. It recalled that it had repeatedly condemned the Administration for delays causing damage to staff members fighting for justice but found no evidence that the Administration had deliberately harmed the interests of the Applicant. Thus, whilst it concluded that the compensation paid by the Administration for the delay in the Applicant’s case was insufficient because of its impact upon his professional reputation, it also concluded that the compensation proposed by the JAB was not proportionate. The Tribunal determined that US$ 10,000 was sufficient compensation and made its order accordingly.
11. Judgement No. 1273 (23 November 2005): Applicant v. the Secretary-General of the United Nations

Lack of the medical clearance required for a field mission—Supervisor’s negligence of his duties and responsibilities regarding the well-being and safety of staff members during a field mission—Illness attributable to the performance of official duties—Compensation for post traumatic stress disorder—Compensation for loss of seniority

The Applicant entered the service of the Organization as a Secretary at the G-3 level on 24 May 1993. Her appointment was subsequently extended and she was promoted to the G-4 level.

In May 1996, the Applicant and her supervisor went on mission to the Democratic People’s Republic of Korea (DPRK). Prior to her departure, she had scheduled an appointment with the Medical Service for the required medical clearance but had not attended the appointment, later claiming her supervisor had instructed her not to do so. Whilst in DPRK, the Applicant began to feel ill. She continued working and did not seek medical advice. On 25 May, she experienced two cardiac syncopes whilst in transit to Beijing. She was hospitalized in Beijing, but released on 27 May. The next day, she had a third cardiac syncope and was hospitalized in the Intensive Care Unit, following which a private doctor indicated she “should be returned with a medical escort to her home in New York for a full cardiological work-up”. The Applicant was released from the hospital on 14 June and, accompanied by a nurse, left for New York three days later.

On 13 January 1999, the Applicant wrote to the Office of Human Resources Management indicating that on her first day back in the office her supervisor had discharged her as his secretary, with the result that she had lost an opportunity for promotion.

On 15 January 1999, the Applicant submitted a claim to the Advisory Board on Compensation Claims (ABCC) for reimbursement of medical expenses resulting from the illness incurred during her 1996 mission. The Secretary of ABCC initially responded that the illness was not related to the performance of her duties on behalf of the United Nations. However, ABCC subsequently found that,

“although the illness was not medically attributable to the performance of official duties, the claim could be considered compensable for procedural reasons as the claimant had not received medical clearance prior to her departure on official business, as is the established procedure, and . . . may not have received the proper level of medical treatment immediately upon the onset of her illness”.

Accordingly, the ABCC recommended that her illness be recognized as attributable to the performance of official duties and that all medical expenses certified by the Medical Director as reasonable and directly related to the illness be reimbursed. It also recommended that the Applicant’s request for compensation for post traumatic stress disorder and permanent loss of function be reviewed by the Medical Service. These recommendations were approved on behalf of the Secretary-General on 13 January 2001.

In the interim, on 24 July 2000, the Applicant had requested administrative review of the decisions affecting her terms of employment, specifically the procedures for dealing

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13 Julio Barboza, President; Spyridon Flogaitis, Vice-President; and Dayendra Sena Wijewardane, Member.
with serious illness or injury whilst in the service of the Organization. On 23 October, she lodged an appeal with the Joint Appeals Board (JAB). In its report dated 26 December 2003, the JAB

“condemn[ed] in the strongest and harshest terms the behavior of [the Applicant’s supervisor] throughout this episode. From the day he instructed [her] not to take time off for medical clearance . . . , to work demands made by him during [her] illness in the DPRK, to his refusal to recognize the seriousness of her condition in Beijing, his decision to leave her behind under the somewhat remote care of the Resident Representative, a.i., his failure to follow-up with his department and the [United Nations] Medical Service of the need for evacuation, to his frigid reception when she finally returned to Headquarters, he displayed remarkable irresponsibility and insensitivity.”

Moreover, it found that there was a complete failure by the Organization, and its agents, to take proper and timely action in a life-threatening situation. The JAB recommended compensation of three years’ net base salary in addition to reimbursement of the Applicant’s medical and psychiatric expenses. However, the Panel rejected the Applicant’s contention that her removal from her position as secretary to her supervisor had resulted in a delayed promotion, dismissing it as “mere speculation”.

On 25 May 2004, the Applicant filed her Application with the Tribunal. On 28 July, she was informed that

“[w]hile the Secretary-General empathizes with your situation and recognizes that being ill in a hospital in a foreign country was undoubtedly frightening for you, he regrets not being able to agree with the JAB that the Organization acted negligently in its handling of the matter”,

thus he had decided not to accept the majority of the conclusions of the JAB or its recommendation in this regard. He agreed, however, that the Applicant should have been evacuated from China immediately and had decided to pay her three months’ net base salary as compensation. Insofar as the Applicant’s claim regarding her delayed promotion was concerned, the Secretary-General agreed with the JAB that this was mere speculation and had decided to take no further action in the matter.

In its consideration of the case, the Tribunal reviewed three distinct periods: the pre-mission and DPRK period; the time in Beijing; and, the Applicant’s return to New York. With respect to the first of these periods, the Tribunal found evidence that her supervisor had asked her to cancel her appointment with the Medical Service on one occasion but had not prevented her from rescheduling. It considered that her lack of medical clearance was a rather serious omission but one which did not support the Applicant’s legal case. During the early stages of her illness, the Tribunal found that the supervisor had given her too much work and had not paid much attention to her symptoms, but that these symptoms were similar to those of influenza and that the Applicant was relatively young and in apparent good health.

In contrast, however, the Tribunal took a dim view of the actions of the Applicant’s supervisor in Beijing, determining that he grossly neglected his duties and responsibilities regarding the well-being and safety of the staff members entrusted to his care during a field mission. The Tribunal noted that he had the authority to order her medical evacuation in accordance with circular PD/1/92, but that he chose not to do so, leaving her in a hospital where she could hardly communicate with the doctors and other hospital personnel due to language difficulties and where medical treatment was unreliable. In view
of the geographical and medical circumstances, the Tribunal found that his conduct was negligent, entitling the Applicant to compensation. Moreover, the Tribunal accepted that the vicissitudes suffered by the Applicant during this period were the cause of her later post traumatic symptoms, for which she was also entitled to compensation.

Insofar as the third period was concerned, the Tribunal recognized that the Applicant was treated with insensitivity by her supervisor and by most of the Organization upon her return to New York. It noted that when she was reassigned to an inferior post, she lost two years in seniority, and held that this entitled her to additional compensation.

In sum, the Tribunal awarded the Applicant compensation of two years’ net base salary and recommended expedition of her claims for compensation for post traumatic stress disorder and permanent loss of function.

12. Judgement No. 1276 (23 November 2005): Applicant et al v. the Secretary-General of the United Nations

Right to full and fair consideration for conversion to permanent appointment—Acquired right by staff members should not be denied due to the negligence of the Administration—Differentiation between competitive and qualifying recruitment examinations—General Assembly resolution 51/226 of 3 April 1997

The named Applicant and 18 other staff members filed a joint Application with the Tribunal. The Applicants were General Service staff members of the Chinese, French, Russian and Spanish Text Processing Units in the Department for General Assembly and Conference Management, who had been internationally recruited by the Organization between September 1987 and June 1997, following official examinations.

In April 1997, the General Assembly adopted resolution 51/226, paragraph 19 of which requested the Secretary-General

“to offer or to continue to offer probationary appointments to all staff members who have passed a competitive recruitment examination and to consider all such staff members for conversion to permanent appointment after completion of the period of probationary service”.

In a memorandum dated 13 April 1998, the Office of Human Resources Management (OHRM) confirmed that this text was “broad enough to encompass staff recruited through a competitive examination, both at the Professional and at the General Service level”.

Thereafter, the Examinations and Tests Section was asked to analyse the tests and examinations administered to General Service staff members in order to determine whether any qualified as “competitive recruitment examination[s]” and, on 18 November 1999, the Section indicated that only the examinations for accounting and statistical clerks and for editorial and language reference assistants would qualify.

On 7 April 2000, the Applicants requested administrative review of the decision not to consider them for conversion to permanent appointments. By a letter dated 14 June, OHRM responded that as the tests for text processors were “qualifying”, rather than “competitive”, the Applicants were not eligible for conversion to permanent appointments. On 19 and 27 July, the Applicants lodged an appeal with the Joint Appeals Board (JAB). In its

14 Julio Barboza, President; Spyridon Flogaitis, Vice-President; and Brigitte Stern, Member.
report dated 31 December 2003, the JAB concluded that five of the French language Applicants had undertaken competitive examinations, as the letters containing their results specified that the successful candidates were ranked based on merit, but that the other Applicants had apparently taken qualifying examinations. Finally, due to the absence of documentation for the Applicants from the Chinese and Russian text processing units, the JAB concluded that it could not find in their favour. Accordingly, it recommended that the five French language Applicants be favourably considered for permanent appointment.

On 28 May 2004, the Applicants filed their Application with the Tribunal. On 16 August, they were informed that the Secretary-General was unable to accept the conclusions and recommendation made by the JAB concerning the five French language Applicants on either legal or policy grounds, as the lack of documentation available for other Applicants was not a sufficient reason to discriminate between similarly situated staff and to accord them unequal treatment. Moreover, the Secretary-General considered that

"[t]he nature of the examinations undertaken by all [Applicants] was the same in each case, that is . . . to demonstrate that [they] could meet pre-established minimum requirements in the fields of typing, grammar and direct dictation. [Their] suitability as staff in the text processing units was measured against a standard of competence, as opposed to . . . being compared to other candidates and selected as being the best person for the position.”

In its consideration of the case, the Tribunal first determined that the General Assembly had not intended to limit the category of staff members eligible for conversion to permanent appointment to professional staff members who had successfully taken the National Competitive Examinations, as the resolution employed the broader term “competitive recruitment examination”. It remarked that the OHRM memorandum of 13 April 1998 indicated that the Administration also considered that the resolution encompassed staff members at both the General Service and Professional levels.

Thereafter, the Tribunal scrutinized whether the Applicants had been recruited through competitive examinations. It took note of the fact that the examinations in question were originally characterized as competitive by the Organization as evidenced by the various circulars issued to announce them, each of which bore the heading “competitive examination”, and found that this did not support the Administration’s subsequent characterization of the examinations as qualifying rather than competitive. Moreover, the Tribunal found that the terms were not incompatible as, whilst

“[a] minimum standard may be fixed in order for candidates to qualify and pass an exam[,] . . . those who qualify still may—and should—be ranked by merit. Likewise, if there are fewer vacancies than qualifying persons, some have to be eliminated, and comparison between exam results is inevitable. So, a supposedly ‘qualifying’ examination may be transformed, by force of circumstances, into a competitive one.”

Having reviewed the circulars in question, the Tribunal held that the examinations had, indeed, been competitive. It disagreed with the conclusion made by the JAB that only some of the examinations could be considered competitive, on the basis that the Administration had called for competitive examinations in the case of all Applicants, and

“[w]hether or not the . . . examinations were actually conducted in a competitive manner [was] not for the Tribunal to examine: they should have been so conducted by the Administration, and the Administration should have taken all necessary measures to assure competitiveness as the first criterion of selection of candidates.”
In consequence, the Tribunal held that it could not now permit the Administration to take refuge in the negligence of its own responsibility and deny the Applicants a right granted by the General Assembly resolution. Moreover, the Tribunal emphasised that it was the responsibility of the Administration to maintain the necessary records of examinations as the Administration must keep reliable records of the facts, which are important in the establishment of staff members’ rights, and held that the Applicants could not be penalised by the absence of such data.

The Tribunal, having found in favour of the Applicants, clarified that it could not order the Respondent to grant each Applicant a permanent appointment, as their right was to full and fair consideration for conversion of their appointment. Accordingly, the Tribunal ordered the Respondent to consider the Applicants for conversion to permanent appointment and awarded them compensation of US$ 7,000 each for the violation of their right to such consideration.


Re-absorption following secondment—Discretionary authority of the Secretary-General to recognise promotions granted during secondment—Burden of proof with regard to allegations of arbitrary decision—Duration of a Special Post Allowance (SPA)—Assumption of higher level functions—Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff Among the Organizations Applying the United Nations Common System of Salaries and allowances

The Applicant entered the service of the Organization in January 1963 as a Bilingual Clerk-Stenographer at the G-3 level. Her contract was subsequently extended and, on 1 January 1965, she was granted a permanent appointment.

Effective 1 January 1986, the Applicant, who was then serving at the P-2 level, was seconded to the United Nations Industrial Development Organization (UNIDO) for two years. Thereafter, her secondment was extended approximately every two years and UNIDO promoted her to the P-3 and P-4 levels. With each extension, the United Nations premised its agreement on UNIDO consenting to absorb the Applicant at the end of her secondment. Nevertheless, this absorption did not take place and no efforts were made to enforce the provision. The Applicant’s final period of secondment ended on 31 December 1998. She was re-absorbed by the United Nations at the P-3 level and was then placed against a P-4 position, where she served for the remainder of her career.

On 6 June 1999, the Applicant requested administrative review of the decision to re-absorb her at the P-3 level. On 3 August and on 23 September 1999, she lodged an appeal with the Joint Appeals Board (JAB). In its report dated 6 June 2002, the JAB held that, in accordance with the terms of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff Among the Organizations Applying the United Nations Common System of Salaries and Allowances, the decision to recognize the Applicant’s promotions at UNIDO fell within the discretionary authority of the Secretary-General.

15 Kevin Haugh, Vice-President, presiding; and Jacqueline R. Scott and Goh Joon Seng, Members.
16 CEB/2003/HLCM/CM/7.
As the Applicant had not alleged, nor had the Panel found, that the decision to reabsorb her at the P-3 level was tainted by prejudice or procedural defect, the JAB concluded that it could not recommend her placement at the P-4 level. It did, however, recommend that she be given favourable consideration for any P-4 level post for which she might apply. On 28 July 2003, the Applicant was informed that the Secretary-General accepted the reasoning behind, and the recommendation of the JAB and had agreed that she should be given favourable consideration for any P-4 post to which she might apply and be found qualified.

The Applicant retired on 31 December 2003. On 30 June 2004, she filed her Application with the Tribunal.

In its consideration of the case, the Tribunal relied upon the “unambiguous” provisions of paragraph 9 (3) of the Inter-Organization Agreement, which provides that:

“The releasing organization will be under no obligation to recognize any change of official status of the staff member which may occur in the receiving organization, except in calculating payments under paras. 18 (b) [compensation for service-incurred illness, injury or death] and 20 [health and group life insurance] . . .”

The Tribunal held that it was clear that the United Nations, as the releasing organization, was under no duty to recognize the Applicant’s promotion granted while in UNIDO, the receiving organization.

The Tribunal reviewed the Applicant’s allegation that the Secretary-General’s decision not to recognize her promotion was “arbitrary, tainted by prejudice and procedurally flawed”. It recalled its consistent jurisprudence that the burden of proof is upon the person making such allegations, and found that the Applicant had failed to discharge her burden in this regard. Accordingly, the Tribunal was satisfied that the Secretary-General was well within his discretion to recognize one promotion and not the other, having no obligation to recognize either. Indeed, it noted that he could have decided to re-absorb the Applicant at the P-2 level.

The Tribunal next considered the Applicant’s contention that the decision to re-absorb her at the P-3 level but place her against a P-4 post for the remainder of her career was improper. The Tribunal found that the decision to reabsorb her at the P-3 level was an independent event and a proper exercise of the Secretary-General’s discretion, and that the decision to place her against a blocked P-4 level post, the incumbent of which was on mission, came some months later. It recalled that

“it has previously recognized that staff members are often called upon to perform services ‘of a character and at a level superior to those for which they have been appointed’. (See Judgement No. 336, Maqueda Sanchez (1984).) This is true particularly in circumstances such as these, where there was a dearth of suitable positions for the Applicant upon her return.”

Finally, the Tribunal addressed the Applicant’s contention that the fact that she had received SPA for much of her tenure against the P-4 post and that she remained against that post until her retirement provided evidence that she was improperly classified and compensated and that the Secretary-General’s decisions were arbitrary, tainted by prejudice and procedurally flawed. The Tribunal disagreed, noting that whilst

“the assumption of higher level posts by staff members and the payments of SPA as compensation for doing so are intended to be a temporary arrangement, the temporary avail-
ability of the post against which the Applicant was placed necessitated this continuing arrangement”.

Indeed, the Applicant could not be placed permanently on the post, as the availability was only for as long as the incumbent remained on mission. Once again, the Tribunal found that the Applicant had not discharged the burden of proof she bore in substantiating her contention that the Secretary-General’s decision was flawed.

For the reasons set forth above, the Tribunal rejected the Application in its entirety.
B. Decisions of the Administrative Tribunal of the International Labour Organization


Entitlement to home leave—Internationally recruited staff—Home country and country of residence—Object of home leave is not to allow material benefit but to help maintaining links with home country—Possibility of home leave in a country other than the country of nationality—Consistency with staff regulations and rules

The Complainant was born in 1948 in the Federal Republic of Germany, the country whose nationality he has retained. He left the Federal Republic of Germany in 1951 and resided in various countries until he settled in Switzerland in 1963.

On 14 November 1994, the Complainant joined UPU under a short-term contract and was given a permanent appointment effective 1 April 1998. At the time he was recruited,

17 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: International Labour Organization, including the International Training Centre; World Health Organization, including the Pan American Health Organization; United Nations Educational, Scientific and Cultural Organization; International Telecommunication Union; World Meteorological Organization; Food and Agriculture Organization of the United Nations, including the World Food Programme; European Organization for Nuclear Research; World Trade Organization; International Atomic Energy Agency; World Intellectual Property Organization; European Organization for the Safety of Air Navigation (Eurocontrol); Universal Postal Union; European Southern Observatory; Intergovernmental Council of Copper Exporting Countries; European Free Trade Association; Inter-Parliamentary Union; European Molecular Biology Laboratory; World Tourism Organization; European Patent Organisation; African Training and Research Centre in Administration for Development; Intergovernmental Organisation for International Carriage by Rail; International Center for the Registration of Serials; International Office of Epizootics; United Nations Industrial Development Organization; International Criminal Police Organization (Interpol); International Fund for Agricultural Development; International Union for the Protection of New Varieties of Plants; Customs Cooperation Council; Court of Justice of the European Free Trade Association; Surveillance Authority of the European Free Trade Association; International Service for National Agricultural Research; International Organization for Migration; International Centre for Genetic Engineering and Biotechnology; Organisation for the Prohibition of Chemical Weapons; International Hydrographic Organization; Energy Charter Conference; International Federation of Red Cross and Red Crescent Societies; Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; European and Mediterranean Plant Protection Organization; International Plant Genetic Resources Institute; International Institute for Democracy and Electoral Assistance; International Criminal Court; International Olive Oil Council; Advisory Centre on WTO Law; African, Caribbean and Pacific Group of States; the Agency for International Trade Information and Cooperation (since March 2005); and the European Telecommunications Satellite Organization and the International Organization of Legal Metrology (since November 2005). 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. For more information about the Administrative Tribunal of the International Labour Organization and the full texts of its judgments, see http://www.ilo.org/public/english/tribunal/.

18 Michel Gentot, President; and Seydou Ba and Claude Rouiller, Judges.
he had been residing for more than thirty years in Switzerland, where he held a settlement permit of indefinite duration and where he still resided at the time of the Judgment. Upon his recruitment to UPU, the Complainant received a category D identity card, which is issued to international civil servants by the Swiss Federal Department of Foreign Affairs.

In 2002, the Complainant asked for his name to be added to the list of staff eligible for home leave. His request was accepted in office notice 15/2002 of 11 March 2002. Following an objection by the Director of Finance, his eligibility for home leave was reviewed and, in a letter of 21 June 2002, the Director General informed the Complainant that the addition of his name to the list “had been made by mistake and [was] not in compliance with article 4.4 of the Staff Regulations of the International Bureau of the UPU”. He explained that, since the Complainant was a resident in Switzerland at the time of his recruitment, he was considered as “locally recruited”. The Director General therefore rescinded the decision concerning the Complainant’s eligibility for home leave. Subsequent to a request by the Complainant that the decision be reconsidered, the Director General decided to undertake a detailed review of the rules and regulations concerned. However, on 3 April 2003, the Director General confirmed his decision to remove the Complainant’s name from the list and explained that although the Complainant was in fact considered as “internationally recruited”, he had not needed to become an expatriate in order to take up his duties at UPU in view of the fact that he was resident in Switzerland prior to his appointment and, thus, did not meet the conditions for eligibility for home leave.

On 1 May 2003, the Complainant filed an appeal with the Joint Appeals Committee, which agreed with the Director General’s conclusion and recommended in its report of 5 June 2003 that the appeal be rejected. On the basis of that recommendation, the Director General rejected the appeal in a letter of 10 June 2003, which constitutes the impugned decision. The Complainant filed his Complaint with the Tribunal on 5 September 2003.

In its consideration of the case, the Tribunal recalled that entitlement to home leave is governed by article 4.5 of the Staff Regulations of the International Bureau of UPU and by staff rule 105.3. Its scope has been set out in detail in Administrative Circular (PER) No. 12/Add.1 of 14 June 1993. It was observed that internationally recruited staff members are eligible for home leave provided, in particular, that while performing their official duties they continue to reside in a country other than that of which they are nationals. Home leave does not apply to staff members performing their official duties in their home country.

It was further recalled that the object of home leave is not primarily to make a monetary concession to staff members and is justified by the fact that it is to the advantage of international organizations that their staff members maintain links with their home country. This country is normally, but not necessarily, that of the staff member’s nationality; it could be the country with which he has the closest connection outside the country in which he is employed. Thus, the Director General, in exceptional circumstances, may authorize a staff member to take home leave in a country other than the country of his nationality, provided that the latter can show that he maintained his normal residence in that other country for a prolonged period preceding his appointment, that he continues to have close family or personal ties in that country and that his taking of home leave there
would not be inconsistent with staff regulation 5.3, which denies home leave to staff members whose home country is the country of their official duty station or who continue to reside in their home country.

While the Defendant acknowledged that the Complainant was considered as “internationally recruited”, it was of the view that he did not make Germany his “home” since, at the time of his recruitment, he had been settled in Switzerland for many years and had maintained only occasional ties with his family in Germany. By residing continuously in Switzerland, the Complainant had established his home in his country of residence, regardless of his nationality. Moreover, the term “normally” appearing in several provisions regarding the grant of home leave clearly allowed the possibility of exceptions. Finally, the Defendant asserted that it was “wrong to maintain . . . that the home leave country is defined solely on the basis of nationality”, since the concept of residence must also be taken into account.

The Complainant contended that this position was not in keeping with the provisions of the staff regulations and rules under which, according to him, all internationally recruited staff members who were not Swiss nationals were eligible for home leave, at least if they maintained links with the country of their nationality.

The Tribunal observed that the purpose of home leave is to enable staff members who, owing to their work, spend a number of years away from the country with which they have the closest personal or material ties to return there in order to maintain those connections. It thus considered regulation 5.3 self-explanatory. It noted that regulation 4.5 reflects the same reasoning, insofar as it provides that a staff member may lose entitlement to home leave if, following a change in his residential status, he is, in the opinion of the Director General, deemed to be a permanent resident of any country other than that of his nationality, provided that the Director General considers that the continuation of such entitlement would be contrary to the purposes for which the benefit was created.

In considering the Complaint, the Tribunal was not convinced that the Complainant’s ties to his country of nationality had been so uninterrupted and so close as to make him eligible for home leave. It noted that it is not sufficient for entitlement to home leave that internationally recruited staff members be serving in a country other than that of which they are nationals; they must also meet the other required conditions.

For the above reasons, the Tribunal dismissed the Complaint.


Contestation of non-selection for a position—Discretionary authority in promoting staff—Requirement of taking into account the criteria of internal candidacy, gender and geographic representation when selecting a candidate—Limited review of discretionary decisions—Duty of organization to provide its staff an efficient internal means of redress—Requirement to provide reasons for non-selection—United Nations General Assembly resolution 53/119 of 5 February 1999

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\(^{19}\) Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.
The Complainant, an Austrian national, joined IFAD in 1984 as Project Controller at the P-4 level. She was subsequently promoted to the post of Country Portfolio Manager at the P-5 level in 1991 and obtained a contract of indefinite duration. She retired in May 2004, at which time she held a post of Senior Portfolio Management Adviser at the P-5 level.

On 18 June 2000, the Complainant applied for the post of Director. On 15 September, the Complainant was informed that she had been short-listed for the post and would be invited for interviews. On 27 October, the Assistant President in charge of the Programme Management Department wrote a memorandum where he summarized the main qualifications of three of the applicants, including the Complainant, and concluded that he was refraining from making a recommendation at that stage and was seeking a decision from the Appointments and Promotions Board (APB). He also stated that:

“The [Programme Management Department Directors] as a team gave a marginal advantage in favour of [the Complainant]. However, when asked individually, each candidate was favoured by at least one Director. In my assessment, the candidates have quite different characteristics from each other and none is absolutely outstanding over the others.”

On 9 November 2000, the APB selected by consensus an external candidate for the post. The Complainant was informed of this decision on 17 January 2001 and, on 31 January, she requested a review of that decision. Having received no response, she appealed to the Joint Appeals Board (JAB) on 24 March 2001. Following some unsuccessful attempts at mediation, the reply to the appeal was not filed until 28 February 2002. On 8 April 2002, the JAB suspended its activities for almost a year, resuming them in February 2003.

On 14 July 2003, the JAB submitted its report in which it detected some irregularities in the selection procedures and suggested, without making a clear finding to that effect, that IFAD had acted in bad faith. The JAB recommended that IFAD recognize the Complainant as a fully qualified candidate for the post (but not that she be appointed to it); acknowledge that the Organization did not provide any written explanation as to why an external candidate was chosen; pay her damages in an amount equal to at least one year’s salary; and grant her an appointment at the D-1 level.

On 13 October 2003, the President of IFAD rejected the finding of the JAB concerning bad faith and accordingly refused to award her damages or other compensation. This was the impugned decision.

In response to the Complainant’s first plea regarding the lengthy appeals procedure, the Tribunal observed that while its jurisprudence permits a complainant to come directly to the Tribunal when the internal procedure takes too long, the fact that a complainant does not take advantage of this cannot be held against him or her. Likewise, whether the delay was due to the tardiness of IFAD or to the malfunctioning of the JAB was considered irrelevant in light of the Organization’s duty to provide to the members of its staff an efficient internal means of redress. Therefore, the Tribunal decided that the Complainant was entitled to damages.

With regard to the Complainant’s second plea, alleging that the selected candidate did not possess the educational qualifications set out in the vacancy announcement, the Tribunal held that it was well within the discretionary power of APB to recommend, and the President to appoint, a successful candidate whose academic qualifications were enough to qualify him in their judgment.
For matter of convenience, the Tribunal chose to consider the Complainant’s next two pleas together as they related to an alleged failure to give her preference as an internal candidate and as a female, referring to United Nations General Assembly resolution 53/119 of 5 February 1999. The Tribunal recalled that it is well settled that preferences such as those mentioned must be given effect to where the choice has to be made between candidates who are evenly matched. On the other hand, it noted that they have no role to play where there is a significant and relevant difference between the candidates. Referring to the information provided by the members of the APB regarding its selection discussion, the Tribunal disagreed with the Complainant’s claim that equality between the candidates was evidenced in the memorandum of 27 October 2000. The Tribunal further observed that, in addition to the criteria of gender and internal candidacy, the issue of equitable geographical distribution also had to be taken into account.

The Tribunal also stressed the discretionary nature of the impugned decision, thus subject to limited review. The Tribunal would only intervene if the decision had been taken without authority, or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence. It further held that it would exercise its power of review with special caution in such cases and would not replace the Organization’s assessment of the candidates with its own. In the circumstances, the Tribunal found that the Complainant had not shown that the selection was vitiated by an error of a type which would entitle its intervention.

As regard the Complainant’s contention that IFAD had not informed her of the reasons for rejecting her application, the Tribunal noted that this requirement is found in general terms in the Tribunal’s case law but much more specifically in the Organisation’s Human Resources Handbook. It further observed that the APB recommendation was silent on the matter and the evidence showed that, at best, the Complainant was given only partial and incomplete oral reasons for the failure to give her preference, long after the internal appeal proceedings had been exhausted and the Complaint to the Tribunal instituted. If reasons for a non-selection decision are to have any use at all they must be given in time for an unsuccessful candidate to decide what, if any, recourse should be sought. Hence, the Tribunal found the plea well founded.

For the above reasons, the Tribunal decided that IFAD should pay the Complainant €10,000 in moral damages for the inordinate delay in the internal appeal procedures and the failure to provide timely reasons behind the recommendation of the APB, and costs in the amount of €2,500, and that all other claims were dismissed.


Methods of investigation of alleged misconduct—Communications to third parties—Defamation—Presumption of innocence—Injury to a staff member’s dignity and reputation—Exhaustion of internal remedies—Construction of ambiguous or incomplete regulations and rules contra proferentem and in favour of the staff
This case is the seventh Complaint filed by the Complainant in a long series of judicial procedures between him and UPU in the context of an investigation for misconduct by the Complainant and his subsequent dismissal.\footnote{The presentation of the relevant facts may be found in Judgment No. 2364 delivered on 14 July 2004 concerning the Complainant’s fourth Complaint.}

Having noted irregularities in the expense accounts drawn up by the Complainant for his missions abroad between October 2000 and December 2001, UPU initiated disciplinary proceedings against him on 16 May 2002. The Director General ordered a further enquiry into the events after receiving a confidential report from the Disciplinary Committee on 6 September 2002. During the investigation, the Complainant repeatedly refused to produce documents concerning his mission. Therefore, in order to verify the exact dates of the missions, requests for information were sent confidentially to airlines and to the general management of national postal administrations, by mail or by fax, bearing the signature of the Director General, the Deputy Director General or the Director for Economic and Regulatory Affairs.

The five faxes sent to the airlines followed the same model, starting with an explanation of the reasons for the request (investigation of suspected systematic fraud) and, with one exception, mentioned the Complainant by name. In a fax sent subsequently to the Director General of a national postal administration, the Director General of UPU emphasised that the information requested was confidential and should be sent to him by fax marked “confidential” to his personal number.

On 31 October 2002, the Complainant, who had received copies of the faxes and other documents relating to the investigation, filed an appeal with the Director General complaining of the “defamatory statements” the faxes contained. He added that the statements constituted unacceptable behaviour for which he intended to seek compensation. On 10 December 2002, the Complainant complained to the Director General that he had received no reply to his appeal. He added that “according to the relevant provisions of the Statute of the International Labour Organization Administrative Tribunal, [he could] appeal directly to the Tribunal if the administration of the organisation fail[ed] to take a decision on any claim within sixty days”. Having received no reply, he filed his Complaint on 15 February 2003.

The Tribunal first considered UPU’s main plea that the Complaint was irreceivable on several grounds in that the Complainant had not complied with the statutory internal appeal procedure and had not exhausted the available means of redress, as required by article VII of the Statute of the Tribunal. UPU further held that the communications in dispute did not constitute decisions causing injury which, in themselves, are open to challenge since they were not binding on the Complainant. It also argued that the Complainant had unduly extended the scope of the claims submitted in his internal appeal.

The Tribunal observed that, in view of the material circumstances, the first two objections were the only ones that needed to be addressed. In doing so, the Tribunal held them unfounded.

First, the Tribunal observed that the internal appeal procedure is governed by articles 11.1 and 11.2 of the Staff Regulations of the International Bureau of the UPU and staff rules 111.1 to 111.3. According to these provisions, prior to appealing against an administrative
decision a staff member must address a letter to the Director General requesting that the administrative decision be reviewed. If the staff member wishes to make an appeal against the decision in reply by the Director General, he must submit an application to the Chairman of the Joint Appeals Committee (JAC) within one month of the date of receipt of that decision. If no reply has been received from the Director General within one month of the letter being sent, the staff member must, within the following month, submit his application to the Chairman of the JAC. By agreement with the Director General, the staff member may dispense with an opinion of the JAC and apply directly to the Tribunal. There is, however, no provision for an internal appeal in the absence of an administrative decision.

The Tribunal recalled that regulations or rules that are ambiguous or incomplete should be construed contra proferentem and in favour of the staff (Judgment No. 1755 (9 July 1998): Mr. Johannes Karl Wilhelm Goettgens v. the European Patent Organisation). It further held that this rule applied not only to the provisions that were directly applicable to the case, but also to the rules which designate those provisions. In the light of the above, the Tribunal found that the Complainant could not be blamed for believing that his internal appeal had been implicitly rejected and that he was entitled to have direct recourse to the Tribunal in conformity with article VII, paragraph 3, of the Statute of the Tribunal, since the Administration had failed to take a decision on his appeal within the sixty days time limit.

The Tribunal further observed that it did not need to consider the question of whether or not the disputed faxes were decisions causing injury, since the Complainant’s appeal was not in the main directed against the fact that the faxes had been sent. The chief objective of the appeal was rather to make good the injury which the content of the disputed faxes had allegedly caused him. The receivability of the Complaint could not be denied insofar as it related to that grievance and the Tribunal thus decided to consider whether the content of the faxes was such as to cause injury to the Complainant’s dignity and reputation.

The Tribunal recalled that any administrative or disciplinary body of an organisation which consults a third party to obtain information concerning the professional behaviour of one of its staff members must naturally avoid impairing the latter’s dignity and reputation. It must ensure that the presumption of his innocence is maintained, and if its action is such as to breach that presumption or the fundamental rights of the staff member, making that action confidential is of no avail.

The Tribunal found surprising how casually the disputed faxes were drafted and considered that the arguments put forward by the Defendant in its submissions in no way justified the action taken by its officials, whose manner of communicating with third parties was at best debatable. Nevertheless, it further observed that this did not mean that the Complaint should be allowed. The disputed wording had to be seen in the context of the faxes as a whole, which the sender could presume would be read with all the professional, objective care he might expect from the addressees, even though these were not the most senior managers of the companies and administrations to which they were sent. The wording was in fact within the limit which could not be exceeded by the Defendant without breaching the Complainant’s fundamental rights.
In view of the above, having found that the Complainant’s pleas were receivable but unfounded, it decided to dismiss the Complaint.


Decision of non-renewal of contract on ground of staff turnover policy—Judicial review of discretionary decisions—Improper motivation for non-renewal—Abuse of authority and want of good faith

The Complainant joined OPCW on 7 August 2000 as Head of the Budget and Finance Branch at the P-5 level under a three-year fixed-term contract. The present Complaint is a follow-up to the first Complaint addressed by the Tribunal in its Judgment No. 2324 delivered on 14 July 2004, in which the Tribunal ordered OPCW to pay the Complainant compensation for having placed her on special leave with pay under questionable circumstances.

The current Complaint challenges the decision not to renew the Complainant’s contract, which was said to be based on a staff turnover policy recommended by the Executive Council of OPCW in March 2003 and adopted by the Conference of the States Parties in April of that year, and which resulted in her separation from service on 13 November 2003.

The Tribunal examined part of the Complainant’s troubled employment history within OPCW, recalling the difficult and constantly deteriorating relationship between the Complainant and her supervisor, the Director of Administration. It recounted various communications between the Complainant and her supervisor relating to their mutual disagreements about methodologies used for financial calculations and substantive conclusions thereof, which included from both parties criticisms, and implicit insinuations by the Complainant of possible misconduct by the Director.

On 23 April 2003, the Complainant had a short meeting with the Director of Administration during which, according to her account, she was told that she was trying to ruin his reputation and that he would “make her life miserable, whatever be the cost”. The following day, she received a letter from the Director in which he stated that he would “not tolerate another insinuation [. . .] about alteration of figures in accounts or reports”.

At a meeting on 30 April 2003 with the Deputy Director-General, the Complainant indicated that she was prepared to accept a transfer to another post. On 15 May, the Complainant was informed by the Director of the Office of Internal Oversight that she was to be transferred to that office but that her contract would not be renewed in August. In the meantime, in a memorandum dated 13 May, the Director of Administration recommended that the Complainant’s contract not be renewed because of material and significant changes in the scope and responsibility of her post and because she had “not performed in a manner which [was] acceptable”.

On 19 May, the Complainant received a letter from the Acting Head of Human Resources informing her that, due to annual staff turnover requirements, her contract would not be extended, save for a limited period to ensure six months’ notice before separation. On 11 July 2003, she wrote to the Director-General, requesting him to review the decision not to renew her contract. In the event that he was unable to grant her request, she

\textsuperscript{22} Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.
asked for a waiver to submit a complaint directly to the Tribunal, without going through the Appeals Council. This request for a waiver was subsequently accorded. On 8 August, the Acting Head of Human Resources informed her that, having regard to the annual staff turnover requirement, her separation from service would take effect upon expiry of the sixth months’ period. On 21 August, the Complainant filed a Complaint with the Tribunal challenging the decision of 8 August 2003.

While the Complainant recognised that decisions not to renew a contract fall within the Director-General’s discretionary authority, she argued that the relevant decision was arbitrary and, as such, reviewable by the Tribunal. She also contended that the decision was tainted by an abuse of authority since it was made to satisfy the Director of Administration’s personal grudge against her. The Complainant further argued that there had been a breach of the obligation to protect her dignity as a staff member and not to cause her unnecessary hardship.

Despite the assertions by OPCW that the impugned decision had been made pursuant to the staff turnover policy and for no other reason, the Tribunal noted that the recommendation not to renew the contract made no reference whatsoever to this policy. Rather, the recommendation was based on what was said to be the changed responsibilities of the Complainant’s post, which would require it being advertised, and her unsatisfactory performance.

In its reply, OPCW asserted, on the one hand, that neither of the matters raised in the Director of Administration’s recommendation were taken into account in the decision not to renew the Complainant’s contract and, on the other hand, that, in reaching his decision, the Director-General took account of, amongst other things, her performance appraisal report. The Tribunal held that the apparent inconsistency would be explicable if a selection for the purpose of the turnover policy had to be made between staff members in the area in which the Complainant was employed. However, there was no suggestion that there had been any such selection, or any procedure of any kind, related to the staff turnover policy.

The Tribunal concluded that when the above matters were analysed in the context of the open and long-standing hostility between the Complainant and the Director of Administration, which was clearly made known to the Director-General, in the face of that hostility and in the absence of any relevant procedure or recommendation based on the staff turnover policy, the decision was taken to rid OPCW of the serious personal and professional conflict that existed between two senior members of the secretariat and to avoid the necessity of taking steps to resolve that conflict. Thus, the decision made under the cover of implementation of the staff turnover policy was considered to be both an abuse of authority and an act which demonstrated want of good faith.

In view of the above, the Tribunal decided that the Director-General’s decision of 8 August 2003 was to be set aside, that OPCW should pay the Complainant the amount of net salary that she would have received from 15 November 2003 until 6 August 2004 had she been employed, moral damages for harm to her dignity and reputation in the sum of €25,000, as well as €3,000 in costs.

**Principle of non-retroactivity of regulation**—**Freedom of association**—**Recognition of associations**—**Change in conditions of representativeness of staff**—**Jurisdiction to hear class actions**—**Collective procedures and collective rights**—**New rule should not breach the principle of good faith nor infringe on acquired rights**—**Proportionality of regulation**—**Compatibility with higher ranking rules**—**Challenge of an implicit rejection of an appeal**

On 19 December 2000, 53 staff members established a staff association called *Syndicat des fonctionnaires internationaux de l’UNESCO*, (the Union). By a letter of 22 December, one of the Complainants acting on behalf of a “transition group”, submitted the constitution of the Union to the Director-General for official approval “[i]n accordance with rule 108.1 of the Staff Regulations and Staff Rules and item 2805 of the UNESCO Manual”.

While this request was being considered, the Director-General, on 27 March 2001, announced in a note to all staff an amendment of Manual item 2805 on the grounds that this rule introduced a distinction between “recognised associations” and “representative associations” which was incompatible with regulation 8.1. The concept of “recognized associations” was therefore removed from the amended Manual, according to which only “associations representative of the staff” would benefit in the future from the rights, facilities and subventions granted by the Administration. In order to be representative an association had to have as its members at least 15 per cent of serving staff members. Nevertheless, existing associations which under the old version of Manual item 2805 were “recognized” but not “representative” were entitled to retain the rights and facilities they previously enjoyed. On 28 March, the Deputy Director-General, referring to the note of 27 March, informed the “transition group” that the Director-General could not approve the constitution of the Union. On 24 April, the Deputy Director-General reiterated to the “transition group” that their Union would enjoy the statutory rights and facilities as soon as it met the conditions of representativeness laid down in the amended Manual item 2805.

On 25 May 2001, each of the three Complainants submitted a protest to the Director-General in accordance with article 7 (a) of the Statutes of the Appeals Board. They considered that the retroactive application of the new provisions of the Manual constituted a clear formal and substantive flaw and complained of discrimination against their Union. Having received no reply, they filed notices of appeal on 24 July 2001. In its report dated 3 July 2003, the Appeals Board recommended that the Director-General “find an equitable solution to resolve the dispute”.

On 19 December 2003, the Complainants filed three separate Complaints with the Tribunal in defence of their right of association. Since the three Complaints raised the same issues of fact and law and sought the same redress they were joined to form the subject of a single judgment.

The Complainants’ claims included the quashing of the Director-General’s note of 27 March 2001 and the Deputy Director-General’s decision of 24 April 2001, the restora-
tion of their right to freedom of association and the application of Manual item 2805 in its 1991 version. None of the Complaints contained reference to a letter of 15 December 2003 by which the Director-General informed the Complainants of his decision to “initiate the discussions with a view to settling the dispute in accordance with existing rules, in particular Manual item 2805 amended on 27 March 2001”.

According to the Defendant these claims were irreceivable. It maintained that the Tribunal had no jurisdiction to hear class actions led by a union which moreover challenged a regulatory decision. In its view, the Complainants should have impugned the decision of 15 December 2003 and not the one of 24 April 2001. Insofar as they challenged the decision of 24 April 2001, it considered their Complaints to be time-barred because the internal appeals were lodged after the time limit stipulated in article 7 (c) of the Statutes of the Appeals Board.

The Tribunal observed that the Complainants had filed three separate complaints, each of them asserting that she was acting to defend her own personal freedom of association. This was sufficient to establish that, contrary to the Defendant’s view, the case did not in fact concern class actions which the Tribunal has no jurisdiction to hear.

It also held that the note of 27 March 2001, which the Complainants initially sought to have quashed, was a regulatory provision intended for all UNESCO staff. At the time of its adoption, such general provision affected the protected personal interests of individual employees only in theory. A staff member might challenge its lawfulness only by appealing against a decision applying the provision which actually caused present damage to his or her personal interests. The Defendant’s objection based on the legal status of this note was therefore in principle sound. However, the Complainants having insisted in their rejoinder that their intention was not to “censure” either the note of 27 March 2001 or the new version of Manual item 2805, it must then be assumed that the Complainants were simply seeking to have the decision of 24 April 2001 quashed, insofar as that decision was based on a text which ought not to have been applied to the requests they had lodged prior to its entry into force.

Regarding the Defendant’s claim that the Complaints were time-barred, the Tribunal observed that the report of the Appeals Board was referred to the Director-General at the latest on 11 August 2003, when it was sent to the Complainants. That referral was equivalent to a new filing of the protests which the Director-General had not dealt with, as a result of which the Complainants had brought their case before the internal appeal body. Yet, once again, the Director-General did not respond for over four months. The Complainants were justified to consider this lack of response as an implicit decision to reject their appeals. They were therefore entitled to challenge this decision directly before the Tribunal within the time limit allowed under article VII, paragraph 3, of the Statute of the Tribunal. The Complaints leading to the present judgment were therefore receivable to the extent that they may be considered to challenge that implicit rejection.

The Tribunal nevertheless held that there was no need to address either the question of whether as a result of the Director-General’s letter of 15 December 2003, the Complaints were premature or showed no cause of action, or the receivability issues raised by the Defendant as it considered the Complaints clearly unfounded.

The Complainants contended that the Administration had breached their freedom of association by basing its decision—in disregard of the principle of non-retroactivity—on
the provisions of the Manual in force at the time it took its decision and not on the provisions of the Manual in force at the time the application was made for recognition of the Union. The decision of 15 December 2003, which has not been challenged, was also based on the new text, despite the recommendation of the Appeals Board.

An administrative authority, when dealing with an appeal such as the one the Director-General had to consider in this case, must generally base itself on the provisions in force at the time it takes its decision and not on those in force at the time the appeal was lodged, subject to the principle of good faith and the protection of acquired rights. It is only if a clear provision of the new applicable rule excludes this approach or effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation that the above rule will not apply. The Tribunal noted that in this case there was no provision that excluded the application of the new rule, and therefore its application did not breach the principle of good faith, nor did it infringe acquired rights. When the application was filed for recognition of the Union, it merely drew the Defendant’s attention to the fact that Manual item 2805, in its 1991 version, was incompatible with higher ranking rules insofar as it instituted two categories of staff associations. The Defendant considered that this distinction jeopardised the general interests which the higher ranking rules were intended to safeguard. When this became clear and after weighing the interests at stake, the Organization consequently altered the provisions of the Manual concerning the recognition of associations. Had it not made this change, the Defendant would have been obliged to apply the earlier provisions and to “recognise” the Union in breach of the higher ranking rules.

The Tribunal further held that the contested amendment of Manual item 2805 observed the principle of proportionality. The new provisions in fact unreservedly recognised the right of staff members to be organised into associations in accordance with the principle of freedom of association. The new version merely restricted the representativeness of the associations, particularly through their right to participate in the decision-making process concerning staff and to submit observations. Furthermore, the Complainants put forward no cogent argument that showed that, in practice, the conditions for recognition of their association’s representativeness rendered such recognition so unlikely that they necessarily amounted to a restrictive measure directed against freedom of association.

Thus, the decision to deal with the Complainants’ application for recognition of the Union by reference to the new provisions of Manual item 2805 breached neither the principle of non-retroactivity nor the Complainants’ individual right to freedom of association. In view of the above, the Tribunal dismissed the Complaints.


Termination of a contract without limit of time—Performance appraisal reports—Resort to an independent expert assessment—Requirement of transparent and adversarial procedures to assess the performance of international civil servants—Claims of harassment—Hostile working relations—Insubordination

24 Michel Gentot, President; James K. Hugessen, Vice-President; and Mary G. Gaudron, Judge.
The Complainant was recruited by ILO in September 1982 as an Arabic language translator at the P-3 level. He obtained an appointment without limit of time starting 1 July 1989 and was promoted to the P-4 level as a translator/reviser in April 1993. In June 1994, after a reorganization of departments, the Complainant who had enjoyed considerable responsibility as the most senior linguist in his Arabic unit, was joined by a translator/reviser of equal grade, Mr. H. Working relations between the Complainant and Mr. H. were tense and, in 1997, the Complainant protested to his supervisor that the distribution of work was unfair, as he was having to translate whilst most of the revision work was being allocated to Mr. H. In January 1998, Mr. H left for a field assignment but returned in February 2000 as the Head of the Arabic unit at the P-5 level, thus becoming the Complainant’s immediate supervisor.

The tensions between Mr. H and the Complainant resurfaced immediately, and in April 2000, the Complainant was issued a warning by the Chief of the Unit referring to his unwillingness to report directly to Mr. H., his refusal of particular items of work and his attempts to impose general conditions regarding the nature of work assigned to him. In addition, the Complainant’s performance appraisal report for the period June 1997 to May 1999 had been written in September 2000 and, thus, mentioned the warning. In the following appraisal reports for the period of 1 June 1999 to 31 May 2001, the Complainant’s performance was rated “not satisfactory”.

In light of this, the Complainant concluded that consideration should be given to the possibility of transferring him. The Director supported this suggestion and advised the Human Resources Development Department (HRD) to act on this as a matter of urgency. However, following the negative 2001 appraisal report, an investigation by an independent expert was initiated, which confirmed the poor quality of work rendered by the Complainant, although some of the 14 documents used for the evaluation, which had been selected in this regard by Mr. H., could not be attributed for sure to the Complainant. On 27 February 2002, the Reports Board unanimously recommended that the Complainant’s contract be terminated for unsatisfactory services.

In the meantime, in March 2001 the Complainant had submitted a grievance to the HRD alleging discrimination and harassment by Mr. H. and the Chief of the Unit.

The Complainant was informed of the proposal to terminate his contract on 26 June 2002 by a letter from the Director of HRD, which he appealed to a Joint Panel. It was decided that the appeal would be joined with the previously submitted harassment grievance. In a recommendation dated 23 September 2003, the Joint Panel concluded that no evidence had been produced regarding the harassment grievance and that the evaluation of the Complainant’s performance at the material time “was not erroneous”. However, the Panel recommended that in view of the special circumstances of the case, the Director-General consider alternatives to the proposal of termination, particularly a transfer.

On 27 October 2003, the Director-General, confirmed the decision of termination, effective on 31 January 2004, as no suitable vacancy had been identified for the Complainant. The harassment grievance was implicitly rejected. This was the impugned decision.
With regard to the Complainant’s harassment grievance, the Tribunal agreed with the Defendant that the Joint Panel had taken all evidence into account when issuing its recommendation and had rightly concluded that the grievance could not be substantiated. Undoubtedly, serious problems arose from the tensions between the Complainant and his former colleague, who had become his supervisor, but the former’s refusal to recognise the authority of the latter largely accounted for a situation which, however regrettable, did not constitute harassment.

Regarding the legality of the decision to terminate his appointment, the Complainant held that the Joint Panel’s recommendation was unlawful because its assessment of his performance was based on the findings of the Reports Board, which rested on the outcome of an expert procedure that was not adversarial. He also argued that the Director-General had not given any reasons as to why he did not follow the Panel’s recommendation that he be transferred. In his view, no fact concerning either the quality of his work or his productivity or conduct supported the conclusion that his performance was unsatisfactory.

The Defendant submitted for its part that no manifest error was committed when evaluating the work of the Complainant and that the Director-General had indeed followed the recommendation of the Joint Panel in trying to find a new post for him. On this last point, the Tribunal agreed with the Defendant that serious efforts had been made to identify posts for which the Complainant might have been suited. The Director-General was therefore not obliged to enlarge any further on the reasons he gave for his decision in this respect. Consequently, the Tribunal decided that the plea that insufficient reasons had been given for the decision failed.

The assessments which led to the conclusion that the Complainant’s performance was unsatisfactory raised more delicate issues in the view of the Tribunal. The Defendant was not wrong to point out that, except in a case of manifest error, the Tribunal would not substitute its own assessment of a staff member’s services for that of the competent bodies of an international organisation. Nevertheless, such an assessment must be made in full knowledge of the facts, and the considerations on which it was based must be accurate and properly established. The Tribunal, which paid considerable attention to these issues in the case of complaints concerning dismissal at the end of a probationary period or the non-renewal of fixed-term contracts on the grounds of unsatisfactory performance, must be even more vigilant where an organisation terminates the appointment of a staff member holding a contract without limit of time, which in principle should secure him against any risk of job loss or insecurity. This applied particularly in the present case, since the staff member concerned received on the whole satisfactory or even excellent appraisals over a period of 15 years.

While the considerations on which the Complainant’s termination were based focused particularly on his conduct and while on this point it is difficult to detect any manifest error in the assessments made by the competent bodies of the organization, the Tribunal found that it was clear from the submissions that the quality of the Complainant’s work and his productivity met with unfavourable assessments by the Reports Board that were endorsed by the Joint Panel. But the findings of the Reports Board concerning the Complainant’s performance were mostly based on the conclusions of an independent expert, who had assessed the quality of the Complainant’s translation and revision work
on the basis of 14 documents, of which only five could be considered to have actually been translated or revised by him and some of which related to periods when apparently the linguistic abilities of the Complainant were not in doubt. The Tribunal held that the procedures used to assess the performance of international civil servants must be both transparent and adversarial. While it may be accepted that in this case the Reports Board resorted to an independent expert to assess the accuracy of the evaluations appearing in performance appraisals drawn up in accordance with the applicable rules, this “expert assessment” should not have been undertaken in breach of the Complainant’s right to an adversarial procedure, which would have given him an opportunity to object in good time to the choice of documents used as a basis for the conclusions reached by the expert who, moreover, was appointed by a method which remains unknown. This failure to observe the principles which ought to have applied, even in the absence of any written rule, to an investigation which was being conducted outside the normal evaluation procedure, led to consequences which were clearly harmful to the Complainant. Furthermore, the fact that the Complainant’s productivity was low during the period following Mr H’s appointment may be explained by the fact that he was given few documents to translate and even fewer to revise. As soon as that situation was remedied, the Complainant’s productivity was restored to a satisfactory level and did not remain below standard, contrary to what the organization maintained.

The Tribunal concluded that, even though the Complainant’s conduct towards his supervisor was not what might be expected of an international civil servant and would probably have justified preventive action on the part of the Organization, the reasons given to establish that the Complainant’s abilities and performance were unsatisfactory did not suffice to justify terminating his appointment for unsatisfactory services.

In view of the above, the Tribunal decided that the decision of the Director-General of ILO of 27 October 2003 was to be set aside, that the Complainant should be reinstated as from 1 February 2004 with all legal consequences, that the Organization should pay the Complainant 25,000 Swiss francs in moral damages, that it should also pay him 15,000 Swiss francs in costs, and that all other claims were dismissed.


Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances—Disciplinary proceedings for misconduct during secondment—Demotion decided by the sending Organization as a result of misconduct charges brought by the receiving Organization—Appeal procedures to two separate administrative tribunals for complaints covering the same facts—Question of forum conveniens—Jurisdiction of the Administrative Tribunal related to the Organization having exercised disciplinary power over the Complainant—Res judicata

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25 Michel Gentot, President; and Flerida Ruth P. Romero and Agustín Gordillo, Judges.
26 CEB/2003/HLCM/CM/7.
The Complainant was seconded to FAO from the United Nations Development Programme for a two-year period, starting from 1 June 1999. At the material time she held the grade D-1.

In the context of a review of the FAO rental subsidy scheme, the Office of the Inspector-General investigated rental subsidy claims made by the Complainant between June 1999 and March 2000. It was found that her claims were based on a lease for the same apartment as that of her partner, a staff member of the International Fund for Agricultural Development. In the context of the investigation, the Complainant forged a cheque relating to the rent of this apartment. Disciplinary proceedings were conducted against her and as a result, it was recommended that she be dismissed for misconduct. However, at the end of the proceedings, as the Complainant was returning to the United Nations after having completed her assignment, it was considered that the purpose of safeguarding the integrity of FAO was no longer an issue, and the measure was not imposed. Nevertheless, the matter was reported to the United Nations, as required in paragraph 7 (a) of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances, by which at the end of an assignment, the receiving organization should provide information on the Complainant’s conduct during secondment.

FAO submitted to the United Nations an “Administrative Details” statement concerning the Complainant, dated 24 May 2001. The Complainant affirmed that on 28 May 2001, she had been informed through “informal channels” that the United Nations was to put her on suspension from duty. On 29 May, she returned the rental subsidy that FAO claimed she had improperly received. On 1 June, she returned to the service of the United Nations, where disciplinary proceedings were initiated against her. On 4 June, the Complainant was suspended from duty and, on 25 June 2002, she was demoted two grades on the grounds of misconduct specified in the statement of FAO and on her own admission of forging a cheque.

In a letter of 10 August 2001, the Complainant appealed to the Director-General of FAO against the findings of the Office of the Inspector-General and the Organization’s charge of misconduct. She further argued that FAO took “unreasonable and improper administrative actions” when it provided the United Nations with information concerning her misconduct at FAO. The Assistant Director-General of Administration and Finance Department dismissed her appeal in a letter of 9 October 2001. She appealed against this decision to the Appeals Committee of FAO on 24 December 2001, questioning in particular the transfer of information concerning her misconduct in the “Administrative Details” statement.

In the meantime, on 15 August 2002, she filed an Application with the United Nations Administrative Tribunal (UNAT) against the decision to demote her.

The Appeals Committee of FAO, in its report of 13 June 2003, concluded that all her claims for relief had failed as it was aware that the challenged decision was also part of the disciplinary proceedings initiated within the United Nations. The Director-General of FAO also rejected her appeal in its entirety.
On 5 December 2003, the Complainant filed her case before the International Labour Organization (ILO) Administrative Tribunal. She asked that the decision by the Director-General of FAO to reject her appeal be quashed, her record of service be rectified and this information be notified to the United Nations, the amount she reimbursed be restituted, as well as moral and material damages.

On 23 July 2004, UNAT handed down its Judgement on the case filed by the Complainant, in which it upheld the demotion imposed upon her by the United Nations as a disciplinary measure for her misconduct while she was seconded to FAO.

The ILO Administrative Tribunal concluded in the present Complaint that while it had jurisdiction to consider claims brought by former employees against the defendant organization, in this case FAO, the present Complaint had already been adjudicated by another tribunal, UNAT. Indeed, UNAT, during its deliberation, had considered whether it was or not the forum conveniens and had found that, since FAO had declined to exercise disciplinary power regarding the Complainant and the United Nations had exercised it, UNAT was necessarily the appropriate jurisdiction. The ILO Administrative Tribunal entirely agreed with this view, and found that the facts that the Complainant challenged in the present Complaint were covered by the principle of res judicata.

Therefore, the ILO Administrative Tribunal rejected all the claims.

C. **Decisions of the World Bank Administrative Tribunal**


Death benefits—Designation of beneficiary—Staff retirement plan—Implied revocation of beneficiary designation—Tribunal’s and Bank’s relationship to national legislation, whether statutory or judicial—Powers and duties of Bank’s Pension Benefits Administration Committee—Presumptions as to deceased’s intentions

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28 The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as “the Bank Group”). The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reasons of the staff member’s death and any person designed or otherwise entitled to receive payment under any provision of the Staff Retirement Plan. For more information on the World Bank Administrative Tribunal and the full texts of its decisions, see http://wbln0018.worldbank.org/crn/wbt/wbtwebsite.nsf.

29 Bola A. Ajibola, President; Elizabeth Evatt and Jan Paulsson, Vice-Presidents; and Robert A. Gorman, Francisco Orrego Vicuña, Sarah Christie and Florentino P. Feliciano, Judges.
The Applicant, the daughter of a deceased staff member, Mr. Fritz Rodriguez, of the International Bank for Reconstruction and Development (the Bank) appealed a decision of the Bank’s Pension Benefits Administration Committee (PBAC) directing the payment of the deceased’s death benefit under the Bank’s Staff Retirement Plan (SRP) to his former second wife, Ms. Hafida Rodriguez.

Mr. Rodriguez joined the Bank in 1972. He had two children with his first wife, whom he divorced in May 1990, one of these being the Applicant. In September 1990, he married Ms. Hafida Rodriguez and formally designated her as his sole beneficiary to receive certain benefits payable upon his death. The standard form that he signed for this purpose, entitled “Change of Designation of Beneficiary”, provided that he thereby revoked “all designations of beneficiaries, if any, heretofore made by me” with respect to SRP death benefits.

Mr. Rodriguez retired from the Bank in 1997 and divorced Ms. Hafida Rodriguez in December 1999. Their Separation and Property Settlement Agreement (Settlement Agreement) provided that he retained, in consideration of certain monetary transfers, “all of his right and interest in that [Bank] retirement plan and [Ms. Hafida Rodriguez] waives and releases any claim to any portion of same.” These terms became part of the divorce decree granted by the Circuit Court for Montgomery County, Maryland.

Mr. Rodriguez died on 30 November 2002 without having revoked or revised the written designation of Ms. Hafida Rodriguez as the beneficiary of his SRP death benefit. Section 4.1 (b) of the SRP provides for the calculation and payment of a lump-sum benefit in the event of the death of a retired staff member not married on the date of death, and states that this death benefit “shall be paid to the beneficiary or beneficiaries designated by the participant or retired participant in a witnessed document received by the Benefits Administrator before the death of the participant or retired participant.”

On 30 June 2003, the attorney for the Applicant and the Estate submitted a petition asking the PBAC to invalidate the designation of Ms. Hafida Rodriguez as beneficiary and have the death benefit paid directly to the Estate. In October 2003, the Benefits Administrator informed Ms. Hafida Rodriguez about her beneficiary status and of the request made by the Applicant and the Estate. On 22 March 2004, the Benefits Administrator informed the Applicant’s attorney that the PBAC had decided that there was no basis to find Mr. Rodriguez beneficiary designation invalid on the account of the divorce decree and Settlement Agreement, as his written designation had not been changed and was thus to be honoured. Furthermore, the PBAC considered an inquiry into the deceased’s intentions to be outside its scope of authority.

In its consideration of the case, the Tribunal noted that the relevant SRP provisions had not been challenged, and that the sole question before it consisted in whether the divorce decree and related Settlement Agreement had revoked Ms. Hafida Rodriguez designation as beneficiary.

The Tribunal observed that the laws of a member State, whether statutory or judicial, do not govern the Bank or an organ such as the PBAC. The Tribunal held that the Bank’s determination to apply only its own internal rule concerning beneficiary designations was quite reasonable due to the uncertainties relating to the state of the law in the United States and to the choice of law, including the “location” of the pension funds (Washington, D.C.), the issuance by a Maryland state court of the divorce decree and Settlement Agreement, and the site of the deceased’s death and Estate (Florida). The Tribunal further concluded...
that to require the PBAC to refer to the laws of a State would potentially render its decision-making thoroughly impracticable, given the fact that staff members come from 184 nations, with widely differing approaches to the respective rights of divorced spouses.

The Tribunal noted that the underlying assumption of the SRP is that the best indicator of a deceased staff member’s intention is the formally executed beneficiary designation. In this regard, the Tribunal found it well within the Bank’s discretion to conclude that the divorce alone did not override the written beneficiary designation and that the terms of the Settlement Agreement did not clearly enough constitute a waiver by Ms. Hafida Rodriguez of her rights as beneficiary. The Tribunal further found it reasonable for the Bank to assume that the staff member should bear the burden of knowingly and formally making any changes on a matter as important as the designation of a beneficiary for a substantial death benefit. Moreover, noting the difficulties in proving that certain circumstances would justify an assumption that a deceased staff member would have intended that his beneficiary designation be revoked, the Tribunal considered the PBAC’s reluctance to investigate the deceased’s intentions be more than reasonable.

The Tribunal further noted that United States federal and state courts had differed among themselves with respect to the dispositive nature of written declarations and the appropriateness of investigations into a deceased’s intentions. The Tribunal found that both section 41 (d) of the SRP and its underlying policies and justifications were reasonable and had been applied in this case without any abuse of discretion. Nevertheless, the Tribunal found it conceivable that in certain circumstances it would be an abuse of discretion to disregard post-designation events that might have an impact upon the equity of the rule. However, in such cases the burden of proving so would lie with the person attacking the written beneficiary designation, both because of that person’s knowledge of and access to such unusual facts and because of the strong presumption of regularity accorded to such a designation.

The Tribunal concluded that the two sets of tenable contentions presented by the parties regarding the meaning of the waiver provisions in the divorce decree and the Settlement Agreement were sufficient to reinforce the PBAC’s decision that there was inadequate reason to ignore the deceased’s written beneficiary designation. The Tribunal observed that the SRP terms, as interpreted by the PBAC and the Tribunal, are meant to instruct the Bank as to the disposition of possibly disputed death benefits. The Tribunal noted that the SRP does not purport to resolve conclusively the respective claims of designated beneficiaries and third parties who assert superior rights under contracts, judicial decrees or other instruments to which the Bank is not a party. The Tribunal also stated that the PBAC has a continuing discretion to determine whether a dispute is in the process of being settled, and to draw such conclusions as it may deem appropriate in this respect pursuant to section 12.2 of the SRP.

The Tribunal for such reasons affirmed the decision of the PBAC.

Performance evaluation procedure—Required performance review discussion and feedback—Salary review increase—Connection between performance and salary increase evaluations—Evaluation as a discretionary act by management—Finality of discretionary act is conditioned upon it not involving abuse of discretion—Recall of staff member from appointment—Due process rights—Abuse of discretion—Damage to career prospects

The Applicant in this case made several claims of mismanagement and abuse of discretion against the International Bank for Reconstruction and Development (the Bank) relating, inter alia, to his 2001–2002 Overall Performance Evaluation (OPE), his Salary Review Increase (SRI), and the Bank’s decision to recall the Applicant from his assignment as Country Manager for Lebanon.

The Applicant had worked for the Bank since 1979 and had consistently received good performance evaluations. On 1 November 1999, the Applicant was appointed to the newly created position of Resident Representative in Beirut for a three-year term. The position was later renamed Country Manager. In this role, the Applicant reported to the Director, Middle East, and the Vice President, Middle East and North Africa (MNA). The original officials to whom the Applicant reported were soon replaced by two new persons. The new Vice-President introduced a number of organizational and work changes, including a redistribution of countries and a stronger emphasis on the management of country portfolios.

During the first year at his post, the Applicant received mainly positive evaluations, both with regard to his 2000–2001 OPE and his 360 Degree Feedback Report. Both of these evaluations were signed by the Applicant’s former Director. Meanwhile, certain correspondence indicated that the new Vice-President had some reservations regarding the Applicant’s performance. In June 2001, the Vice-President met with the Applicant and expressed concern about the lack of improvement in Lebanon’s troubled portfolio and the Applicant’s management of the Country Office. The Vice-President’s comments were reflected in the 2000–2001 OPE.

Over the following year, the Applicant’s work proved yet more difficult, with the Applicant’s new Director criticizing his performance and suggesting that he consider returning to Washington prior to the expiration of his appointment. The Applicant returned to Washington in May 2002, seven months ahead of the appointment’s original end-date.

The Applicant’s 2001–2002 OPE reflected the deteriorating perceptions of the Applicant’s performance by the Director and Vice-President and his ratings had changed dramatically from that of the previous period. While the Director signed the OPE almost six months after being presented with it, neither the Applicant nor the Vice-President signed it.

In December 2002, the Applicant initiated an Appeals Committee proceeding regarding his 2001–2002 OPE. While the Bank withdrew the contested OPE during the process, the Appeals Committee nevertheless found that this did not dispose of the Applicant’s complaints and concluded that the Bank had not followed its procedures in completing

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30 Bola A. Ajibola, President; and Robert A. Gorman and Francisco Orrego Vicuña, Judges.
the OPE. It held that the Applicant had been harmed by procedural flaws and denied fair
treatment, particularly with respect to the Director's failures to: (i) conduct a required
performance review discussion with the Applicant; (ii) provide clear feedback on areas for
improvement; (iii) sign the OPE promptly; and (iv) follow a systematic process in collecting
feedback. The Appeals Committee found that the mismanagement of the 2001–2002 OPE
process had impacted the Applicant’s due process rights and denied him any opportunity
to explain and defend his performance. The Appeals Committee, however, did not find that
the performance evaluation embodied in the 2001–02 OPE, or the manner in which it had
been conducted, had been motivated by a desire to harass or retaliate against the Appli-
cant. The Bank accepted the Appeals Committee’s recommendation that the Applicant be
awarded compensation and costs.

In its consideration of the case, the Tribunal first examined the question whether
procedural violations had occurred during the 2001–2002 OPE process. It noted that staff
rule 5.03, paragraph 2.02, provides that the manager or designated supervisor and the staff
member “shall meet and discuss the staff member’s performance . . .” and that the essential
steps in the process must all be memorialized in writing and relate to the review period
under consideration. The Tribunal further noted that discussion of performance does not
replace the need for ongoing feedback throughout the year in question and should be
provided so that the staff member is “able to anticipate the nature of this year-end discus-
sion and resultant ratings on the OPE.” While the Tribunal confirmed that an evaluation
is a discretionary act entailing an exercise of judgment by management and that such an
evaluation is final, it also reiterated its finding in Saberi, Decision No. 5 [1981], para 24,
that the finality of discretionary acts is conditioned upon their not involving an abuse of
discretion or other forms of arbitrariness or discrimination.

The Tribunal observed that strict requirements govern the provision of feedback to
staff members and noted that no specific performance discussions had been held with the
Applicant, neither during the period reviewed nor since the 2001–2002 OPE’s withdrawal.
It further held that discussions of a general nature, or those held prior to the actual OPE
process, were not sufficient, and that the Bank must take a proactive role since the obli-
gation to guide the affected staff member falls upon it and not the other way round. The
Tribunal also reiterated that the assessment of performance has to take into account all
relevant and significant facts that existed for that period of review and found that the
gathering of information in the Applicant’s case did not seem to have been sufficiently
comprehensive.

Furthermore, the Tribunal found more serious the fact that the Applicant had not
been afforded an opportunity to discuss in a timely manner the criticisms made against
him and observed that even those in higher management are entitled to an opportunity to
correct mistakes. The Tribunal reiterated its finding in Marshall, Decision No. 226 [2000],
para. 24, that although a change in a staff member’s assessment, relative to prior evalua-
tions, cannot in itself be regarded as an abuse of discretion, an abrupt change, unaccom-
panied by adequate descriptive statements may suggest a “degree of inconsistency in the
exercise of managerial responsibilities.” The Tribunal concluded that the Bank had violated
staff rule 5.03 and the Applicant’s due process rights with respect to the 2001–2002 OPE.

The Tribunal thereafter considered the Applicant’s claim that the Bank had abused
its discretion with respect to his SRI assessment, which was significantly lower compared
to previous years, and that no explanation had been provided as to the rationale for this decision. In this regard, despite the efforts of the Bank to de-link the SRI and OPE procedures, the Tribunal observed that a connection between the two necessarily existed and recalled its finding in Desthuis-Francis, Decision No. 315 [2004], para. 32, that “if there is any appreciable difference between these two processes, it is in all probability a difference in emphasis rather than a fundamental cleavage.” It noted that there existed no evidence that the SRI assessment had taken the Applicant’s OPE into account, which had never been completed, and that it thereby lost all connection to his individual performance. It also noted that there was no connection between the disputed SRI assessment and the Applicant’s previous salary increases and that the Bank had failed to provide any satisfactory justification for this decision. The Tribunal concluded that the Bank had abused its discretion in respect of the Applicant’s SRI assessment and established more generally that OPE and SRI assessments cannot contradict each other without a most convincing explanation.

In reviewing the Applicant’s early recall from Lebanon, the Tribunal noted its finding in Sengamalay, Decision No. 254 [2001], para. 30, that a reassignment is not an abuse of discretion “simply because . . . the unit Vice-President’s impression of a staff member’s management skills is markedly less enthusiastic than that of the staff member’s immediate supervisor”. However, in the Applicant’s case, the Tribunal found that while his new supervisors had shared critical views of him, their assessment contrasted rather dramatically with earlier ones. The Tribunal also found that only negative aspects of the Applicant’s performance had been given attention in the adoption of the recall decision and that this raised questions about the decision’s impartiality and objective nature. While the Vice-President may not have been formally involved in the performance evaluation or the recall decision, this was not true in substance since both he and the Director were part of these processes. Both were also aware of the Bank President’s view on the need to reorganize the MNA Region. The Tribunal determined that the recall decision had responded to this reality more than to any specific performance problem, and was entirely disconnected from the OPE that allegedly supported it. The Tribunal consequently held that the Bank had abused its discretion with respect to the Applicant’s recall, as the decision lacked the necessary transparency and openness.

The Tribunal concluded that a reassignment decision can be reasonably reached only at the end of an appropriate chain of assessments, and that the isolation of such a decision, or that of an SRI, can constitute an abuse of discretion even when the decision adopted could otherwise be entirely justified. It observed that there may be cases in which a reassignment has to be effected promptly in the best interests of the institution, but even then the matter has to be handled with respect for due process rights, and in the open and transparent manner that has to govern professional relations, including most certainly a discussion of the performance issues concerned.

In considering remedies, while the Tribunal noted that the 2001–2002 OPE could not be quashed as it had been withdrawn, it granted the Applicant’s request that the SRI performance ratings and increase percentage be deleted from his personnel file. The Tribunal disagreed with the Applicant that his present position was causing damage to his career and forcing him into retirement, as the position had not caused deterioration in his grade level and as there was no evidence that his career was ending. The Tribunal acknowledged, however, that the Applicant’s career prospects in the Bank had been affected by the
aggregate of decisions and measures reviewed. The Tribunal therefore ordered the Bank to assist the Applicant’s job search, granted the Applicant compensation in addition to that awarded by the Appeals Committee, and awarded the Applicant costs.


Improper staff relationships—Conflict of interest—Discretion to decide to conduct an investigation—Administrative leave is not a disciplinary measure—Notice of investigation—Scope and standards of review with respect to investigative proceedings and administrative leave

The Applicant, a Finance Analyst with the International Bank for Reconstruction and Development (the Bank), challenged the Bank’s decision to place her on administrative leave during an investigation of possible misconduct undertaken by the Bank’s Department of Institutional Integrity (INT).

In November 2002, the Applicant undertook a mission to Afghanistan for three weeks, during which time the Government decided to hire a commercial bank to provide services to its Central Bank. The Applicant was invited to accompany Government officials to Dubai in early January 2003 in order to meet with various commercial banks to determine their suitability for this purpose. The Applicant’s trip was approved by her supervisor, with the caveat that she would not give the impression that the Bank was giving its blessing to any particular bank. She ultimately did not make the trip.

The Applicant returned to Afghanistan on 22 January 2003 and stayed until 1 April 2003. During this time, the Government received proposals from three commercial banks willing to provide the requested banking services. The Government decided to hire a consultant to evaluate the proposals and asked the Applicant if she knew of anyone who could perform the work in question. The Applicant suggested a Mr. I, a former Bank staff member who had been the Applicant’s mentor when she first joined the Bank.

Mr. I was hired in March 2003 for a fee of approximately US$ 2,500. Mr. I and the Applicant were invited to accompany Government officials for meetings in Dubai in April, which they both attended. The Applicant did not seek explicit permission from any supervisor for this April mission, and later explained that this was for two reasons: (i) her supervisor had previously approved her joining the Afghan delegation for the January 2003 meetings relating to the same issue; and (ii) the April trip to Dubai was of minimal cost since she was at any rate scheduled to leave Afghanistan for Washington via Dubai on 1 April, and thus could conveniently extend her stopover in Dubai for two days.

After returning to Washington, the Applicant submitted to the Bank a withdrawal application for the payment of Mr. I’s consulting fees and expenses in the amount of US$ 1,927.38. A Finance Officer reviewed the application and approved the payment. On 4 June 2003, two Bank staff members reviewing payment instructions noticed the payment to Mr. I and, having heard that he had a personal relationship with the Applicant, reviewed the relevant documentation. They discovered that a receipt for Mr. I’s stay in Dubai was

31 Elizabeth Evatt, Vice President, presiding; Jan Paulsson, Vice President; and Sarah Christie and Florentino P. Feliciano, Judges.
addressed to the Applicant’s home in Virginia, that the Applicant had been in Dubai on the same dates as the Applicant, that the Applicant had recommended the Afghan Government to hire a consultant (this person ultimately being Mr. I), and that the Applicant had processed Mr. I’s application for payment.

The two staff members informed their superiors of their findings, and the Applicant was subsequently questioned by her Division Chief on these matters. The Division Chief thereafter contacted the INT, which commenced a preliminary inquiry focusing on whether there was any foundation or merit to the initial suspicions and allegations of misconduct that would warrant a full investigation. In the meantime, the INT was also notified of concerns that the Applicant had recommended a particular bank to the Afghan Government with whom it should conduct its business.

The INT reviewed the information and documents provided by the Applicant’s department and formally interviewed her Division Chief, the Director and the Regional Chief Financial Officer for the South Asia Region. Once an evidentiary foundation had been established, the INT also accessed and reviewed the Applicant’s archived e-mails. The INT did not notify the Applicant about the preliminary inquiry, nor did it interview the Applicant about the allegations during the preliminary inquiry.

In October 2003, the INT informed the Applicant’s Division Chief and Director of its conclusion that the circumstances of the case warranted a full investigation on a number of questions. The INT did not, however, provide any written report to them or to the Applicant. On 15 October 2003, the INT informed the Applicant by memorandum that it was conducting an investigation into four specific allegations against her and interviewed the Applicant the following day. Given its preliminary inquiry and taking into account the fact that the Applicant had fiduciary responsibilities as a Finance Analyst, the Division Chief and the Director decided to recommend that the Applicant be placed on administrative leave for the duration of the investigation.

The INT final report of 9 July 2004 vindicated the Applicant with respect to the most serious allegations, and concluded that an allegation of excess of authority, although apparently founded, was immaterial in effect and at any rate mitigated by the Applicant’s good work. While no sanctions were ultimately imposed on the Applicant, she submitted her Application with the Tribunal in order to seek redress on the ground that the decision to place her on administrative leave was arbitrary and capricious.

In considering the case, the Tribunal observed that while the allegations against the Applicant had turned out to be unfounded, they were on their face troubling and had required a thorough investigation. It further observed that the issue before it did not relate to the Applicant’s relations with Mr. I, but “whether the Bank [had] failed to respect the Applicant’s rights in placing her on administrative leave.”

The Tribunal noted that placement on administrative leave is not a disciplinary measure and is therefore reviewable only for abuse of discretion. The Tribunal found the Applicant’s contention that she should not have been placed on administrative leave because her work was not of a fiduciary nature unconvincing, and saw no reason to question the Bank’s decision that it was unfeasible to re-assign the Applicant to alternative tasks not involving financial responsibility. The Tribunal likewise rejected the Applicant’s contention that her placement on administrative leave had irreparably damaged her career. The Tribunal found that the investigation had left her integrity intact, that the Bank had left her free to
resume her career, that there was no evidence of the Applicant being unwelcome to pursue her career, and that the Applicant’s claim was one of conjecture.

In considering the Applicant’s allegation of improper motive in the investigation, the Tribunal recalled that such a finding cannot be made without clear evidence and that the Applicant carried the burden of proof. In rejecting the Applicant’s allegation, the Tribunal observed that what is required of the INT is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights.

Regarding the Applicant’s contention that her rights had been infringed by the manner the INT had conducted its preliminary investigation, the Tribunal noted that it was difficult to articulate a positive standard for determining when an evidentiary basis exists for initiating such an inquiry, and found that it appeared to be a matter of discretion given the lack of guidance from Bank rules and standards. The Tribunal further observed that a meaningful negative standard had been set out by the Tribunal in Koudogbo, Decision No. 246 [2001], to the effect that a preliminary inquiry cannot be launched on the basis of rumours or allegations from questionable sources, and should not be triggered merely because of isolated, anonymous, indirect, word-of-mouth tips. The Tribunal stated that such statements must be considered critically. It found that the facts which justified the Applicant’s investigation were objective and of the Applicant’s own doing, and that there had been no harassment or abuse of investigatory initiatives.

The Tribunal rejected the Applicant’s contention that she had not been given timely notice of the preliminary investigation. The Tribunal stated that since a preliminary inquiry is not an adjudicatory process, it is not open to challenge on as broad a range of grounds as those which may invalidate judicial proceedings, and particularly with respect to lack of notice. While the Tribunal recalled its jurisprudence that the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment, it also held that it did not require such notification in each and every circumstance (D, Decision No. 304 [2003]). The Tribunal noted that the Applicant’s first questioning in the matter by her Division Chief preceded the formal notice given to her by several months and that she had obviously been in a position to prepare for the interview. The Tribunal stated that it could not find that the decision to place the Applicant on administrative leave had been materially affected by a tardy notification.

For such reasons, the Tribunal dismissed the Application.


Jurisdiction of the Tribunal extending to former and retired staff—Survivability of terms of contract of employment—Existence of an administrative decision to be reviewed—Administrative decision can be affirmative or negative—Obiter dictum statements by Tribunal

In this case, the Applicant, a retired staff member of the International Bank for Reconstruction and Development (the Bank), claimed that the investigation by the Bank

32 Elizabeth Evatt, Vice President, presiding; Jan Paulsson, Vice President; and Sarah Christie and Florentino P. Feliciano, Judges.
of a current staff member\textsuperscript{33} had been conducted wrongfully and to his prejudice. The Tribunal in this judgment considered only the question of jurisdiction.

The Applicant, who retired from the Bank in 1994, was hired as a short-term consultant for a Bank-financed project in Afghanistan in March 2003. In October 2003, the Bank’s Department of Institutional Integrity (INT) commenced an investigation of Ms. G, a staff member in the Loan Department, based on allegations that she had engaged in misconduct involving the Applicant. The INT investigated in particular whether Ms. G’s personal relationship with the Applicant had influenced her to recommend to the Afghan Government that it hire the Applicant as a consultant. As part of its investigation, the INT inquired into the issue of potential conflict of interest in the manner in which the Applicant had been offered the consultancy and had received payment thereunder.

During the investigation, the INT interviewed the Applicant and several other witnesses. Some of the witnesses informed the INT that the Applicant and Ms. G had an intimate relationship, while others indicated that they were only close friends. The INT concluded its investigation in July 2004 and reported that there was insufficient evidence to support a finding of misconduct by Ms. G with respect to the most serious charges. The INT further found that the allegations of an intimate relationship between Ms. G and the Applicant could not be substantiated.

Meanwhile, on 3 May 2004, the Applicant had written to the President of the Bank raising concerns about the allegations regarding his relationship with Ms. G, which the Applicant considered defamatory and demanded their immediate retraction. The Applicant further requested that the Bank take remedial steps and conduct an inquiry into the process. On 29 June 2004, the Applicant’s counsel wrote letters to the INT Director and the President of the Bank reiterating the Applicant’s concerns and complaining about a Bank memorandum allegedly defaming the Applicant. This memorandum, of which the Applicant had been previously unaware, allegedly indicated that there was a ban on the Applicant being rehired. The Applicant’s counsel requested an unredacted copy of the memorandum.

The Acting Director of the INT replied on 5 August 2004, reassuring the Applicant that the investigation had not impacted his ability to receive consulting contracts financed by the Bank but did not take any further remedial measures. The Applicant launched an action before the Appeals Committee challenging, \textit{inter alia}, the Acting Director’s refusal to retract the defamatory allegations; correct records of the Applicant’s Bank employment which had been wrongly published in the INT report; and take appropriate actions to mitigate damage to his reputation. The Appeal was ultimately rejected for lack of subject-matter jurisdiction. The Appeals Committee concluded that the Appeal had not been directed against an administrative decision alleged to have altered or breached the Applicant’s terms of appointment or conditions of employment, or any formal disciplinary action based on misconduct.

In considering its own jurisdiction over the case, the Tribunal rejected the Bank’s reliance on \textit{Walden}, Decision No. 167 [1997], in contending that an Ethics Officer’s report does not constitute a “decision” that can be the subject of administrative review. The Bank further declared its statement in \textit{Walden} to have been \textit{obiter dictum}, as the application in

\textsuperscript{33} G, Decision No. 340 [2005]. For a summary of this case, see chapter V, section C.1, above.
that case had been rejected for untimeliness. The Tribunal concluded that the Applicant had convincingly rebutted the Bank’s argument that there was no administrative decision for the Tribunal to review. The case was not a mere challenge to an INT report, but rather one involving an allegedly unfair and prejudicial investigation process.

The Tribunal found that the issues in the case clearly involved the Applicant’s privacy and reputational rights as well as alleged violations of the terms and conditions of his employment. The Tribunal agreed with the Applicant that such rights survived his separation and retirement from the Bank, and that administrative decisions may be either affirmative or negative (i.e., a failure to exercise a power affecting a staff member’s rights). The Tribunal further agreed that the Bank’s argument that it had not directed any accusation against the Applicant was to be rejected, as the allegation of an intimate relationship and receipt of a consultancy on that basis had been made as much against the Applicant as against Ms. G. The Tribunal agreed that the Bank’s argument would, if accepted, deprive the Applicant of the only forum in which he could vindicate his rights.

The Tribunal rejected a narrow conception of its jurisdiction which would leave a former staff member incapable of bringing a case based on an alleged violation of his rights. The Tribunal identified in this respect a parity of reasoning between it and the International Court of Justice (ICJ) in its Advisory Opinion of 1956 relating to the Judgments of the Administrative Tribunal of the International Labour Organization.34 The ICJ in that case counselled that a contract of employment should not be interpreted literally so as to disentitle an employee from relying upon it when challenging its non-renewal. The Tribunal stated that the issue of whether relevant rules extend to the benefit of retired staff members in the circumstances of the Applicant’s case was a matter of substance, not jurisdiction.

The Tribunal praised the presentation of the Applicant’s arguments and stated that the Bank’s jurisdictional objection should not have been made. For such reasons, the Tribunal denied the Bank’s request that the Application be declared inadmissible, and awarded the Applicant costs in connection with the jurisdictional phase of the proceedings.

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D. Decisions of the Administrative Tribunal of the International Monetary Fund


Review of decision to abolish a post—Abolition of post falls under managerial discretion to be reviewed on ground of abuse of discretion—Proper motivations to abolish a post—Evaluation of qualifications of an applicant for a post is a managerial and not a judicial responsibility—Requirement of fair and reasonable procedures for the abolition of a post—Inadequate notice of the abolition of a post—Allegations of discrimination on religious basis—Failure to take effective measures in response to religious intolerance and workplace harassment—Serious efforts to be undertaken by international organizations to reassign their employees whose positions have been abolished—Granting of legal costs deriving from representation in proceedings antecedent to the Tribunal’s review process

The Applicant joined the International Monetary Fund (the Fund) on 4 February 1980 as a Transcriber. In 1990, he was appointed to the post of Translation Preparation Assistant at Grade A-6, and in October 1998, he was promoted to Grade A-7, holding the post of Translation Coordination Assistant. It was in this position that the Applicant was serving when it was abolished, effective 1 November 2001.

The Language Section where the Applicant had been working for more than 20 years underwent structural changes within the organization of the Fund, resulting in the abolition of the Applicant’s position. It was not contested that for years his Language Section was plagued with problems of interpersonal conflicts, not exempt of certain religious issues. The restructuring of the Language Section was aimed to enhance the efficiency of the newly created Department of Technology and General Services as a whole and, at the same time, resolve the problems mentioned above.

On 21 February 2002, the Applicant sought administrative review of the decision to abolish his post and of several surrounding issues of discrimination, retaliation and harassment. The administrative review was transferred to the Director of Human Resources (HR), who, on 8 August 2002, found that the decision to abolish the post and the Applicant’s separation from service had been made in compliance with the rules of the Fund. She further refuted the discrimination and harassment allegations. On 3 October 2002, the Applicant filed a Grievance with the Grievance Committee, which issued its Recommendation and Report on 31 July 2003, recommending denial of the Grievance. On 20 November 2003, the Applicant filed his Application with the Tribunal.

35 The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is competent to pass judgment upon any application: a) by a member of the staff challenging the legality of an administrative act adversely affecting him; or b) by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant. For more information on the Administrative Tribunal of the International Monetary Fund and the full texts of its judgments, see http://www.imf.org/external/imfat/index.htm.
The Applicant raised various claims, including that the decision to abolish his post and terminate his employment was motivated by discrimination on religious grounds and, thus, was improperly motivated. He further argued that the abolition of post in reality constituted a redistribution of functions with the view to resolve personal problems grounded in religious intolerance that had never been investigated by the Fund despite his repeated claims. The Applicant also alleged that the procedure of separation had not followed the rules relating to advance notice and that the efforts provided by the Fund to find him an alternative position had been insufficient. The Respondent strictly denied each of the Applicant’s contentions and argued that the Applicant himself contributed to the irrefutable interpersonal problems within the Section and its failure to find an alternative post.

In considering the case, the Tribunal noted that it was the first case brought to it in which an Applicant directly contested the lawfulness of an abolition of post, and also the first case where it had to address allegations that a staff member’s career had been adversely affected by religious prejudice.

The Tribunal observed that the abolition decision had been taken in the exercise of managerial discretion and was thus subject to limited review for abuse of discretion, that could not “be overturned unless [it was] shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedure”. Accordingly, the Tribunal decided to consider whether: (i) the decision was based on an error of law or fact; (ii) it was improperly motivated so as to vitiate an otherwise lawful decision; (iii) it was discriminatory because of the Applicant’s religion; (iv) the Applicant was subjected to a hostile work environment; and (v) the abolition decision was carried out in violation of fair and reasonable procedures.

Regarding the question whether the abolition decision involved abuse of discretion, the Tribunal considered whether the position had been abolished or redesigned to meet institutional needs and whether the incumbent was no longer qualified to meet its requirement. The Tribunal concluded that the reasons advanced by the Fund in justification for the structural changes in the Section were credible and sufficient, and that the new positions involved responsibilities materially different from those performed by the Applicant.

The Tribunal also concluded that the finding by the Fund that the Applicant was not qualified for the redesigned position was persuasive and that “the determination of the adequacy of professional qualification [was] a managerial, and not a judicial, responsibility”. Therefore, in the view of the Tribunal, the decision to abolish the post was not motivated by religious discrimination. Nevertheless, the Tribunal recalled the close relationship between discrimination and harassment and that in this regard, there was evidence that conduct in the Applicant’s Section had not met the standards set forth in the Code of Conduct of the Fund, and that the Fund’s supervisors had not taken effective measures to correct that problem. Accordingly, it found that there was ground to conclude that the Applicant had suffered from harassment in the workplace because of his religion.

Turning to the question of procedures applied for the abolition of the post, the Tribunal held that an official notice of eight days of the abolition decision was not reasonable and that it should be distinguished from the subsequent notice of separation of service. Indeed, the staff member should be in a position when such a decision of abolition is con-
veyed to him or her, to set out any reasons that he or she may have to contest the propriety or equity of this decision.

Finally, the Tribunal referred to a general principle of law requiring that international organizations make genuine, serious and pro-active efforts to find alternate employment for staff declared redundant. However, in the view of the weak initiative shown by the Applicant in finding another position in the Fund, the Tribunal concluded that the fault should be borne by both parties.

Regarding costs, the Tribunal held that a request for costs deriving form representation in proceedings antecedent to the Tribunal’s review had been found to be within the scope of the Tribunal’s remedial authority:

“The phrase ‘legal representation’ . . . embraces Applicant’s representation in the administrative review that she had to exhaust . . . prior to the filing of an Application with the Tribunal, as well as the proceedings before the Tribunal.”36

Based on the above, the Tribunal unanimously decided that the abolition of the Applicant’s post in the context of the reorganization of the Department was an act of managerial discretion, whose conception and implementation did not provide cause for reconsideration by the Tribunal on grounds of abuse of right or otherwise. However, the Tribunal awarded financial compensation of US$ 100,000 to the Applicant for the Fund’s failures to take effective measures in response to religious intolerance and workplace harassment of which he had been an object, and for failure to give him reasonable notice of the abolition of his post. Further, it was decided that the Fund should pay the Applicant the reasonable costs of his legal representation.

Chapter VI

SELECTED LEGAL OPINIONS’ OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. Privileges and immunities

(a) Electronic mail addressed to the Department of Management, United Nations, regarding diplomatic immunity with regard to a “When Actually Employed” contract at the level of Assistant Secretary-General


1. This is in response to your email of 22 February 2005 requesting advice as to whether a person who is the holder of a “When Actually Employed” contract (WAE contract) at the level of an Assistant Secretary-General would enjoy diplomatic privileges and immunities over the entire duration of the WAE contract, or whether such privileges and immunities would only apply in respect of days of actual employment.

2. In our view, such diplomatic privileges and immunities only apply in respect of days of actual employment. The Secretary-General’s Bulletin regarding “Use of ‘When Actually Employed’ Contracts for Special Representatives, Envoys and Other Special High Level Positions” of 29 August 1996 (ST/SGB/283) divides WAE contracts into two categories: (i) short term appointments under the 300 series of the Staff Rules; and (ii) on special service agreements. With respect to both kinds of WAE contracts, it is clear that a person employed under a WAE contract has the status of a staff member (300 series) or expert on
mission (special service agreements) “only when actually employed by the United Nations”. (See paragraphs 12 and 14 of the Bulletin.)

3. This means that status of the WAE contract holder as a staff member, or an expert on mission, only applies as at such time that he or she is employed by the United Nations. In this respect, it should be noted that paragraph 4 of the Bulletin states that “the holder of a WAE contract must be notified in writing of the days during which his or her services will be required, and his or her acceptance must be in writing. In cases of extreme urgency, this may be done on a post facto basis”. Accordingly, the privileges and immunities would only apply to words spoken or written or acts performed in an official capacity during the actual period or periods of employment. It is clear, of course, that privileges and immunities in respect of activities conducted on such days would continue to apply until waived by the Secretary-General in accordance with the Convention on the Privileges and Immunities of the United Nations.

24 February 2005

(b) Interoffice memorandum to the Assistant Secretary-General, Central Support Services, United Nations, regarding immunity from search for holders of red United Nations Laissez-Passer

Privileges and immunities granted to United Nations officials—Article V, section 19, and article VII, section 27, of the Convention on the Privileges and Immunities of the United Nations, 1946—Articles 29 and 36 of the Vienna Convention on Diplomatic Relations, 1961—Diplomatic privileges and immunities granted only to United Nations officials at the level of Assistant Secretary-General and above—Possibility to issue red United Nations Laissez-Passer to officials at lower level without granting full scope of diplomatic privileges and immunities—Personal inviolability—Exceptions to personal inviolability with respect to security procedures by airlines

1. This is with reference to your request addressed to [name] by email on 17 February 2005 for a legal opinion concerning the relevant privileges and immunities enjoyed by the holders of red United Nations Laissez-Passer (UNLPs) of [. . .]. The email states that a red UNLP holder of [. . .] was twice forced to allow his bags to be searched at [city] airport, and that a security officer had advised that she was under instructions to treat national diplomatic passports differently from United Nations “diplomatic passports”, which she said did not entitle their holders to immunity from search.

2. Pursuant to the Guide to the Issuance of United Nations Travel Documents (PAH/INF.78/2) of 1 June 1978, red UNLPs may be issued to officials of the United Nations at the level of Assistant Secretary-General and above, who by virtue of article V, section 19, of the Convention on the Privileges and Immunities of the United Nations (the Convention), are entitled to the “privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law”. In accordance with that Guide, red UNLPs may also be issued to officials of the United Nations at the D-2 level who under

article VII, section 27, of the Convention, are only entitled to the same facilities as are accorded to diplomatic envoys when travelling on the business of the United Nations. The Guide also provides that red UNLPs may, in exceptional cases, be issued to staff members below the rank of D-2 who are designated by the Secretary-General as within one of the categories listed in paragraph 10 thereof. With respect to such staff, the Convention provides neither the diplomatic privileges and immunities nor the facilities accorded to diplomatic envoys.

3. Based on the foregoing, and unless there is an agreement with the Government of the host country which provides otherwise, only officials who are at the level of Assistant Secretary-General and above are entitled to the full scope of diplomatic privileges and immunities. As such, only Assistant Secretary-Generals and above are entitled to “personal inviolability” under article 29 of the Vienna Convention on Diplomatic Relations (the Vienna Convention). As diplomatic agents, they cannot be required to submit to compulsory search procedures by police or other law enforcement authorities. In respect of travel by air, however, such inviolability does not preclude being expected to submit to a search either manually or by x-ray device as it has been established that airlines may refuse to carry persons who have not submitted to search procedures. In addition, pursuant to article 36 of the Vienna Convention, the personal baggage of a diplomatic agent is exempt from search unless there are serious grounds for presuming that it contains articles other than for official or personal use, which may be either prohibited or controlled by the laws of the receiving State. Such inspection, however, can only be conducted in the presence of the diplomatic agent or of his authorized representative.

1 March 2005

(e) Note verbale to the Permanent Representative of a Member State regarding the imposition of a road toll tax on the United Nations High Commissioner for Refugees

Privileges and immunities granted to the United Nations—Article 105 of the Charter of the United Nations—Article II, section 7 (a), of the Convention on the Privileges and Immunities of the United Nations, 1946—Road toll tax—Exemption of any form of direct taxation—No exemption of charges for public utility services—Charges for services must be specifically identified, described, itemized and calculated according to some predetermined unit

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [Member State] to the United Nations and has the honour to refer to the decision by the Government of [Member State] to impose a road toll tax on [staff members of the Office of] the United Nations High Commissioner for Refugees (UNHCR) with respect to the purchase of fuel in [Member State]. The Legal Counsel notes that since 2001 UNHCR has not been exempted from the road toll, and has thus incurred an additional annual cost of some US$ 300,000. The Legal Counsel notes that UNHCR has requested exemption from such road toll, in particular via its notes verbales of 14 November

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2001, 16 December 2003 and 25 August 2004 (as attached)," but to date has not received a response from the Government. The Legal Counsel understands that in September 2001 the [Member State] Revenue Authority advised that an exemption from the road toll for UNHCR was not recommended as this was a “user charge and . . . payable by all fuel users” (copy of advice attached)."

In this connection, the Legal Counsel wishes to clarify the legal position of the United Nations. Pursuant to article II, section 7 (a), of the 1946 Convention on the Privileges and Immunities of the United Nations (the Convention), acceded to by the [Member State] on [date], without reservation, “the 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 services”. The obligation of the Government to exempt UNHCR from “any form of direct taxation” is also set forth under article VIII, paragraph 4 (a), of the Agreement between the United Nations High Commissioner for Refugees and the Government of [Member State] of [date] (the Agreement). Article VIII, paragraph 4 (a), of the Agreement, like the Convention, also specifies that such exemption is on the proviso that “UNHCR will not claim exemption from charges for public utility services”. Accordingly, it follows that if a “tax” is in fact a “charge for services”, the United Nations will not seek exemption. The question at hand is thus whether the “road toll” is in fact a charge for services, or a form of taxation, from which the United Nations and UNHCR should be exempt under the Convention and the Agreement.

The United Nations' position with respect to charges for public utility services is set out in the Study prepared by the Secretariat on the Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency (Yearbook of the International Law Commission, 1967, vol. II”). The Study states that the term “public utility” has a restricted connotation applying to particular supplies or services rendered by a Government or a corporation under Government regulation, for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. As a matter of principle and as a matter of obvious practical necessity, charges for actual services rendered must relate to services which can be specifically identified, described and itemized. The Legal Counsel wishes to advise that unless the above-mentioned tax can be shown to be a charge for services which can be specifically identified, described, itemized and calculated according to some predetermined unit, the Government of the [Member State] is bound to exempt the United Nations from payment of such taxation according to its obligations under article II, section 7 (a), of the Convention, and under article VIII, paragraph 4 (a), of the Agreement.

Under section 34 of the Convention, the Government of the [Member State] has an obligation to be “in a position under its own law to give effect to the terms of this Convention.” Moreover, 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

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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.

The Legal Counsel is confident that it is not the intention of the Government of the [Member State] to breach its obligations under the Convention, the Agreement or the Charter of the United Nations. Accordingly, the Legal Counsel kindly requests the Permanent Representative of the [Member State] to the United Nations to urge the competent national authorities to continue its previous policy of exempting the United Nations and UNHCR from the payment of the road toll tax in accordance with the Government of the [Member State]’s obligations under international law.

The Legal Counsel avails himself of this opportunity to renew to the Permanent Representative of the [Member State] to the United Nations the assurances of his highest consideration.

14 March 2005

(d) Draft note verbale for the United Nations Development Programme to be addressed to the Ministry of Foreign Affairs of a Member State in respect of a national law requiring mandatory contribution to the national health scheme

Privileges and immunities granted to United Nations officials—Article II, section 7 (a), and Article V, section 18 (b), of the Convention on the Privileges and Immunities of the United Nations, 1946—Articles 101 and 105 of the Charter of the United Nations—Exemption of any form of direct taxation—Equality of treatment of all officials of the Organization, independently of nationality—Mandatory contributions for health insurance under national legislation considered as a form of direct taxation—Locally recruited staff not assigned to hourly rates are entitled to exemption from such taxation—General Assembly resolution 78 (I) of 7 December 1946

The United Nations Development Programme (UNDP) Resident Representative in the [Member State] presents his compliments to the Ministry of Foreign Affairs of the [Member State] and has the honour to refer to a law for health insurance enacted in the [Member State] which provides for obligatory membership in, and contribution to, the national health scheme.

The UNDP Resident Representative has the honour to inform the Ministry of Foreign Affairs of the [Member State] that it has been the consistent practice and policy of the United Nations, pursued by the Organization for more than five decades, that mandatory contributions for health insurance under national legislation are considered a form of direct taxation on the United Nations and therefore contrary to the Convention on the Privileges and Immunities of the United Nations (the Convention), to which the [Member State] has been a party since [date] without reservation.

Pursuant to the provisions of article II, section 7, sub-paragraph (a), of the Convention, the United Nations, its assets, income and other property shall be exempt from all direct taxes. Furthermore, pursuant to article V, section 18, sub-paragraph (b), of the Con-

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vvention, “officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations”. It should be noted in this regard that General Assembly resolution 76 (1) provides “the granting of privileges and immunities referred to in article V . . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates”. Thus, locally recruited staff who are not assigned to hourly rates are entitled, irrespective of their nationality, to the exemption from such taxation. Under section 34 of the Convention, the [Member State] has an obligation “to be in a position under its own law to give effect to the terms of this Convention”.

Thus, as a party to the Convention, the [Member State] is not entitled to make use of United Nations emoluments for any tax purposes. The rationale of the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment of all officials of the Organization, independently of nationality. These principles were clearly enunciated by the General Assembly in resolution 78 (1) of 7 December 1946 as follows: “In order to achieve full application of the principle of equality among Members and equality of personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter.”

The Organization’s exemption from national health insurance schemes is further evidenced by the fact that the United Nations has its own comprehensive social security scheme, which includes provisions for health protection, for United Nations staff members. The establishment of such scheme is required under regulation 6.2 of the United Nations Staff Regulations, which are established by the General Assembly according to Article 101 of the Charter of the United Nations.

Finally, any interpretation of the provisions of the Convention 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.

The UNDP Resident Representative would be grateful if the Minister of Foreign Affairs would take the necessary steps, in recognition of the foregoing privileges and immunities of the United Nations and its officials, to ensure that the United Nations, its subsidiary organs and their officials are not subject to compulsory membership in the national health insurance scheme.

23 March 2005
(e) Facsimile to the Representative of the Secretary-General of a United Nations Office, regarding the issuance of diplomatic cards to United Nations officials by the Host Country


1. This is with reference to your memorandum of 14 March 2005 attaching a note verbale dated 10 March 2005 from the Ministry of Foreign Affairs of [Member State], which advises that diplomatic cards will be issued to United Nations staff members upon submission of their United Nations diplomatic Laissez-Passer, or passports which indicate the diplomatic status of the bearer. You request advice as to whether [United Nations office] should reply to this note, and if so, on the possible content of such a reply.

2. Although [Member State] is not a party to the 1946 Convention on the Privileges and Immunities of the United Nations (the Convention), the status of the Organization and its officials in [Member State] derive from the Charter of the United Nations and the Convention. We note in particular that [Member State] is party to the “Agreement between the [Member State] and the United Nations Development Programme” signed on [date], of which article IX provides that the Convention shall apply in respect of the United Nations, its organs and officials, etc., in the country.

3. The issuance of diplomatic cards by the host country is usually regulated by the practice which is followed in each country and not by any specific provisions of the Convention, under which only a very limited number of officials at the level of Assistant Secretary-General and above are accorded diplomatic privileges and immunities. While practice varies from country to country, in most countries the head of the United Nations office is usually accorded diplomatic status for purposes of protocol regardless of their grade. We would also note that at most major United Nations headquarters (other than New York) including Geneva, Vienna, Nairobi and the Regional Economic Commissions, staff members at the level of P-5 and above are granted diplomatic privileges and immunities.

4. We are not informed of the practice in [Member State] but we would suggest that you confirm to us whether or not the head of Office is accorded diplomatic status, which we would regard as the minimum requirement in the light of the established practice.

30 March 2005

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(f) Interoffice memorandum to the Director of the Investment Management Service of the United Nations Joint Staff Pension Fund regarding the Fund’s tax exempt status in certain States

Article II, section 7 (a), of the Convention on the Privileges and Immunities of the United Nations, 1946—Exemption from direct taxation of all assets of the United Nations—Assets of the United Nations Joint Staff Pension Fund held on behalf of the participants and beneficiaries of the Fund are property of the United Nations—Article 18 of the Regulations, Rules and Pension Adjustment System of the Joint Staff Pension Fund—Measures which may increase the burdens, financial or other, of the Organization are considered inconsistent with Article 105 of the Charter of the United Nations

1. This is in response to your memorandum dated 21 March 2005 addressed to the Director of the General Legal Division, requesting a legal opinion on the tax exempt status of the United Nations Joint Staff Pension Fund in [Member State A] and [Member State B]. We understand that [name], a custodian of the Fund, requested a legal opinion in a meeting on 18 March 2005 in connection with the Fund’s outstanding tax claims in [Member State A] and [Member State B].

2. We wish to advise that all assets of the United Nations, including the assets of the United Nations Joint Staff Pension Fund, are exempt from direct taxation. This position derives from the obligations of Member States under the Convention on the Privileges and Immunities of the United Nations (the Convention) and the Charter of the United Nations. We note that [Member State B] acceded to the Convention without reservation on [date], and that [Member State A] acceded to the Convention with no relevant reservation on [date]. Pursuant to article II, section 7 (a), of the Convention, “the 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 services”. Article 105 of the Charter provides that “[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.” Among these privileges and immunities is immunity from taxation of the assets, income and property of the Organization. Measures which may increase the burdens, financial or other, of the Organization are considered to be inconsistent with a Member State’s obligations under Article 105 of the Charter.

3. It is clear that the assets of the United Nations include the assets of the United Nations Joint Staff Pension Fund. Article 18 of the Regulations, Rules and Pension Adjustment System of the Joint Staff Pension Fund (the Regulations and Rules) states that “[t]he assets shall be the property of the Fund and shall be acquired, deposited and held in the name of the United Nations . . .”. Although the assets are held on behalf of the participants and beneficiaries of the Fund, which may include the employees of non United Nations bodies which meet the criteria for membership as set forth under article 3 (b) of the Regulations and Rules, the assets are nevertheless the property of the United Nations. They are accordingly entitled to exemption from taxation under the Convention on the Privileges and Immunities of the United Nations.

25 April 2005

(g) Letter to the Ambassador and Deputy Permanent Representative to the Permanent Mission of [Member State] to the United Nations


I refer to your letter of 25 April 2005 by which you informed us that [Member State] will be hosting the [...] session of the Conference of the Parties to the United Nations Climate Change Convention. In this respect, you seek clarification as to whether “the Conference of the Parties, being part of the United Nations, falls within the scope and application of the Convention on the Privileges and Immunities”. You further indicate that “if this is the case, [Member State] will be able to grant privileges and immunities for the Conference under an existing legal instrument, and if it is not the case, it will be required to prepare a new regulation in order to provide this meeting with privileges and immunities”.

At the outset, we note that the Conference of the Parties is one of the bodies set up by the Climate Change Convention, together with the Convention Secretariat and a number of subsidiary bodies (subsidiary body for scientific and technological advice (article 9), and subsidiary body for implementation (article 10)). While both the legal nature and the functions of these bodies indicate that they have certain distinctive elements attributable to international organizations, none of these bodies is de jure a United Nations subsidiary organ.

Notwithstanding, as indicated in your letter, the Secretariat of the Climate Change Convention is presently institutionally linked to the United Nations pursuant to General Assembly resolution 56/199 [of 21 December 2001] approving the continuation of the institutional linkage and related administrative arrangements initially approved by the Conference of the Parties in decision 14/CP.1.

As reflected in General Assembly resolution 56/199, despite the institutional linkage, the Convention Secretariat is not fully integrated in the work programme and management structure of any particular department or programme of the United Nations. It is however a fact that, since 1995, the United Nations provides administrative support to the Convention Secretariat. In addition, the Executive Secretary of the Convention Secretariat is appointed by the Secretary-General, to whom he/she reports on administrative matters through the Under-Secretary-General for Management and on other matters through the Under-Secretary-General for Economic and Social Affairs, while being accountable to the Conference of the Parties.

It should also be noted that, over time, the Executive Secretary has functioned within the scope of a broad delegation of authority and that he/she is invited by the General Assembly to report on the work of the Conference of the Parties to the Convention.

Finally, it should be noted that the sessions of the Conference of the Parties and its subsidiary bodies are included in the United Nations calendar of conferences and meetings for the biennium (A/AC.172/2004/2 of 12 March 2004).

In the light of the above, and although the Convention Secretariat may, per se, be defined as a “treaty body with an institutional linkage to the United Nations”, we are of the view that by virtue of such linkage, the principles governing United Nations conferences convened by United Nations bodies should apply to the [. . .] session of the Conference of the Parties, as was the case with regard to previous conferences of a similar nature. We would thus suggest that, as appropriate, internal legislation be enacted in [Member State] so that (i) the 1946 Convention on Privileges and Immunities of the United Nations be made applicable, mutatis mutandis, in respect of the Conference and (ii) participants that are not covered under the 1946 Convention be granted the necessary privileges and immunities.

11 May 2005

(h) Interoffice memorandum to the Director of the Investment Management Service of the United Nations Joint Staff Pension Fund regarding tax exemption in a Member State

Article II, section 7 (a), of the Convention on the Privileges and Immunities of the United Nations, 1946—Exemption from direct taxation for all assets of the United Nations—No exemption for “distribution tax” assessed against companies in which the United Nations Joint Staff Pension Fund (UNJSPF) is a shareholder

1. This is in response to your memorandum dated 3 May 2005 requesting advice as to whether UNJSPF should pay “distribution tax” in [Member State] in view of its exemption from “direct taxation” under the Convention on the Privileges and Immunities of the United Nations (the Convention), even if, as in the circumstances, the tax is not paid directly by UNJSPF but by entities in which the Fund is a shareholder.

2. You state that UNJSPF has purchased shares in a number of companies which carry on business in [Member State] ([names of banks and companies]), and that you have been advised by the custodians of the Fund, [names of banks] that the sum of [. . .] was deducted as tax from profits accruing to the Fund in its investments in the [Member State] companies. You attach a copy of a letter dated 10 February 2005 from the Ambassador of [State] in response to [name]’s letter of 30 September 2004, advising that under [Member State] Tax Law, the companies are required to pay two categories of taxes: a company tax and a distribution tax. The letter explains that the “distribution tax” is due on the company once it decides to distribute its profits to shareholders. The letter also explains that the amount of [. . .] is “actually an amount of tax due on the companies of which UNJSPF is a shareholder of.

shareholder and not of UNJSPF itself and that “under [Member State] law, those companies and UNJSPF are separate juridical entities”.

3. As you are aware, pursuant to article II, section 7 (a), of the Convention “the 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 services”. As the “distribution tax” is not assessed against the Fund as such, but with respect to the individual companies in which the Fund is a shareholder, it is not a direct tax within the meaning of article II, section 7 (a), of the Convention. Accordingly, as the tax is not being levied against the Fund, there is no entitlement to an exemption from the tax under article II, section 7 (a), of the Convention.

31 May 2005

(i) Note verbale to the Permanent Representative of a Member State to the United Nations regarding the intention of its Government to tax United Nations officials serving in the country

Privileges and immunities granted to United Nations officials—Article 105 of the Charter of the United Nations—Article V of the Convention on the Privileges and Immunities of the United Nations, 1946—Tax exemption on salaries and emoluments for all staff members regardless of their nationality, including locally recruited staff not assigned to hourly rates—General Assembly resolution 76 (1) of 7 December 1946—Staff Assessment Plan designed to impose a direct assessment on staff members comparable to national income taxes—General Assembly resolution 239 A (III) of 18 November 1948—Equality of treatment for all officials of the Organization—General Assembly resolution 78 (I) of 7 December 1946—National taxation would impose double taxation burden on staff members and increase financial burden of the Organization and its Member States

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [Member State] to the United Nations and has the honour to refer to the apparent intention of the Government of [Member State] to tax United Nations national staff serving in [Member State]. The Legal Counsel is advised that the [State] tax authorities have recently commenced a tax recovery action against [name], Head of Human Resources of the United Nations Development Programme (UNDP) in [Member State], who is a locally employed staff member. The Legal Counsel understands that in this connection, the Resident Coordinator of UNDP in [State], has written to the Minister of Foreign Affairs of [Member State], with respect to the tax exempt status of United Nations officials, as set forth in his note of 28 April 2005, and letter of 25 May 2005 (copy attached).”

In order to clarify the relevant privileges and immunities of the United Nations, the Legal Counsel has the honour to refer to the Agreement between the United Nations Development Programme and the Government of [Member State] signed on [date] (the Agreement). Pursuant to paragraph 1 of article LX, of the Standard Basic Assistance Agreement,


** The documents are not reproduced herein.
the Government has an obligation “to 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” (the Convention). In addition, the Legal Counsel has the honour to refer to the Convention, to which [Member State] acceded on [date], without reservation.

In the event of any misunderstanding with respect to the application of privileges and immunities to nationals of [Member State] employed by the United Nations, its organs, and subsidiary organs, the Legal Counsel wishes to clarify the categories of United Nations staff who enjoy privileges and immunities under the Agreement and the Convention, which privileges and immunities include exemption from taxation on the salaries and emoluments paid to them by the United Nations.

Pursuant to article V, section 18 (b), of the Convention, “officials” of the United Nations are “exempt from taxation on the salaries and emoluments paid to them by the United Nations”. With respect to the definition of “officials”, it should be noted that General Assembly resolution 76 (1) of 7 December 1946 (copy attached), adopted pursuant to the procedure laid down in section 17 of the Convention, provides for “the granting of the privileges and immunities referred to in article V . . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates” (emphasis added). Thus, regardless of their nationality, all United Nations officials, including locally recruited staff who are not assigned to hourly rates, are entitled to the exemption from such taxation.

Thus, any nationals of [Member State] employed by the United Nations, including locally recruited staff who are not assigned to hourly rates, are entitled to exemption from taxation on their salaries and emoluments paid to them by the United Nations.

Based on the foregoing, [Member State] is not entitled to make use of United Nations emoluments for any tax purposes. In place of national taxation, the United Nations General Assembly, in 1948, adopted a Staff Assessment Plan designed “to impose a direct assessment on United Nations staff members which is comparable to national income taxes” (resolution 239 (III) A). The total funds collected from this assessment are distributed among Member States in proportion to their contributions to the assessed budget of the United Nations. National taxation would therefore impose a double taxation burden on officials of the United Nations and would increase the financial burden of the Organization and its Member States.

Another rationale of the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment for all officials of the Organization. These principles were clearly enunciated by the General Assembly in resolution 78 (1) of 7 December 1946 as follows: “In order to achieve full application of the principles of equality among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter.”

* The resolution is not reproduced herein.
It should be noted that under section 34 of the Convention, the Government of [Member State] has an obligation to be “in a position under its own law to give effect to the terms of this Convention”. Moreover, any interpretation of the provisions of the Convention 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.

The Legal Counsel would be grateful if, in fulfilment of its obligations under the Agreement, the Convention, and the United Nations Charter, the Permanent Representative of [Member State] to the United Nations would kindly request the competent authorities in [State] to exempt all officials of the United Nations, including national staff serving in the country, from taxation on the salaries and emoluments paid to them by the United Nations.

The Legal Counsel avails himself of this opportunity to renew to the Permanent Representative of [Member State] to the United Nations the assurances of his highest consideration.

16 September 2005

2. Procedural and institutional issues

_(a) Interoffice memorandum to the Deputy Director of the Security Council Affairs Division, United Nations, regarding the circulation of documents in all official languages_

Submission and circulation of documents in all official languages in Security Council subsidiary organs—Rules 26 and 41 of the Provisional Rules of Procedure of the Security Council and relevant practice applicable to its subsidiary organs—Possibility to consider a document prior to its circulation in all official languages—Actual date of official submission of a report—Obligation to submit a report by a specific date and the obligation to circulate the report in all official languages are two distinct obligations incumbent upon different entities at different points of time—Practice of circulating informal documents only in English unless there is formal objection by a Member State—Discretionary decision of the chairman of a committee to extend the deadline for comments to a report beyond the 48-hour no-objection rule

1. This is in reference to your routing slip of 28 December 2004 attaching a note from the Secretary of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities (the Committee), on the use of official languages in Security Council organs. Our advice was sought on the following issues:

   a. Whether a report of the Monitoring Team submitted to the Committee pursuant to Security Council resolution 1526 (2004) by the date indicated in the English language only, could be considered as formally “submitted” before it has been reproduced in all official languages;
b. Whether the Committee’s annual report, or for that matter, any communications, letters from the Chairman, or proposals for additions to the Committee’s consolidated list, could be considered by members of the Committee before they are translated and circulated in all official languages;

c. The strict application of the 48-hour no-objection rule to the adoption of reports and their amendments, and more particularly, whether after a deadline for submitting comments on a report has expired and an amendment has been circulated under a 48-hour no-objection rule, could a member of the Committee then submit, within the latter 48-hour deadline, another amendment to the report, unrelated to the one circulated under the no-objection rule.

2. These questions were examined in the light of the Provisional Rules of Procedure of the Security Council, which are applicable, as appropriate, to the Committee, as a subsidiary organ of the Security Council in the absence of any other applicable rules. These questions were examined also in the light of the practice of this and similar Security Council committees, as well as the Main Committees of the General Assembly.

3. Rules 26 and 41 of the Provisional Rules of Procedure pertain to the circulation, distribution and publication of documents in all official languages.

They provide, respectively, as follows:

“The Secretary-General shall be responsible for the preparation of documents required by the Security Council and shall, except in urgent circumstances, distribute them at least forty-eight hours in advance of the meeting at which they are to be considered” (emphasis added).

and,

“Arabic, Chinese, English, French, Russian and Spanish shall be both the official and the working languages of the Security Council” (emphasis added).

According to the strict interpretation of the rules, therefore, all documents considered by the Council, and by analogy also by its subsidiary organs, should be circulated in all official languages before they are considered by their members.

A. Official “submission” of a report of the Monitoring Team


5. The obligation to submit the report by the date indicated and the obligation to circulate the report in all official languages are two distinct obligations incumbent upon different entities at different points of time. While the former applies to the Monitoring Team, the latter is binding upon the Secretariat. If submitted, therefore, within the deadline indicated, the report of the Monitoring Team in the language submitted should be considered as “submitted” within the meaning of resolution 1526.
B. Consideration of reports and other communications in all official languages

6. Rule 26 of the Provisional Rules of Procedure does not distinguish between official and unofficial documents for the purpose of distribution in all official languages. Nor does it specify at what stage of the consideration of any working document, should it be so reproduced. In the practice of the Security Council and its various committees, however, unofficial working documents have been considered on the basis of an English text, and submitted for reproduction and issuance in the six official languages at the final stage of the negotiations. In the committees of the General Assembly, the practice has not been consistent. In the Second, Third, Fifth and Sixth Committees, informal consultations are conducted on the basis of informal papers and in the language submitted, for the most part in English. The Sixth Committee, in particular, adopts a pragmatic approach to the reproduction of documents and, depending on the content of the document, it may decide on whether, and at what stage of the discussion a reproduction in the six official languages is required. The Host Country Committee, being the exception, requires the reproduction in all official languages of any draft text before it is considered by members of the Committee.

7. In the practice of the various committees, therefore, the reproduction of working documents in any or all of the United Nations official languages, has been a matter for each of these committees to decide as part of its working methods. While for the most part informal working documents have been considered in the English language, this practice can be challenged by any member who may request the reproduction of a document in all six languages based on the strict interpretation of the rule. In the event of a challenge, and if no agreement is reached among members of the committee, the chairman would have to postpone consideration of the report until such time as the Secretariat reproduces it in all official languages.

8. The question of whether apart from the annual report all other communications, letters or proposals should also be reproduced in all six languages before they are considered by members of the Committee should be decided by the Committee in full consideration of the time, costs and human resources required to comply with the request for reproduction. We should note in this connection the recommendation of the Secretariat in its note of 10 March 2004 (A/58.CR.P.5) on the “Historical and analytical note on the practices and working methods of the Main Committees on reports and resolutions” which reads as follows:

“Draft resolutions and decisions, as far as possible, should be issued as official “L” documents only after the text is finalized through informal consultations (with interpretation), as is the practice in the Fifth Committee. This would lead to better utilization of resources” (emphasis added) (para. 94).

C. The strict application of the 48-hour no-objection rule

9. The question of whether an amendment to a report can be introduced after a deadline for comments on the report has expired, but within a 48-hour deadline for comments on another amendment to a report, is essentially a question of whether at any time before the adoption of the report the deadline for comments can be extended. While the extension of the deadline is within the discretion of the Chairman, in the circumstances,
we would advise that as long as the report has not been formally adopted, the request for an additional amendment should be receivable.

31 January 2005

(b) Interoffice memorandum to the Legal Adviser of the United Nations Conference on Trade and Development regarding the provision of premises and secretariat functions by the Conference to two non-governmental organizations

Use of United Nations premises, resources and e-mail address by non-governmental organizations—Extent of support granted by the United Nations to non-governmental organizations—Question of concluding host country agreement to formalize such support—Hosting of the secretariats of non-governmental organizations is incompatible with the special status of the United Nations and its privileges and immunities—Information Circular IC/Geneva/2005/14—Provision of secretariat functions to non-governmental organizations is incompatible with the mandate of the United Nations Conference on Trade and Development (UNCTAD)—Secretary-General’s Bulletin ST/SGB/1998/1—Obligation of staff members not to seek or receive instructions from any authority external to the Organization—Article 100 of the Charter of the United Nations and staff regulation 1.2 (d)—Use of the United Nations name and emblem—General Assembly resolution 92 (1) of 7 December 1946

1. This is in reference to your e-mail message of 1 June 2005 to me, concerning the above-captioned matter. In your correspondence, you note that two non-governmental organizations (NGOs) established pursuant to the Swiss Civil Code, the World Association of Investment Promotion Agencies (WAIPA) and the World Association of Debt Management Offices (WADMO), have their headquarters offices located in Geneva, and their secretariats are located on UNCTAD premises on the Palais des Nations, United Nations Office at Geneva (hereinafter the “UNCTAD premises”). You also note that UNCTAD provides secretariat functions for these two organizations, and their e-mail addresses use the UNCTAD name.

I. Background

2. As we understand from your e-mail message, UNCTAD’s management is supportive of WAIPA and WADMO, including the hosting of their secretariats on UNCTAD premises and the performance by UNCTAD of secretariat functions for WAIPA and WADMO. In this regard, while your correspondence does not specify whether WAIPA and WADMO are charged for their use of UNCTAD premises or for the performance by UNCTAD of secretariat functions, it appears from the information provided that the premises are provided and the secretariat functions performed for these two organizations free of charge. You have indicated that, while UNCTAD could provide certain support to

* For information on Secretary-General’s bulletins, see note in section 1 (a), above.
WAIPA and WADMO, you have serious concerns as to whether such support could include hosting of their secretariats on UNCTAD premises and the performance of secretariat functions for WAIPA and WADMO, and that you have expressed your concerns to the UNCTAD management. In this connection, you have attached a copy of the e-mail message of 19 April 2005 by the Senior Legal Liaison Officer, United Nations Office at Geneva, expressing the same concerns in regard to WAIPA. You concur with the Senior Legal Liaison Officer’s views and advice.

3. In your 1 June 2005 correspondence, it is indicated that you have discussed this issue with the Officer-in-Charge of UNCTAD, and that he requests this Office’s views as to whether it is appropriate for UNCTAD to (i) allow WAIPA and WADMO secretariats to be located on UNCTAD premises; and (ii) perform secretariat functions for WAIPA and WADMO. You also inquire, in the event that the use of United Nations Office at Geneva premises by WAIPA and WADMO are not sanctioned, whether such uses can be continued if an agreement was entered into between the United Nations, the Government of Switzerland, WAIPA and WADMO.

4. The Statutes of WAIPA provide in article I as follows:

   “1. Following the founding meeting of high-level officials of Investment Promotion Agencies held 26–27 April, 1995 under the auspices of the United Nations Conference on Trade and Development (UNCTAD), an international association of Investment Promotion Agencies is hereby established and shall hereinafter be referred to as World Association of Investment Promotion Agencies (WAIPA).

   “2. WAIPA is an autonomous, non-profit making organization established pursuant to articles 60 to 79 of the Swiss Civil Code.

   “3. The headquarters of WAIPA shall be situated in Geneva, Switzerland, or at such place as the General Assembly may decide.”

Regarding its secretariat, article XV of the WAIPA Statutes provides, inter alia, as follows:

   “3. WAIPA shall seek and utilize to the extent possible support from Foreign Investment Advisory Services (FIAS), Multilateral Investment Guarantee Agency (MIGA), Organization for Economic Cooperation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), United Nations Industrial Development Organization (UNIDO) and such other bilateral and multilateral agencies as may be authorized by the Steering Committee and the General Assembly.”

5. Regarding WADMO, its Statutes provide that it is an autonomous, non-profit making organization established pursuant to articles 60 to 79 of the Swiss Civil Code, and its headquarters shall be in Geneva (chapter I, article 1, paragraphs 2 and 3). Regarding the secretariat of WADMO, chapter 6, article XV, paragraph 3, of the Statutes provides that: “[t]he Secretariat should seek and utilize to the extent possible organizational and other support from bilateral and multilateral agencies, as may be authorized by the Steering Committee and the General Assembly’.” In addition, you have indicated that:

   “According to the information received, the idea to create a professional association of debt managers originated in December 1997, during the first inter-regional Confer-

* We understand that the reference to the “General Assembly” is to the General Assembly of WAIPA, established as the “deliberative assembly” of WAIPA under its Statutes (chapter 4, article V).
ence on Debt Management organized by UNCTAD in Geneva. In response to the request of a large number of countries, UNCTAD, through its Debt Management-DMFAS Programme, helped establish the association. WADMO had its founding meeting in April 2000 under the auspices of UNCTAD, (immediately after UNCTAD’s second Inter-regional Debt Management Conference). During the first General Assembly, UNCTAD was asked to serve as the Secretariat of WADMO. UNCTAD, through its Debt Management-DMFAS Programme, formally accepted. The Chief of UNCTAD’s Debt Management Programme (UNCTAD staff) is mentioned in the WADMO letterhead, website and WADMO documentation as contact person.”

6. The Statutes of WAIPA and WADMO, quoted above, make clear that they are Swiss NGOs that are legally independent and separate from the United Nations. In this regard, while, under the Statutes of WAIPA and WADMO, they are to obtain “support” from UNCTAD, as authorized by the Steering Committee and the General Assembly of WAIPA and WADMO, respectively, it is unclear whether the “support” is intended to include UNCTAD performing secretariat functions. However, even if the Statutes of WAIPA and WADMO should so provide, UNCTAD would be authorized to provide UNCTAD premises to WAIPA and WADMO, and provide secretariat functions to them, only if the provision of premises and such functions was consistent with the mandate of UNCTAD.

II. Use of UNCTAD premises by WAIPA and WADMO

7. With regard to the use by WAIPA and WADMO of a portion of UNCTAD premises, we note that the legal status of the United Nations Office at Geneva premises is based on the “Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946” (Host Country Agreement). Section 2 of article II of the Host Country Agreement provides, inter alia, that the “premises of the United Nations shall be inviolable” and that the “property and assets of the United Nations in Switzerland shall be immune from search, requisition, confiscation, expropriations, and any other form of interference, whether by executive, administrative, judicial or legislative action.” It is noted that such privileges and immunities solely and exclusively apply to the United Nations and not to any third party, such as non-United Nations entities.

8. In view of the above, we concur with your views expressed in your e-mail message of 1 June 2005 to me, that the use by WAIPA and WADMO of a portion of UNCTAD’s office space is incompatible with the status of the United Nations and its privileges and immunities. As previously advised in a comparable case, which you have quoted in your e-mail message (see my e-mail message to you of 17 August 2004), concerning the proposed use by [name of non-profit organization], a non-profit organization incorporated under the laws of the [Member State], of premises of the [name of organization], this Office takes the view that the commingling of private non-United Nations entities, organized under the laws of a Member State (such as WAIPA and WADMO), and the United Nations would jeopardize or at least confuse the special regime applicable under the Host Country Agreement as well as the status of the United Nations and its privileges and immunities.

9. Moreover, we note that the use of the UNCTAD premises is regulated by Information Circular IC/Geneva/2005/14 of 1 March 2005. That Information Circular restricts the use of United Nations Office at Geneva premises to “meetings, conferences and special events” and does not, in particular, contemplate the long-term hosting of non-United Nations entities. We also note that the mandate of the Secretariat of UNCTAD (see ST/SGB/1998/1 of 15 January 1998 on the “Organization of the Secretariat of the United Nations Conference on Trade and Development”) entrusts the Secretary-General of UNCTAD with the responsibility of providing “guidance in UNCTAD’s relations with non-governmental actors.” (See section 3.2 of ST/SGB/1998/1.) In this regard, the Office of Legal Affairs takes the view that the scope of UNCTAD’s mandate to provide guidance to non-United Nations entities, such as WAIPA and WADMO, in the absence of a specific authorization by the General Assembly, cannot be construed to encompass the provision of UNCTAD premises to such non-United Nations entities (see paragraphs 11 to 16 below). Finally, we note that the use of United Nations resources, such as office space, in the absence of such an authorization by the General Assembly, should be for the benefit of the United Nations only and should not be for the benefit of non-United Nations entities.

10. Even if the Government of Switzerland were to agree to formalize the use of UNCTAD premises by WAIPA and WADMO by way of an agreement between the United Nations, the Government of Switzerland, WAIPA and WADMO, we would find that such an agreement would not cure the problems described above, namely the inconsistency of such an arrangement with the status of the United Nations and its privileges and immunities and the mandate of UNCTAD. Moreover, as I indicated in the case of the [name of non-profit organization], such an arrangement would set an unnecessary and undesirable precedent.

III. The involvement of UNCTAD staff members in WAIPA and WADMO

11. As far as we can determine from ST/SGB/1998/1, the mandate of the Secretariat of UNCTAD does not include the performance of secretariat functions for non-United Nations entities. According to section 2.1 (a) of ST/SGB/1998/1, UNCTAD:

“provides substantive and secretariat services for the United Nations Conference on Trade and Development (every four years), the Trade and Development Board (one annual session) and its subsidiary bodies. In addition, UNCTAD is responsible for substantive servicing of the Commission on Science and Technology for Development, a subsidiary body of the Economic and Social Council.”

12. In addition, while section 3.2 of ST/SGB/1998/1 entrusts the Secretary-General of UNCTAD with the responsibility of providing “guidance in UNCTAD’s relations with non-governmental actors”, it does not provide for the provision of secretariat functions to selected non-United Nations entities as part of such guidance. Further, neither section 7.4, describing the functions of the Globalization, Development and Debt Management Branch of the Division on Globalization and Development Strategies, nor section 8, describing
the functions of the Division on Investment, Technology and Enterprise Development* contain any language that would include the performance of secretariat functions to non-United Nations entities as part of the functions of such Divisions.

13. The Office [of Legal Affairs] has consistently advised that the United Nations should not be involved in the establishment, management or operation of an entity external to the United Nations, since such involvement, as in this case, raises not only the issue of the United Nations’ mandate but also the issues of liability and the privileges and immunities of the United Nations. This Office has advised in similar cases that by becoming involved in the establishment, management or operation of an external entity incorporated under the law of a Member State, the United Nations would, effectively, agree to be governed by the Member State laws in respect of the United Nations’ involvement with the entity. Compliance with local law could be deemed as the United Nations’ agreement to the jurisdiction of the Member State, including its court, should claims or disputes be brought against the entity in the Member State court, resulting in the waiver of the privileges and immunities of the United Nations, particularly immunity from legal process, provided under the 1946 Convention on the Privileges and Immunities of the United Nations.**

14. Based on the foregoing, we are of the view that the performance of secretariat functions for WAIPA and WADMO, in the absence of a specific authorization by the General Assembly, is not part of the mandate of UNCTAD. Accordingly, UNCTAD staff members should also not become involved in the administration or operation of a non-United Nations entity. Moreover, the use of staff resources should be only for official purposes of the Organization, and should not be for the benefit of non-United Nations entities (see also our paragraph 9 above). Furthermore, the involvement by UNCTAD staff members in WAIPA and WADMO also violates the United Nations Charter, as well as Staff Regulations. Article 100 of the United Nations Charter, which is also reflected in staff regulation 1.2 (d), states that:

“...In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.”

15. Similarly, staff regulation 1.1 (b) states that each staff member is required to make a written declaration promising to “exercise in all loyalty, discretion and conscience the functions entrusted to [him/her] as an international civil servant of the United Nations, to discharge these functions and regulate [his/her] conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of [his/her] duties from any Government or other source external to the Organization”.

16. We also note that the use by WAIPA and WADMO of UNCTAD e-mail addresses violates the provisions of General Assembly resolution 92 (1) of 7 December 1946, which reserves the use of the United Nations name and emblem, including the acronym of the

* ST/SGB/1998/1 has not been amended since it has been issued. It is not clear, however, whether any revisions have been made, in fact, to the organizational structure of the Secretariat of UNCTAD since the issuance of ST/SGB/1998/1. In this regard, it is not clear if the “Debt Management—DMFAS Programme”, which you indicated helped establish WADMO, is part of the Globalization, Development and Debt Management Branch.

United Nations name, for official purposes of the Organization, as WAIPA and WADMO are non-United Nations entities whose activities do not constitute official business of the Organization. Further, such use also creates the misleading impression that WAIPA and WADMO are United Nations entities, have been endorsed by the United Nations, or are somehow affiliated with the Organization. We recommend, therefore, that the use of UNCTAD e-mail addresses by WAIPA and WADMO be discontinued.

17. Please contact this Office if you need any further assistance in this matter.

7 June 2005

(c) Letter to the Chairperson of the Commission on Human Rights concerning the accreditation and participation of non-governmental organization representatives who are subject to requests for arrest or detention by Interpol in the work of the Commission on Human Rights

Question regarding the possibility to accredit individuals subject to Interpol arrest warrants in view of the implied security risks—Economic and Social Council resolution 1996/31 of 25 July 1996 on the accreditation of non-governmental organizations (NGO) focuses on the organization and not the individuals—Duty of the United Nations to protect its officials, visitors and assets—United Nations is not legally bound to act upon Interpol “red notices”, but may consider them when assessing security risks—No general prohibition to accredit individuals subject to Interpol “red notices”—Responsibility of the Director-General of United Nations Office at Geneva, as designated official for security, to assess the risks in any given situation and take appropriate actions—The policy decision by the Commission on Human Rights to deny accreditation to such individuals at previous sessions, being procedural in nature, is not binding for subsequent sessions

I write in response to your letter of 21 April 2005 concerning the accreditation and participation of non-governmental organization representatives who are subject to requests for arrest or detention by Interpol (“red notices”) in the work of the Commission on Human Rights. You refer in this regard to the decision taken by the Commission at its fifty-ninth session, by which access to the meetings of the Commission was denied to any individual subject to an Interpol “red notice”, and the subsequent decision taken by the United Nations Office at Geneva Director-General to deny such individuals access to the United Nations Office at Geneva premises. You also refer to the request for accreditation of an individual subject to a “red notice” to the sixty-first session of the Commission made by [NGO], which request was denied.

You note in your letter the common desire of all involved to find “an equitable and just solution to the general issue”. I hope to contribute to that effort.

You request our advice with respect to the following two questions:

(i) Do the conditions for accreditation, spelled out in Economic and Social Council resolution 1996/31 require or permit the expanded Bureau of the Commission, the Commission Secretariat, the United Nations Office at Geneva Director-General or anybody else, to consider the suitability of the individual representing the accredited NGO on the basis that he/she poses a security risk or threat?
(ii) Can individuals subject to Interpol arrest warrants be accredited by the United Nations Office at Geneva?

From the outset, and as stated previously, I would like to reiterate that the above-mentioned decisions taken by the Commission and the United Nations Office at Geneva Director-General were ones of policy, within the scope of their respective responsibilities. Further, it is not the role of the Office of Legal Affairs to substitute itself for either the Commission or the Director-General.

With respect to your first question, we believe that Economic and Social Council resolution 1996/31 does not provide a basis for the Bureau, the Commission Secretariat or the Director-General to consider the suitability of a representative of an NGO on the basis of a security risk. Rather, the resolution is directed to establishing conditions for the consultative status of NGOs with the Economic and Social Council.

In this respect, we note that organizations granted consultative status and those on the Roster are required to conform to the principles governing the establishment and nature of their consultative relations with the Council (paragraph 55) and that organizations which do not meet these requirements may be suspended or excluded from participation in the work of the Council and its functional commissions. The conduct of individuals who represent these organizations may also have an impact on their status in the Council. The resolution states that an organization shall be suspended or withdrawn, if, inter alia, it “either directly or through its affiliates or representatives acting on its behalf, clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations including unsubstantiated or politically motivated acts against States Members of the United Nations incompatible with those purposes and principles” (paragraph 57 (a)). While it is clear, therefore, that individuals authorized to represent NGOs are also obliged to conform to these principles, we can conclude that the focus of the resolution is on the organization, and not the individuals. Furthermore, we can also conclude that the resolution is to ensure that only those NGOs whose objectives and actions are consistent with the United Nations Charter participate in meetings of the United Nations, rather than directed to security concerns.

With respect to your second question, we wish to advise that there is no general prohibition as such to prevent individuals subject to Interpol “red notices” from being accredited to any meeting of the United Nations. Although certain Member States may have obligations to act upon Interpol “red notices”, the United Nations is not obliged to act with respect to notices issued by Interpol. However, it may, if it chooses. Indeed, in our view, it is clear that the Organization, having the duty to protect its officials, visitors and assets, can deny access to its premises to any individual on the grounds of security concerns.

We wish to note that, in each location where the United Nations has a presence, there is a “Designated Official” responsible for security. The Designated Official for security in Geneva is the Director-General at the United Nations Office at Geneva. It is therefore for the good judgment of the Designated Official to assess the risks in any given situation and take the appropriate measures. Although, as indicated above, the Organization is not legally bound to take any action in respect of Interpol “red notices”, they may be a key element to be considered when assessing security risks.

Finally, it should be noted that we consider the decision of the Commission at its fifty-ninth session to deny NGO representatives subject to Interpol notices access to meetings, to
be procedural in nature, and as such, not binding on the Commission at its subsequent sessions. The fact that the Commission renewed this decision, explicitly or implicitly, at its sixtieth and sixty-first sessions does not alter this position. The Commission, therefore, should consider itself free to deal with similar requests differently at its sixty-second session.

13 June 2005

(d) Note to the President of the General Assembly regarding voting procedures on a resolution related to the equitable representation on and increase in the membership of the Security Council

Amendments to the Charter of the United Nations—Article 108 of the Charter of the United Nations—Rules and Procedures of the General Assembly—General Assembly resolution 53/30 of 23 November 1998—Affirmative vote of two-thirds of the members of the General Assembly required for amendments to the Charter—Consensus is considered as the absence of objection rather than a particular majority—Possibility for the General Assembly to adopt a resolution on any issue by secret ballot—Procedural motions are adopted by simple majority—Possibility for a Member State to request that a procedural motion be adopted by two-thirds majority

1. At your request, we set out below two issues which may arise in the course of the consideration of draft resolution L.64 [A/59/L.64], or any other draft resolution on the equitable representation on and increase in the membership of the Security Council, which are specific to the amendment procedure. These questions are the following:

   a. Whether a resolution or a decision on any of the proposals or amendments could be adopted by consensus, or a vote in this case is mandatory;

   b. What is the majority rule required for procedural motions.

A. Adoption by consensus or a vote

2. Under Article 108 of the United Nations Charter a majority vote of two-thirds of the members of the General Assembly is required for an amendment to the Charter. In its resolution 53/30 the General Assembly decided “not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two-thirds of the Members of the General Assembly.” A two-thirds majority of 191 Member States requires an affirmative vote of 128.

3. While in the practice of the General Assembly decisions are adopted by consensus, in the present case, the language of both the Charter and the resolution clearly requires an affirmative vote of two-thirds of the membership of the Organization. Furthermore, consensus, which is understood as the absence of objection rather than a particular majority, would not guarantee that the 128 required majority is obtained and could, in theory, allow the adoption of a resolution or decision with less than the two-thirds majority required under the Charter and resolution 53/30. Indeed, since a quorum to take a decision is 96, consensus could, in principle, be achieved with only 96 members present in the Assembly at the time of the decision. To ascertain that there is an affirmative vote of 128 members,
any resolution or decision relating to the question under consideration must therefore be voted upon, even in the event of a consensus among members of the Assembly.*

4. While the circumstances under which any resolution or decision may eventually be adopted are as yet unknown, the possibility of consensus emerging as a result of a fragile agreement still exists. If political constraints would militate against a vote, it would be for Member States to ascertain, by means other than voting, that a two-thirds majority of the members are in favour of the resolution. It would also be for them to decide whether, as such, adoption without a vote would be compatible with the Charter and resolution 53/30.

5. A vote by “secret ballot”, as has been suggested by some delegations, may be another option which would allow members to cast their vote in accordance with the Charter and the resolution, but to avoid the possible political repercussions which might result from an open ballot. The Rules of Procedure of the General Assembly do not provide for secret ballot other than for election. However, the absence of a provision does not, as a matter of principle, prevent the General Assembly, if it so decides, from resorting to a secret ballot to adopt a resolution or decision on any issue under consideration. For example, the Second Committee decided to resort to secret ballot for the selection of the site of the United Nations Industrial Development Organization in December 1966.

6. The role of the President in conducting the procedure, and the question of whether he should announce the procedure of voting at the start of the consideration, or leave it for Member States to request a vote, could preferably be determined at a later stage.

**B. Majority required for procedural motions**

7. Under the Rules of Procedure of the General Assembly procedural motions are adopted by a simple majority. General Assembly resolution 53/30 should be interpreted to apply to substantive resolutions and decisions only, thus maintaining the simple majority rule with regard to all procedural motions. That said, any member of the General Assembly may request that any or all procedural motions should be adopted by a two-thirds majority. In this case, the President should ask the proposer of the motion to explicitly indicate whether the two-thirds majority is of those “present and voting” (in accordance with rule 85 of the Rules of Procedure) or of the members of the General Assembly (in accordance with resolution 53/30). A decision on the motion “to adopt motions by two-thirds majority” should be adopted by a simple majority of those “present and voting”.

14 July 2005

*(e) Note to the Assistant Secretary-General for Policy Coordination and Strategic Planning, United Nations, on voting in the General Assembly

Voting procedures in the General Assembly—Article 18 of the Charter of the United Nations—The term “decision” refers to all types of action which the General Assembly takes by a vote while performing its functions under the Charter—Elections—Rules 82 et seq and 91 et seq of the Rules of Procedure of the General Assembly

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* In the case of consensus, the requirement to vote may be presented as a technical means to record the majority required, rather than as an attempt to force Members to make their positions explicit.
Assembly—Possibility to require that a decision be taken by a two-thirds majority for elections—Election of members to the Human Rights Council—Decision that members to the Council are to be elected by a two-thirds majority may be specified in the establishing resolution or decided *ad hoc* by the General Assembly with a decision adopted with a simple majority

1. This note sets out some general principles of voting in the General Assembly and further addresses the specific questions you had raised in your e-mail of 1 August.

2. The principle that decisions in the General Assembly are taken by a majority vote is enshrined in Article 18 of the Charter of the United Nations. Depending on the substance of the matter in question a simple or a two-thirds majority of the members present and voting is required. In that respect, Article 18 distinguishes between “important questions” (paragraph 2) and “other questions” (paragraph 3). Paragraph 2 draws up a list of questions which are deemed to be important, thus requiring a two-thirds majority. The formulation “(t)hese questions shall include [ . . . ]” clearly indicates that this list is not exhaustive.

3. Article 18, paragraph 3, of the Charter sets forth that the voting majority required for decisions on “other questions” shall be a (simple) majority of the members present and voting. It further provides for the creation of “additional categories of questions to be decided by a two-thirds majority.” The determination of such additional categories shall also be made by a simple majority of the members present and voting.

4. The term “decision”, as used in Article 18, refers to all types of action which the General Assembly takes by a vote while performing its functions under the Charter. This also includes, for example, elections.


6. Assuming the General Assembly (at the level of Heads of State and Government in the framework of the September summit) were to establish a Human Rights Council as a subsidiary organ of the General Assembly by means of a General Assembly resolution, it could specify in that resolution that members to the Human Rights Council are to be elected by a two-thirds majority of the members present and voting. Rule 93 explicitly mentions the possibility to require a two-thirds majority for an election. We would recommend, in that connection, that the required majority be specified in the resolution establishing the Human Rights Council, i.e., possibly in the Outcome Document of the September summit.

7. Alternatively, the General Assembly could decide *ad hoc* that a two-thirds majority shall be required for these elections. In accordance with Article 18, paragraph 3, of the Charter, this decision could be taken by a (simple) majority of the members present and voting.

2 August 2005
Letter to the Permanent Representative of a Member State to the United Nations regarding credentials and composition of delegations for the sessions of the General Assembly

Credentials and composition of delegations for the sessions of the General Assembly—Rule 25 of the Rules of Procedure of the General Assembly—Difference between letter of credentials and the list of delegation requested by the Protocol and Liaison Service—Only credentials have legal implications on the status of members of the delegation—List of delegation is published for information purposes only—No credentials are required for Heads of State or Government or Ministers for Foreign Affairs—The manner in which the Secretary-General is informed of their presence depends on national practice

I wish to refer to your letter dated 22 August 2005 by which you requested some clarifications about procedural issues regarding credentials and composition of delegations for the sixtieth session of the United Nations General Assembly and its High-Level Plenary Meeting, in light of section VIII of the note verbale sent by the United Nations Protocol and Liaison Service to all Member States on 16 August 2005.

You referred in your letter to rule 25 of the Rules of Procedure of the General Assembly, which provides that the “delegation of a Member shall consist of not more than five representatives and five alternate representatives and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation”. You also referred to the request by Protocol for a list of delegation that includes only ten persons indicating that the Head of the Delegation should be one of the five representatives, except in the cases of Heads of State, Government and Vice-Presidents. Your specific question is whether the “Minister for Foreign Affairs who signs the credentials for the delegation [should] be counted as one of the five representatives according to rule 25 of Rules of Procedure of General Assembly”.

At the outset, I would like to clarify that the letter of credentials and the list of delegation requested by Protocol are two different documents having different legal value and serving different purposes. While the letter of credentials is a legal document spelling out the names of the State’s representatives throughout the entire session of the General Assembly, the list of delegation requested by Protocol is a provisional document that reflects the composition of delegations at the beginning of the session for information purposes only. Therefore, both documents do not have to necessarily coincide.

With respect to the letter of credentials, I should recall that, in accordance with rule 27 of the Rules of Procedure of the General Assembly, “credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs”. When any of the three represents his or her country, no credentials are required. The Minister for Foreign Affairs, therefore, whether he or she signs the letter of credentials or not, does not need to be included in that letter as one of the five representatives provided for in rule 25.

However, I should also point out that, on occasion, the presence of the Head of State or Government or that of the Minister for Foreign Affairs in a particular United Nations event is conveyed to the Secretary-General in the letter of credentials. Other Members prefer to do that through a separate note verbale or in a different manner. It should be noted that the manner in which this information is provided to the Secretary-General depends
on the national practice and preference of each Member and does not affect the legal validity of the credentials or of the composition of the delegation.

Regarding the Protocol list referred to in section VIII of the note verbale mentioned above, I should reiterate that it is requested to allow Protocol to publish, for information purposes only, a provisional list of all delegations. This list has no legal effect and does not necessarily reflect the composition of delegations at all times during the session of the General Assembly, as it is only published once.

The letter of credentials is thus the only instrument having legal implications on the status of members of delegations and that the Heads of State or Government and the Minister of Foreign Affairs can represent their country in the United Nations at any time whether or not they are listed in the credentials, or in the list of delegation provided for Protocol.

...  

6 September 2005

3. Other issues relating to United Nations peace operations

(a) Note to the Assistant Secretary-General, Office of Operations of the Department of Peacekeeping Operations, United Nations, regarding the treaty-making capacity of the United Nations Interim Administration Mission in Kosovo

Treaty-making capacity of the United Nations Interim Administration Mission in Kosovo (UNMIK)—Security Council resolution 1244 (1999) of 10 June 1999—Assumed treaty-making capacity to conclude bilateral agreements on behalf of Kosovo with regard to matters falling within the scope of its mandate and to the extent necessary for the administration of the territory—Treaty establishing the Energy Community deemed necessary for the administration of the territory—Necessity to include reservations regarding the limited duration of the Treaty with respect to UNMIK and a non-prejudice clause on the future status of Kosovo—Such treaty shall not engage the responsibility of the United Nations or create any legal, financial or other obligation for the Organization

1. This is in reference to your note of 6 October 2005 (received on 10 October) requesting our approval of UNMIK’s signature on behalf of Kosovo of the Treaty establishing the Energy Community. The final draft of the Treaty is annexed to UNMIK code cable [...] . Our comments pertaining to the treaty-making power of UNMIK, the limited duration of the Treaty with respect to UNMIK, and its participation therein “without prejudice” to the future status of Kosovo, are set out below.

2. The question of UNMIK’s treaty-making power has been raised with the Office of Legal Affairs (OLA) on a number of occasions. The position maintained by this Office has been that UNMIK, while not expressly vested with treaty-making power independent of that of the United Nations of which it is a subsidiary organ, has the power to conclude bilateral agreements with third States and organizations on behalf of Kosovo. This power has, in practice, been assumed by UNMIK with regard to matters falling within the scope of its responsibilities under Security Council resolution 1244 (1999), and to the extent
necessary for the administration of the territory. A number of agreements have thus been concluded over the years on a variety of practical matters relating to economic development assistance and cooperation, road transport and police cooperation with States and international organizations. A similar limited treaty-making power has been exercised by the United Nations Transitional Administration in East Timor (UNTAET) in matters affecting the territory of East Timor.

3. The purpose of the Treaty establishing the Energy Community is to establish an integrated market in natural gas and electricity and regulate trade in these, as well as in other energy products and carriers in Kosovo. Its conclusion is thus necessary for the administration of Kosovo, and as such falls within the ambit of UNMIK’s limited treaty-making power as described above. Accordingly, in the preamble of the Treaty, in the paragraph spelling out the names of the parties to the Treaty, UNMIK should be described as “The United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo”. The words “pursuant to the United Nations Security Council resolution 1244” should be deleted. In the signature part UNMIK should be described in an identical manner.

4. Two reservations regarding the limited duration of the Treaty with respect to UNMIK and the future status of Kosovo should be introduced. While it would be our preference to introduce them in the Treaty itself, we would agree that they be introduced in a unilateral declaration or statement issued by UNMIK to that effect. Along the lines proposed by UNMIK-OLA and informally submitted to us for our review, this declaration should state: (i) that the United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo; (ii) that the Treaty is valid in respect of Kosovo for the duration of UNMIK administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future administration of Kosovo; and (iii) that the conclusion of the Treaty on the part of UNMIK is without prejudice to the future status of Kosovo. The declaration should also state that the Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligation. The declaration should be submitted to this Office for review before it is issued.

5. On the basis of the foregoing, this Office would approve the signing of the Treaty establishing the Energy Community by UNMIK on behalf of Kosovo.

17 October 2005

(b) Interoffice memorandum to the Director, Africa Division of the Department of Peacekeeping Operations, regarding the use and occupancy of the Mobil Compound by the United Nations Mission in Liberia

Question relating to rental payment for property used by the United Nations Mission in Liberia (UNMIL) owned by an individual subject to assets freeze sanctions—Security Council resolution 1532 (2004) of 12 March 2004—Withholding of rental payments by UNMIL—Question of rental payment to the spouse of the said individual—Obligation for the Secretary-General to comply with assets freeze sanctions, even when the host country has not established mechanisms to implement them—Transfer of the property to the spouse after the establish-
MENT OF THE SANCTIONS LIST NOT TO BE CONSIDERED AS LEGALLY BINDING ON UNMIL—ALL RENTAL PAYMENTS LEGALLY DUE SHOULD BE DEPOSITED IN AN ESCRROW ACCOUNT UNTIL THE ESTABLISHMENT OF APPROPRIATE MECHANISMS TO IMPLEMENT THE SANCTIONS BY THE HOST GOVERNMENT

1. This is response to your note of 14 November 2005, addressed to [title], by which you requested that the Office of Legal Affairs take the lead in responding to the questions posed by UNMIL in a code cable, dated 2 November 2005, related to the use and occupancy by the Mission of the “Mobil Compound”.

2. We understand from the documentation provided to us that the [Member State] contingent of UNMIL has been occupying since 21 August 2003 a property in Monrovia, Liberia, commonly known as the “Mobil Compound”, which, since 17 October 2001, belongs to Mr. [X]. Use and occupancy of the Mobil Compound for the period 1 October–31 December 2003 were formalized in a lease agreement signed on 12 December 2003. A second lease agreement was signed on 7 June 2004, covering the period 1 January–31 December 2004. Both lease agreements were signed by UNMIL with Mrs. [X], in her capacity as the manager of the Mobil Compound on behalf of her husband.

3. On 14 June 2004, the Security Council Committee established pursuant to Security Council resolution 1521 (2003) concerning Liberia approved the first list of individuals and entities subject to the assets freeze sanction set out in paragraph 1 of Security Council resolution 1532 (2004). Since Mr. [X] was included in the Committee’s list,” UNMIL decided not to renew the second lease agreement that expired on 31 December 2004 and withhold rental payments. However, the Mission informed that, for logistical reasons beyond its control, the [State] contingent has not yet vacated the premises in the Compound.

4. We are informed that the Mission is currently under pressure from Mrs. [X] to pay outstanding rental fees, vacate the premises as soon as possible and undertake extensive repairs to the premises. UNMIL has sought the advice of Headquarters on “whether the Mission should pay all outstanding rents to Mrs. [X], or withhold such payments until such time as the Office of Legal Affairs and/or the Security Council Committee established pursuant to resolution [Security Council] 1521 provide guidance as regards the exact status of the Mobil Compound”.

5. We would like to point out at the outset that while it is the responsibility of States to establish adequate mechanisms to enforce the sanctions imposed by the Security Council, the Secretary-General is, in any event, bound to comply with such sanctions. In a normal situation, without prejudice to its immunity from every form of legal process and in accordance with its obligation to cooperate with local authorities, the United Nations should apply the mechanisms established by the host country to implement the decisions of the Security Council. The lack of such mechanisms, however, does not legally release the Secretary-General of the duty to comply. In such situations, the United Nations continues to be obligated by the decisions of the Security Council and to take all necessary steps to comply with them.

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* The legal basis for the use and occupancy of the Mobil Compound from 21 August to 30 September 2003 is unknown to us.

** We note that Mr. [X] remains in the latest Committee’s list dated 30 November 2005 and that his name is written in the list in four different manners: [ . . . ].
6. In the case of Liberia, we note that, as set out in paragraph 124 of the report of the Panel of Experts, submitted pursuant to paragraph 14 (e) of Security Council resolution 1607 (2005) concerning Liberia and transmitted to the Security Council on 7 December 2005, “[a]fter one and a half years, the assets freeze imposed by the Security Council in its resolution 1532 (2004) has not yet been implemented in Liberia. None of the assets of designated persons have been frozen”. Accordingly, the Panel of Experts recommended in paragraphs 134 and 135 of its report that “[a]dequate international pressure should be put on the incoming Government of Liberia to implement Security Council resolution 1532 (2004) in letter and spirit. Every effort should be made to speed up the legal process in Liberia to freeze the assets of the designated persons” and that “[t]he Government of Liberia should be requested to ensure that no funds are made available to the persons on the assets freeze list, as stated in the resolution”.

7. Accordingly, it is our opinion that, even if the Government of Liberia has not yet implemented the assets freeze sanctions, UNMIL should comply with them and ensure that no funds, other financial assets and economic resources are made available, directly or indirectly, to, or for the benefit of, any person included in the assets freeze list of the Committee on Liberia. To that end, and until such a time as the Government of Liberia establishes the appropriate mechanisms to enforce the sanctions, we would recommend that, to the extent possible, the Mission refrain from dealing, directly or indirectly, with persons and/or entities included in such a list and that any outstanding payment legally due to these persons and/or entities be deposited in an escrow account.

8. In the particular case of the Mobil Compound, we note the information provided by the Mission that a) Mrs. [X] acquired property rights over part of the Mobil Compound on 30 May 2002; b) Mrs. [X] was granted a limited authority to manage, administer and control, for Mr. [X] and on his behalf, the entire Mobil Compound on 30 October 2003; and c) Mr. [X], as a result of a separation settlement, assigned all his property rights over the Mobil Compound to a trust administered by Mrs. [X], on behalf and for the sole benefit of Mrs. [X] and their three children, on 15 November 2004.

9. It should be noted that the Mobil Compound, even if managed by his wife from 30 October 2003, was the property of Mr. [X] at the time he was included in the Committee’s list, i.e., 14 June 2004, and, therefore, would, presumably, be subject to the assets freeze sanction from that date on. Accordingly, it is recommended that the transfer of this property to his wife, as part of the separation settlement, on 15 November 2004, not be considered as legally binding the Mission. Indeed, had the Liberian Government implemented timely the assets freeze sanction imposed by the Security Council, the transfer would have, in principle, not taken place. The United Nations cannot condone the failure of the Government to implement the sanctions in a timely manner and, as stated above, the Mission should comply with the sanctions from 14 June 2004, whether the host country has established the appropriate mechanisms to implement them or not.

10. Under the circumstances, it would not be appropriate for the Mission to make rental payments for the use and occupancy of the Mobil Compound to Mrs. [X], from 14 June 2004. Of course, this does not mean that the use of occupancy should not be properly compensated. As advised above, all rental payments legally due should be made by deposit-
ing them in an escrow account until such a time as the Government of Liberia establishes appropriate mechanisms to implement the sanctions. Any humanitarian exception to the application of the sanctions should be determined by the Committee, in accordance with its own procedures. It is advisable that both the Government and the Panel of Experts be informed of this decision. At the same time, any rental payments that may have been made from 14 June 2004 for the use and occupancy of the Mobil Compound should be reported also to both the Government and the Panel of Experts.

11. As to whether Mrs. [X] is entitled to a percentage of the rental payments representing the part of the Mobil Compound that she acquired prior to the imposition of the sanctions, this Office is not in a position to ascertain either the validity of the transfer or whether or not it indirectly benefits Mr. [X]. That is for the Government of Liberia, once the mechanisms for the implementation of the sanctions have been established, and the Panel of Experts to ascertain. It would then be advisable to also withhold the proportional rental payments due to Mrs. [X] in an escrow account until a decision in this regard has been taken by the appropriate authorities.

12. Regarding any claims that Mrs. [X] may have against the Mission related to the use and occupancy of the Mobil Compound, including those during the period 1 January 2005 until the time the Mission vacates the premises, the terms and conditions of the last lease agreement signed with her should apply.

13. Finally, we would like to advise that the general guidance and principles outlined in this memorandum should apply to any other person or entity included in the Committee’s list, with whom or which the Mission has been dealing, involving transfer of funds, other financial assets and economic resources, since 14 June 2004, such as [name of enterprise].

21 December 2005

4. Treaty law

Note on the notification of withdrawal by the [Member State] from the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963

Question regarding the possibility to withdraw from the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963—Absence of an explicit withdrawal clause—Article 56, paragraph 1, of the Vienna Convention on the Law of Treaties, 1969, considered as reflecting international customary law—Consensual nature of international jurisdiction—Withdrawal permitted in view of the nature of the instrument as a settlement-of-dispute protocol—“Terminable” nature of settlement-of-dispute treaties—Ultimate test whether a withdrawal from a treaty is possible is in its acceptance by the States parties

By letter of [date], the [Member State] submitted to the Secretary-General a notification of withdrawal from the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963 (the Optional Protocol) to the Convention on Consular Relations, 1963* (the Consular Convention) (copy attached).” The [Member State] became a party to the Optional Protocol in [year].

The Optional Protocol provides for the compulsory jurisdiction of the International Court of Justice (ICJ) in respect of disputes arising out of the interpretation or application of the Consular Convention, unless the parties have agreed on other modes of dispute-settlement. In her letter, the [Member State] notes that as a consequence of withdrawal, “the [Member State] will no longer recognize the jurisdiction of the ICJ reflected in the Optional Protocol.”

Both the Consular Convention and the Optional Protocol are silent on the option of withdrawal or denunciation. In the absence of a withdrawal or denunciation clause in either instrument, the depositary is guided by the Vienna Convention on the Law of Treaties, 1969 (the Vienna Convention), and the relevant customary international law rules.

Article 56, paragraph 1, of the Vienna Convention provides that a treaty which contains no withdrawal clause is not subject to withdrawal, unless it is established that the parties intended to permit the possibility of denunciation or withdrawal, or a right of denunciation or withdrawal may be implied in the nature of the treaty. In such a case, according to article 56, paragraph 2, a party must give at least 12 months notice of its intention to denounce or withdraw from the treaty.

While the Vienna Convention is not, strictly speaking, applicable in the present case, both because its entry into force post-dated the Consular Convention and the Optional Protocol, and because the [Member State] is not a party to the Convention, it is nevertheless generally accepted that article 56, paragraph 1, of the Convention reflects customary international law, and as such is binding upon States regardless of their participation in the Convention. It is less clear, however, whether article 56, paragraph 2, as well, is reflective of customary international law, with the result that if determined that the notification should be accepted in deposit, it would have an immediate effect.

In determining whether to accept in deposit the [Member State] notification of withdrawal, this Office has examined the nature of the Protocol, and the question of whether as a settlement-of-dispute treaty it allows for withdrawal or denunciation even in the absence of an explicit withdrawal clause. Having considered the consensual nature of international jurisdiction and States’ wide discretion in accepting such jurisdiction, conditioning its scope or terminating it;*** having examined also the practice, however limited, of States’ withdrawal of declarations of acceptance of the compulsory jurisdiction of the ICJ, made under Article 36 of the ICJ Statute;**** we have come to the conclusion that the nature of the

** The instruments are not reproduced herein.
**** Among those who withdrew their acceptance of the Court’s compulsory jurisdiction are: Israel, Australia, South Africa, France, China and the United States of America (Multilateral Treaties Deposited with the Secretary-General, 2004 (United Nations publication, Sales No. E.05.V.3, (ST/LEG/SER. E/23)), vol. I, part I, chapter 1.4).
Optional Protocol as a settlement-of-dispute protocol is such that would allow for withdrawal even in the absence of a withdrawal clause.

On the “terminable” nature of settlement-of-dispute treaties, the views expressed by Sir Humphrey Waldock, the Special Rapporteur on the Law of Treaties, and Judge Jennings in his Separate Opinion in the Nicaragua Case, respectively, are worth noting:

“... State practice ... and especially the modern trend towards Declarations terminable upon notice, seem only to reinforce the clear conclusion to be drawn from treaties of arbitration, conciliation and judicial settlement, that these treaties are regarded as essentially of a terminable character” (emphasis added) ILC, Yearbook, 1963, vol. II, p. 68’).

“... treaties of arbitration, conciliation and judicial settlement are amongst those which, even in the absence of a denunciation clause, are by reason of the nature of the treaty, terminable by notice” (emphasis added) (I.C.J. Reports 1984, Separate Opinion of Judge Jennings, p. 552).

While the ultimate test of whether a withdrawal from a treaty can be accepted, is in its acceptance by its States parties, the depository has on two occasions (i.e., the [ ... ] notification of withdrawal from the Covenant on Civil and Political Rights, and the withdrawal of [ ... ] from the 1958 Geneva Conventions on the Territorial Sea and Fishing) exercised his discretion and refused to accept in deposit a notification of withdrawal where the nature of the treaty, or of the substantive rights and obligations it contained, could not be implied to allow for a withdrawal.”

Convinced that the nature of the Optional Protocol is such that allows for withdrawal or denunciation without a specific withdrawal clause, I have decided to accept the [Member State] notification of withdrawal in deposit as from the date of its receipt, i.e., [date]. As such, the corresponding depositary notification [ ... ] (copy attached)” was circulated without comments. It is understood, however, that the date of receipt in deposit constitutes the effective date of the withdrawal.

22 March 2005

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2 In the case of the notification of withdrawal of the Government of the [ ... ] with regards to the International Covenant on Civil and Political Rights, 1966, the Secretary-General, relying on article 56 of the Vienna Convention, concluded that in the case of the Covenant, the negotiating parties did not seem to have overlooked the possibility of explicitly providing for withdrawal or denunciation, but rather it appeared that they had deliberately not provided for it. This position was supported by a great number of States which wrote to the Secretary-General confirming their views that the denunciation was not permitted under the Covenant, and that they objected to the denunciation by the [ ... ]. A similar situation arose with regard to [ ... ] and the Convention on the Territorial Sea and the Contiguous Zone, 1958 and the Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958. In that case, the Secretary-General, in the absence of pertinent clauses in the Conventions concerned and of specific instructions from the parties, did not consider himself authorized to receive the notification or denunciation in deposit. An explanatory footnote in the publication Multilateral Treaties Deposited with the Secretary-General was nonetheless inserted. In that case, the [ ... ] was the only State which objected to the withdrawal.

3 The depository notification is not reproduced herein.
5. Personnel questions

(a) Interoffice memorandum to the Office of Human Resources Policy Services, United Nations, regarding permanent resident status in a country other than the United States

Obligation for new staff members to renounce any permanent resident status in a country other than their country of nationality—Obligation for staff members to notify in advance the Secretary-General of their intention to change their nationality or to acquire permanent resident status in another country—Administrative instruction ST/Al/2000/19—Maintenance of links by staff members with their country of nationality considered to be in the interest of the United Nations in view of the policy of geographical distribution in the Secretariat—Permanent resident status in another country considered as affecting the maintenance of the link with the country of nationality and thus incompatible with the conditions governing employment in the United Nations

1. I refer to your memorandum of 11 May 2005 on the above-captioned subject. You refer, in particular, to administrative instruction ST/Al/2000/19 entitled “Visa status of non-United States staff members serving in the United States, members of their household and their employees, and staff members seeking or holding permanent resident status in the United States”.

2. In your memorandum, you state that you “are concerned about any interpretation that would weaken the link between staff members and their country of nationality, especially in view of the intense interest in the geographical composition of the Secretariat on the part of Member States.”

3. We understand that you are increasingly faced with individual challenges against the general application of the policy requiring staff members to renounce the permanent resident status they may have acquired in any country they are not a national of. In particular, you mentioned the case of a national from Finland, having acquired permanent resident status in Australia, and being considered for an appointment of one year or longer in New York. She challenges the United Nations policy requesting her to renounce her permanent resident status on the ground that the policy is not specifically authorized by any administrative issuance. You seek advice, noting that the title of ST/Al/2000/19 appears to limit its scope to non-United States staff serving in the United States and staff members seeking or holding permanent resident status in the United States.

Current policy

4. Staff rule 104.8 (a) provides that the United Nations shall not recognize more than one nationality for each staff member. Staff rule 104.4 (c) provides that a staff member who intends to acquire permanent resident status in any country other than that of his or her nationality or who intends to change his or her nationality shall notify the Secretary-General.
General of that intention before the change in residence status or in nationality becomes final. Staff rule 104.7 (c) provides that an internationally recruited staff member who has changed his or her residence status in such a way that he or she may, in the opinion of the Secretary-General, be deemed to be a permanent resident of any country other than that of his nationality can lose the allowances and benefits available to internationally recruited staff members.

5. ST/Al/2000/19, section 5.1, provides that staff members intending to acquire permanent resident status in any country other than that of their nationality or who intend to change their nationality must notify the Secretary-General of that intention before the change in resident status or in nationality becomes final. Such staff members should inform the Office of Human Resources Management (OHRM) in writing prior to making their application for permanent resident status or naturalization, as the case may be.

6. Under sections 5.6 and 5.7 of ST/Al/2000/19, staff members who have permanent resident status in the United States are required to renounce it and to change to a G-4 visa upon appointment, unless they have applied for citizenship prior to recruitment or they fall within one of the exceptions specified in the instruction. Staff members who seek to acquire such a status after recruitment will not be given permission to do so, unless they fall within one of the exceptions specified in the instruction.

7. The information circular ST/IC/2001/27 entitled “Visa status in the United States of America” provides in paragraph 26:

“Under section 5.6 of ST/Al/2000/19, non-United States citizens who have permanent resident status in the United States are required to renounce such status and to change to G-4 visa status upon appointment. The same rule provides that staff members who seek to change to permanent resident status will not be granted permission to sign the waiver of rights, privileges, exemptions and immunities required by the United States authorities for the acquisition or retention of permanent resident status. The provision is based on a policy established in 1953 by the General Assembly that persons in permanent resident status should in future be ineligible for appointment as internationally recruited staff members unless they are prepared to change to a G-4 visa status (or equivalent status in host countries other than the United States of America). That policy was adopted because it was considered that a decision to remain in permanent resident status in no way represents an interest of the United Nations. On the contrary, to the extent (if any) that it may weaken existing ties with the country of nationality, it is an undesirable decision.” (Emphasis added.)

Origin of the policy

8. Since 1954, the Organization has consistently interpreted and applied the United Nations policy on geographical distribution as requiring staff members to renounce the permanent resident status they may have acquired in any country they are not a national of prior to recruitment.

9. In its twenty-fifth report to the eighth session of the General Assembly (A/2581, 1 December 1953), the Advisory Committee on Administrative and Budgetary Questions (ACABQ) commented on the question of staff members having permanent resident status in the United States. The ACABQ noted:
“A decision to remain on permanent residence status in no way represents an interest of the United Nations. On the contrary, to the extent (if any) that it may weaken existing ties with the country of nationality, it is an undesirable decision. In any case the interest involved is personal to the staff member who, in pursuit of that interest, seeks authority to waive privileges and immunities that have been granted to the United Nations and not to any individual.”

The ACABQ recommended that:

“Persons in permanent residence status should in future be ineligible for appointment as internationally recruited staff members unless they are prepared to change to a G-4 visa status (or equivalent status in host countries other than the United States of America). [ . . . ]”

The ACABQ finally noted that:

“The Secretary-General refers in his report (A/2533, paragraph 117) to the possibility that staff members opting for permanent residence in another country may intend not to maintain ties with the country of nationality, in which case a question may arise as to the application of the principle of geographical distribution. This is a complex and difficult problem, for the solution of which the Secretary-General does not have at this stage submitted proposals. The Advisory Committee would wish, when such proposals are made, to give further consideration to the matter.”

10. The question of a change of nationality was discussed at length during the eighth session of the General Assembly. As a consequence of that discussion, the Fifth Committee adopted a report (A/2615) of 7 December 1953 that included the following paragraphs:

“63. In the ensuing discussion, a number of delegations specifically endorsed the view expressed by the Advisory Committee in its report that a decision to remain in permanent residence status in no way represented an interest of the United Nations and that, on the contrary, to the extent (if any) that it might weaken existing ties with the countries of nationality it was an undesirable decision.

[ . . . ]

70. The view was widely shared that international officials should be true representatives of the cultures and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations. [ . . . ]” (Emphasis added.)

11. Pursuant to the Assembly discussions, the Secretary-General issued information circular ST/AFS/SER.A/238 of 19 January 1954. It provided in paragraph 12:

“The Secretary-General wishes to draw to the attention of the staff the importance of the steps they may wish to take concerning their visa (or residence) status in the country of their duty station or in any other country which is not the country of their nationality, and concerning change of nationality.

The decision of a staff member to remain on or acquire permanent residence status in such a country in no way represents an interest of the United Nations. On the contrary, this decision may adversely affect the interests of the United Nations in the case of internationally recruited staff members in the Professional category, and be specified undesirable in the case of staff members recruited subject to the requirements of geographical distribution.”
ST/AFS/SER.A/238 was subsequently superseded by ST/Al/294 of 16 August 1982 entitled “Visa status of non-United States staff members serving in the United States”, which was in turn superseded by ST/Al/2000/19. ST/Al/294 and ST/Al/2000/19 only mention the issue of permanent residence obtained in the United States.

12. The Administrative Tribunal has consistently upheld the policy requiring internationally recruited staff to renounce their permanent resident status in the United States before recruitment, and the policy requiring internationally recruited staff to ask for permission before applying for permanent residence in the United States. (See Judgement No. 326, Fischman (1984) and Judgement No. 819, Moawad (1997).”)

Considerations and conclusion

13. We understand that the authority to request staff members to renounce before recruitment their permanent resident status not only in the United States, but in any country they are not a national of, is not reflected in any current administrative issuance. Such authority derives from the view of the General Assembly that international officials should be true representatives of the cultures and personality of the country of which they were nationals, and that those who elect to break their ties with that country can no longer claim to fulfill the conditions governing employment in the United Nations.

14. We also understand that, although not reflected in any administrative issuance, this policy has been consistently applied by OHRM. It is our view that, given the rationale behind this policy, as legislated by the General Assembly in 1953, OHRM is correct in continuing to maintain that policy.

15. In order to prevent future misunderstanding concerning the requirement to renounce permanent resident status in countries other than the United States, OHRM may wish to amend ST/Al/2000/19 to clarify that the United Nations policy, as applied consistently since 1954, is not limited to permanent resident status in the United States, but also to permanent resident status in any country of which the staff member is not a national.

4 August 2005

(b) Interoffice memorandum to the Assistant Secretary-General, Human Resources Management, Department of Management, United Nations, on the retroactivity of payments under the proposed new mobility and hardship scheme

Changes to benefits and advantages enjoyed by staff members—Letters of appointment are specifically made subject to the Staff Regulations and Rules—Distinction between contractual and statutory elements of an employment agreement—Right of the General Assembly to establish and amend statutory elements of appointment of staff—Article 101 of the Charter of the United Nations—Contractual elements can only be changed with the agreement of the two parties—Acquired rights derive from the contract of employment and are acquired through service—Guidelines of what constitutes “acquired rights” through the

United Nations Administrative Tribunal’s jurisprudence—Computation of the amount of an allowance is not an acquired right, although the allowance itself may be—Amendments affecting a right acquired through service cannot be retroactive—Policy decision to pay transitional payment to counteract negative effects of an amendment

1. This is in reference to the memorandum of 25 July 2005 from [name] Officer-in-Charge (at the time), Office of Human Resources Management (OHRM), and our subsequent discussions with your Office regarding whether staff members have acquired rights to the provisions of the current mobility and hardship scheme and/or to the continuation of the amounts they currently receive under that scheme, in view of the proposed action by the International Civil Service Commission (ICSC). We understand that, in its annual report for 2005, the ICSC intends to recommend to the General Assembly a change to the current mobility and hardship scheme, as discussed in document ICSC/61/R.4 that you have provided to us. Such a change would result in some staff members receiving higher amounts of allowances, while others would receive lower amounts. We further understand that, even if it were determined that staff members have no acquired rights to the current provisions of the mobility and hardship scheme, you have raised the question of whether it would be “legally advisable for the United Nations to pay, as a good employer, a lump sum amount corresponding to the loss that the staff would experience under the revised scheme for a limited period . . .”

I. Background

2. At its fifty-ninth session, held in July 2004, the ICSC established a Working Group on the Mobility and Hardship Scheme in response to concerns expressed by the General Assembly about the increasing costs generated by the automatic movement of entitlements under the annual adjustment procedure applied to the base/floor salary scale (see ICSC/61/R.4, paragraph 1). I understand that at the outset, the ICSC decided to separate the mobility element from the hardship element and to delink both allowances from the base/floor salary scale, deferring implementation of the decisions until a new system had been put in place (see ibid., paragraph 3)—currently estimated with effect from 1 July 2006. The main difference between the current and the proposed schemes is that the proposed scheme would establish flat rate sums for the mobility, hardship and non-removal allowances, whereas the current scheme establishes payments by linkage to the base/floor salary scale at the P-4, step VI level. Payments are currently calculated as a percentage of this salary base.

3. As a result of the proposed changes to the mobility and hardship scheme based on “flat rate” allowances and not linked to the P-4 salary scale, some staff will receive higher amounts, while others will receive lower amounts for the hardship, mobility and non-removal allowances. (See ibid., annex IV, on the differences in payments). Therefore, with respect to transition of staff to the new mobility and hardship scheme, the Working Group established by the ICSC agreed that “while discretion rested with each organization, it would be expected that the acquired rights of the staff member should be protected by a personal transitional allowance to ensure that she/he would suffer no loss in payments.”

Staff rule 103.22 describes the current requirements for the mobility and hardship allowances.
(See *ibid.*, paragraph 43). However, no proposals were given by the ICSC on the specifics of this transitional allowance.

## II. Applicability of acquired rights concept to the proposed changes

4. The concept of “acquired rights” is referred to in the United Nations Staff Regulations and Rules, without defining the term specifically. Staff regulation 12.1 states that “[t]he present Regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members.” The United Nations Administrative Tribunal (UNAT) has not provided a detailed and consistent definition of what constitutes an “acquired right” although UNAT jurisprudence contains guidelines that determine what is an acquired right and when such a right might be infringed by administrative action. These guidelines are discussed in more detail below.

### A. UNAT jurisprudence

#### (i) Contractual vs. statutory rights

5. In one of its first pronouncements on the issue of acquired rights, the Tribunal was called upon to interpret the effect of staff regulation 12.1, the acquired rights clause, on amendments to procedures established by the United Nations for the termination of temporary appointments. The applicant in *Kaplan* claimed that the procedures governing the termination of temporary appointments were acquired rights and could not be unilaterally amended. (See Judgement No. 19 (1953)). In determining whether such procedures were indeed acquired rights, the Tribunal made a fundamental distinction between contractual and statutory elements of a staff member’s employment agreement and found that the guarantee of acquired rights as set forth in staff regulation 12.1 extended to the contractual elements. In its decision, the Tribunal expounded on the relationship between a staff member’s acquired rights and the power of the General Assembly to amend the staff regulations which may adversely affect the enjoyment of certain benefits and advantages as follows:

“The Tribunal considers that relations between staff members and the United Nations involve various elements and are consequently not solely contractual in nature.

Article 101 of the Charter gives the General Assembly the right to establish regulations for the appointment of staff, and consequently the right to change them.

\[\text{...}\]

It follows from the foregoing that notwithstanding the existence of contracts between the United Nations and staff members, the legal regulations governing the staff are established by the General Assembly of the United Nations.

In determining the legal positions of staff members, a distinction should be made between contractual elements and statutory elements:

All matters being contractual which affect the personal status of each member—e.g., nature of his contract, salary, grade;

*Judgement No. 19 (21 August 1953): Kaplan v. the Secretary-General of the United Nations.*
All matters being statutory which affect in general the organization of the international civil service, and the need for its proper functioning—e.g., general rules that have no personal references.

While the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.” (See Judgement No. 19, Kaplan (1953), paragraph 3.)

6. This approach appears to have been followed by the Tribunal in other cases decided since Kaplan. For example, UNAT in a case related to the amendment of the education grant, held that:

“...[T]he amendment made concerns the procedure for computation of the Organization’s contribution to educational expenses. ... While it does in fact lead to a reduction in the grant paid on that account to some staff members, it does not seem that the decision exceeds the powers accorded to the Organization in the contract accepted by the Applicant.” (See Judgement No. 202, Quégüiner (1975), paragraph VI).

The Tribunal further pointed to the fact that the applicant’s employment agreement incorporated the Staff Regulations and Staff Rules and that the Staff Regulations and Rules included express reservation of the Organization’s right to amend them. (See ibid., paragraph IV.)

7. This holding was reiterated by the Tribunal when it rejected the assertion of acquired rights in a consolidated case challenging the decision authorized by the General Assembly to suspend the increase of post adjustment. (See Judgement No. 370, Molinier et al (1986).”) In Molinier, the Tribunal, citing to Powell (Judgement No. 237 (1979)””) and Puvrez (Judgement No. 82 (1961)“”), excluded the doctrine of acquired rights to the case for two reasons: “... first, because the rules of post adjustment are statutory ... and secondly, because the doctrine can apply only to benefits accruing through services before the adoption of the amendment and not to remuneration for future services ... .” (See Judgement No. 370, Molinier et al (1986), para. XMI.)

8. It is our view that under the case law of UNAT, the proposed amendment of the United Nations Staff Rules on the mobility and hardship allowances would not deprive staff of the entitlement to these allowances, which have been acquired through contract, but would merely provide for a change in the computation of the allowance. Such an amendment, whereby the Organization would have the right to calculate the allowances differently, i.e., as a flat rate, rather than linked to the salary scale, would, therefore, be permissible.

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* Judgement No. 202 (3 October 1975): Quégüiner v. the Secretary-General of the Intergovernmental Maritime Consultative Organization.


""" Judgement No. 82 (4 December 1961): Puvrez v. the Secretary-General of International Civil Aviation Organization.
(ii) Retroactivity

9. However, UNAT jurisprudence has been clear and consistent that any amendments that affect a right acquired through service can only be amended prospectively. For example, in *Puvrez*, the Tribunal was called upon to interpret the International Civil Aviation Organization (ICAO) Staff Regulation 12.1 that makes amendment of the staff regulations conditional upon the amendment not adversely affecting “the entitlement of a staff member to any benefits earned through service prior to the effective date of the amendment.” The case was based on whether or not an amendment to the Service Code of the ICAO requiring staff members to furnish information concerning income of their spouses in order to qualify for dependency benefits impinged on the acquired rights of the staff members who had been receiving dependency benefits irrespective of the income of their spouses. The Tribunal held that:

“... [N]o amendment of the regulations may affect the benefits and advantages accruing to the staff member for services rendered before the entry into force of an amendment. Hence, no amendment may have an adverse retroactive effect in relation to a staff member, but nothing prevents an amendment of the regulations, where the effects of such amendment apply only to benefits and advantages accruing through service after the adoption of such amendment.” (See Judgement No. 82, *Puvrez* (1961), paragraph VII).

10. Similarly, in *Powell*, the Tribunal reiterated *Puvrez*’s holding with respect to retroactivity when it considered a staff member’s entitlement to reimbursement of income taxes on a lump sum withdrawal of pension benefits. (See Judgement No. 237, *Powell* (1979), paragraph XVI.)

11. In *Mortished*, the issue was whether the conditions for the grant of a relocation allowance could be amended. The Tribunal held that the allowance was expressly provided for in the contract, together with the relationship of the amount of the grant and the length of service. Further, the practice of not requiring proof of relocation had created an acquired right. Finally, the Tribunal held that “respect for acquired rights also means that all the benefits and advantages due to the staff member for services rendered before the coming into force of a new rule remain unaffected.” (See UNAT Judgement No. 273, *Mortished* (1981),’ paragraph XV; affirmed I.C.J. Reports 1982, p. 325.)

12. In *Capio*, the Tribunal cited to previous cases, such as *Puvrez* (1961) and *Queguiner* to affirm the prohibition against amendments to regulations and rules affecting benefits and advantages accrued through prior service. The case involved an amendment to the procedure for promotion in the United Nations through a resolution of the General Assembly in 1979. At the time the change was introduced by the Administration, the procedure for promotion of the Applicant had already been initiated by the chief of service and her department had prepared its recommendations. While the Tribunal made it clear that the applicant did not have an acquired right to promotion, it held that, under those circumstances, the Applicant had a right to have the former procedure applied to her promotion, the action taken by the United Nations in implementing the amendment being regarded as a violation of acquired rights. (See UNAT Judgement No. 266, *Capio* (1980),” paragraph VIII.)

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Judgement No. 266 (20 November 1980): *Capio v. the Secretary-General of United Nations.*
13. In *Horlacher*, the Tribunal held that “an amendment of the applicable Staff Regulations and Staff Rules which abolished the right to reimbursement [of income taxes on lump sum withdrawal of pension benefits] would be permissible with regard to pension benefits resulting from service after such an amendment, but could not be applied retroactively with respect to pension benefits resulting from service prior to the amendment.” (See Judgement No. 634, *Horlacher* (1994), paragraph VII.)

III. Conclusion and recommendations

14. The UNAT jurisprudence demonstrates that acquired rights are rights that derive from the staff member’s contract of employment and are acquired through service. This is particularly so because the United Nations letters of appointment are specifically made subject to the Staff Regulations and Rules “and to changes which may be duly made in such regulations and rules from time to time.” (See United Nations Staff Regulations, annex II, paragraph (a)(i).) However, the Administration has, from time to time, implemented amendments to Staff Regulations and Rules in such a way as to permit existing staff members to continue to take advantage of benefits they had been entitled to prior to the amendments, for a limited time, as a transitional measure. With respect to the benefits accrued by staff members for past service, if it is determined that these are acquired rights, then staff members will continue to receive such entitlements for the remainder of their employment with the Organization.

15. As has been demonstrated above, UNAT has held that the computation of the amount of an allowance is not an acquired right, although entitlement to the allowance itself may be. (See, e.g., discussion in paragraphs 6–8 above.) It is our view that staff members do not have an acquired right to the provisions of the current mobility and hardship scheme, as long as the amendments proposed by ICSC are not applied retroactively.

16. However, the Organization may decide—as a policy matter—to pay each affected staff member a transitional payment to counteract any negative effect of the amendments on the allowances they will receive in future. We understand that this policy has been adopted in the past, for example, when the Organization instituted the current mobility and hardship scheme in 1989, whereby a transitional allowance was payable to staff members who experienced a reduction in their allowances under the revised mobility and hardship scheme. (See “Mobility and Hardship Allowance,” ST/AI/363, 1 August 1990, paras. 56–58.)

17. If the Organization once again decides to institute a transitional allowance when implementing the new mobility and hardship scheme, the determination of the length and amount of such an allowance would also be a policy matter.

18. The advice given above is predicated on the assumption that the General Assembly will approve the proposal of ICSC, as presented in its annual report for 2005, with regard to the changes to the mobility and hardship scheme. Should the General Assembly make modifications to the ICSC proposal, it may be necessary to review the question of acquired rights and transitional measures in that context.

11 October 2005

*Judgement No. 634 (6 July 1994): Horlacher v. the Secretary-General of United Nations.*
6. Miscellaneous

(a) Note to the Special Representative of the Secretary-General for a Member State, regarding the Secretary-General’s legal power to offer his good offices in the process of demarcation of the border between two Member States

Power of the Secretary-General to offer his good offices to assist in the adjustment of situations which may threaten the maintenance of international peace and security—Appointment of a mediator—Consideration of the dispute regarding demarcation as a source of tension between two States—Declaration on the Prevention and Removal of Disputes Which May Threaten International Peace and Security and on the Role of the United Nations in this Field

I refer to your note dated 10 May 2005, transmitting a letter dated [date] which the Minister of Internal Affairs of [State A] has sent to the Special Representative of the Secretary-General for [State A] regarding the border between [State A] and [State B] in the vicinity of the village of [X]. The Minister states that, at a summit meeting between the Heads of State of [State C] and [State A] and the Head of Government of [State B] held at [city] on [date], the President of [State A] and the [State B] delegation agreed that (i) technical experts appointed by the two Governments should jointly demarcate the boundary between the two States and identify the location of the beacons shown on the map annexed to the Agreement [ . . . ], done at [city] on [date] (the 1912 Treaty) and (ii) the United Nations, through the Special Representative, should appoint an independent expert to mediate between the two teams in case of disagreement. The Minister requests the Special Representative to have such an expert appointed. You seek our advice.

The boundary between [State A] and [State B] was established in a series of agreements concluded in the late nineteenth and early twentieth centuries, culminating in the Agreement of [date] (the 1912 Treaty). At the same time, the boundary was demarcated by pillars, beacons and cairns, except where it follows the course of certain rivers. The demarcation of one section of the boundary and the positions of the pertinent cairns were shown on a map attached to the 1912 Treaty, it appears that [village X] is located in that section.

We understand from the twenty-third, twenty-fourth and twenty-fifth reports of the Secretary-General on the [United Nations Mission] that, on [date], the Presidents of [State A] and [State B] met in [city] to discuss the issue of the boundary in the vicinity of [village X] and that they issued a joint communiqué affirming that that village belongs to [State A] [ . . . ]. It appears from the text of that joint communiqué, as attached to [United Nations Mission] Code Cable No. [ . . . ] of [date], that the task that now remains—at least as far as the establishment of the border is concerned—is to undertake its physical demarcation in the vicinity of the village. In this connection, we understand from [United Nations Mission] Code Cable No. [ . . . ] of [date] that at least certain of the boundary cairns in the vicinity of [village X] may have been destroyed or moved and so may need replacing or repositioning.

This being so, the task at hand—at least as far as the establishment of the boundary is concerned—would appear to be chiefly technical in nature, requiring expertise that, within the Organization, would most probably be possessed by the Cartographies Section.

In so far as concerns the appointment by the Secretary-General of a mediator, as envisaged in the Minister of the Interior’s letter, it is certainly within the Secretary-Gener-
eral’s lawful powers under the Charter to offer his good offices, including the appointment of a mediator, to assist in the solution or adjustment of disputes or situations the continuance of which may threaten the maintenance of international peace and security (see the Declaration on the Prevention and Removal of Disputes Which May Threaten International peace and Security and on the Role of the United Nations in this Field, annexed to General Assembly resolution 43/51 of 5 December 1988). It appears from recent reports of the Secretary-General on [United Nations Mission] that the dispute in the area of [village X] is of such a nature, representing a source of tension between [State B] and [State A] and posing a potential threat to the latter’s security (loc. cit. above; [. . .]). Indeed, it appears that [State B] troops are still present in the area and have yet to withdraw from the village and its environs [. . .].

We do not know whether the Government of [State B] has in fact agreed to the two points set out in the letter of the Minister of the Interior of [State A].

If it has, there would certainly be no legal obstacle to the Secretary-General’s indicating that he is prepared to appoint an expert mediator for the purpose outlined in that letter.

If it has not, then it may be recalled that, from a strictly legal point of view, it is not necessary, in order for the Secretary-General to offer his good offices in respect of a dispute or situation, that both parties approach him for that purpose or otherwise indicate that they are willing to accept his offer. He may make such an offer at the invitation of one of them only or even without any invitation from either of them. (From a political point of view, though, for the Secretary-General to offer his good offices at the request of one of the parties alone might be problematic.) In the present case, we understand from the Secretary-General’s twenty-fifth report on [United Nations Mission] that the Secretary-General has already offered to provide assistance in resolving the dispute regarding the boundary in the vicinity of the village of [X] (reference to report). This being so, even if [State B] has not agreed to both of the points in the Minister of the Interior’s letter, there would certainly not be any legal obstacle to the Special Representative of the Secretary-General’s informing [State B] and [State A] that the Secretary-General is prepared to appoint a mediator for the purpose of helping the two States in resolving any differences that might arise between their experts, should they agree to appoint technical teams to undertake the demarcation of the boundary in the vicinity of [X].

Finally, we would note that, if a decision is taken that the Secretary-General should be prepared to appoint a mediator, as requested, then it may be necessary to consult with Office of Programme Planning, Budget and Account to confirm the availability of the necessary financing.

19 May 2005
(b) Annex to the letter dated 25 August 2005 from the Legal Counsel, Under-Secretary-General of the United Nations for Legal Affairs, addressed to the Chairman of the Commission on the Limits of the Continental Shelf

United Nations Convention on the Law of the Sea—Continental shelf—Procedure to delimit the continental shelf of a coastal State—Competence and functions of the Commission on the Limits of the Continental Shelf—Implicit powers of the Commission to adopt its rules of procedures and its scientific and technical guidelines—Possibility for coastal State to reassess or add, in good faith, scientific data in its submission for the determination of its continental shelf and conclude that original limits should be adjusted—Exclusive competence of the Commission to determine whether those limits meet the requirements of the Convention on the Law of the Sea

...  

Introduction

The question with regard to which the Commission on the Limits of the Continental Shelf (CLCS) decided to seek a legal opinion reads as follows:

“Is it permissible, under the United Nations Convention on the Law of the Sea and the rules of procedure of the Commission, for a coastal State, which has made a submission to the Commission in accordance with article 76 of the Convention, to provide to the Commission in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission?”

A description of the context within which this legal opinion was sought can be found in the Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission at its fifteenth session (CLCS/44, paras. 12–16).


a. General observations

The United Nations Convention on the Law of the Sea is a multilateral treaty the provisions of which are therefore binding on the Commission and States parties to the Convention submitting particulars regarding the outer limit of their continental shelf along with supporting scientific and technical data to the Commission. Therefore, it is important initially to identify the provisions of the Convention which are pertinent to the question on which a legal opinion is being sought by the Commission.

* The text of the letter is not reproduced herein. For the text of the letter, see Doc. CLCS/46.
b. Pertinent provisions of the Convention

It appears that the following provisions of the Convention are relevant to the question at issue.

"Article 76
"Definition of the continental shelf"

"1. The continental shelf of a coastal State comprises the seabed and subsoil of the maritime areas that extend beyond its territorial sea throughout the natural prolongation of its territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

"2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

..."7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

"8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

..."

"ANNEX II. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF"

"Article 1"

"In accordance with the provisions of article 76, a Commission on the Limits of the Continental Shelf beyond 200 nautical miles shall be established in conformity with the following articles.

..."

"Article 3"

"1. The functions of the Commission shall be:

"(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;"

..."
"Article 4"

"Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.

"Article 5"

"Unless the Commission decides otherwise, the Commission shall function by way of sub-commissions composed of seven members, appointed in a balanced manner . . ."

c. Analysis of the pertinent provisions of the Convention

It follows from the above provisions of the Convention that a coastal State, which is entitled pursuant to the provisions of article 76 of the Convention to the continental shelf extending beyond 200 nautical miles, is required to submit to the Commission for its consideration information on the limits of its continental shelf beyond 200 nautical miles. The Convention further provides that such information should include particulars of such limits accompanied by supporting scientific and technical data. Thus, under the Convention, scientific and technical data are provided by a coastal State for the purpose of supporting particulars of the limits of the continental shelf submitted by that coastal State to the Commission.

In its request for the legal opinion, the Commission enquires as to whether it is permissible, under the Convention, for a coastal State to provide to the Commission, in the course of the examination by it of the submission of that State, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were submitted to the Commission and which were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission.

It may be assumed that since additional data is presented by a coastal State in support of the particulars of the limits of the continental shelf submitted by it to the Commission, it should not contradict them. In other words, it is expected that the additional material and information should not amount to a revision of the original submission.

It appears, however, that there is nothing in the Convention that could preclude a coastal State from informing the Commission in the course of its examination of the submission of that State that further analysis of the scientific and technical data originally presented to the Commission in support of particulars of the limits of its continental shelf or substantial part thereof has brought this State to a conclusion that some of these particulars were not correct and therefore the outer limits of the continental shelf need to be adjusted.

Likewise, it appears that there is nothing in the Convention that prevents a coastal State from submitting to the Commission, in the course of the examination by the Commission of its original information, new particulars of the limits of its continental shelf
or substantial part thereof if in the view of the coastal State concerned it is justified by additional scientific and technical data obtained by it.

The coastal State concerned will be expected in both cases to explain to the Commission why it believes that some of the limits of the continental shelf originally presented by it to the Commission need to be adjusted or modified and to provide the necessary scientific and technical data supporting this conclusion. It will, of course, then be for the Commission to examine, in the light of its mandate as defined by the Convention, the original submission together with the proposed new limits of part of the continental shelf of the coastal State concerned and to determine whether they meet the requirements of article 76 of the Convention. The findings of the Commission will be reflected in its recommendations on the submission.

Coastal States are expected to act in good faith and exercise caution so that the work of the Commission and the establishment of the outer limits of the continental shelf of these States are not unreasonably prolonged or delayed.

The analysis of the legislative history of the Convention indirectly supports the above conclusions. The travaux préparatoires of the Convention [Official Records of the Third United Nations Conference on the Law of the Sea, Vols. I-XVII] show that delegations did not discuss the modalities through which a coastal State would provide the Commission with the particulars of the limits of its continental shelf and the supporting scientific and technical data. Consequently, the fact that the Convention does not expressly permit the coastal State to submit new particulars during the course of the examination of the original submission by the Commission cannot be interpreted to imply that States cannot do so.

Part II.  *Rules of procedure and other documents of the Commission*

  a.  *General observations*

The Commission is a treaty body which is established by the Convention to perform functions defined in article 3, paragraph 1, of annex II to the Convention. In accordance with subparagraph 1 (a) of that article, the Commission, as noted above, is entrusted with the responsibility to consider the data and other material submitted by a coastal State concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the statement of understanding adopted by the Conference.

In addition to the explicit authority conferred upon it by the Convention, it is recognized that as a treaty body the Commission has certain implied powers that are essential for the fulfilment of its responsibilities under the Convention.

This is the case of the power to adopt rules of procedure and other relevant documents with a view to facilitating the discharge of the functions of the Commission in an orderly and effective manner. Due to the nature of the functions of the Commission, its rules of procedure and other relevant documents are not merely organizational, or internal, in nature. On the contrary, they also offer guidance to States which make a submission to the
Commission. Unlike the case of the International Seabed Authority (see article 149, para. 4), the Convention does not contain any article providing the Commission with the power to adopt its own rules or procedure. The Commission, therefore, can do so only by exercising a power which is conferred upon it by necessary implication as being essential to the performance of its duties. The same applies to other relevant documents. This is consistent with the 1949 advisory opinion by the International Court of Justice on Reparations for injuries suffered in the service of the United Nations. The Court found in that opinion, inter alia, that “under international law, the Organization must be deemed to have those powers, which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties” (I.C.J. Reports 1949, p. 182). The same considerations can be applied to the Commission with regard to powers which are essential to the performance of its duties, even though not expressly provided in the Convention.

It should be underlined, however, that rules of procedure and other relevant documents adopted by the Commission should be in strict conformity with the pertinent provisions of the Convention, which is the main instrument guiding the work of the Commission. In the case of any conflict between the provisions of these documents, which are supplementary by their nature, and those of the Convention, the latter shall prevail.

In this regard, it must be recalled that the Commission has adopted two documents: the rules of procedure of the Commission (CLCS/40) and the Scientific and Technical Guidelines of the Commission (CLCS/11 and Add.1).

Although the rules of procedure and the Guidelines are two separate documents, they are interrelated. The reference to the Guidelines is contained in various articles of the rules of procedure, which, inter alia, provide that “the Commission may adopt such regulations, guidelines and annexes to the present rules as are required for the effective performance of its functions” (rule 58, para. 1).

The rules of procedure of the Commission currently have three annexes, which—as provided for by rule 58, paragraph 2—form an integral part of the rules of procedure. Of particular relevance to the present legal opinion is annex III, entitled “Modus operandi for the consideration of a submission made to the Commission on the Limits of the Continental Shelf”.

It should be observed that the States parties to the Convention acknowledged in one of their decisions the right of the Commission to adopt documents necessary for the proper discharge of its responsibilities under the Convention. In the decision regarding the date of commencement of the 10-year period for making submissions to the Commission set out in article 4 of annex II to the Convention (SPLOS/72), adopted at their Eleventh Meeting, held from 14 to 18 May 2001, the States parties noted “that it was only after the adoption by the Commission of its Scientific and Technical Guidelines on 13 May 1999 that States had before them the basic documents concerning submissions in accordance with article 76, paragraph 8, of the Convention”. By that decision, the States parties thus recognized the role played by the Guidelines and highlighted the particular importance they attached to them in the context of implementation of article 76, paragraph 8, of the Convention.
b. Pertinent provisions of the rules of procedure

It appears that the following provisions of the rules of procedure of the Commission are relevant to the question at issue.

“Rule 45
“Submission by a coastal State
“In accordance with article 4 of Annex II to the Convention:
“Where a coastal State intends to establish the outer limits of its continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible, but in any case within ten years of the entry into force of the Convention for that State.

“Rule 47
“Form and language of submission
“1. A submission shall conform to the requirements established by the Commission.

“Rule 48
“Recording of the submission
“1. Each submission shall be recorded by the Secretary-General upon receipt.

“Rule 50
“Notification of the receipt of a submission and publication of the proposed outer limits of the continental shelf related to the submission

“The Secretary-General shall, through the appropriate channels, promptly notify the Commission and all States Members of the United Nations, including States Parties to the Convention, of the receipt of the submission, and make public the executive summary including all charts and coordinates referred to in paragraph 9.1.4 of the Guidelines and contained in that summary, upon completion of the translation of the executive summary referred to in rule 47, paragraph 3.

“Annex III

“Modus operandi for the consideration of a submission made to the Commission on the Limits of the Continental Shelf

“I. Submission by a coastal State

“1. Format and number of copies of the submission

“In accordance with paragraphs 9.1.3, 9.1.4, 9.1.5 and 9.1.6 of the Guidelines, the submission shall contain three separate parts: an executive summary, a main analytical and descriptive part (main body), and a part containing all data referred to in the analytical and descriptive part (supporting scientific and technical data).
“III. Initial examination of the submission

“3. Format and completeness of the submission

“The subcommission shall examine whether the format of the submission is in compliance with the requirements set out in paragraph 1, and shall ensure that all necessary information has been included in the submission. If it is deemed necessary, the subcommission may request the coastal State to correct the format and/or to provide any necessary additional information, in a timely manner.

“6. Clarifications

“1. The subcommission shall determine whether there are any matters to be clarified by the coastal State.

“2. If necessary, the Chairperson of the subcommission shall, through the Secretariat, request clarification from the representatives of the coastal State on those matters. Clarifications should be sought in the form of written questions and answers and translated by the Secretariat, if necessary, into the language in which the submission was made.

“IV. Main scientific and technical examination of the submission

“10. Additional data, information or advice

“1. At any stage of the examination, should the subcommission arrive at the conclusion that there is a need for additional data, information or clarifications, its Chairperson shall request the coastal State to provide such data or information or to make clarifications. Such a request, articulated in precise technical terms, shall be transmitted through the Secretariat. If necessary, the Secretariat will translate the request and questions. The data, information or clarifications requested shall be provided within a time period agreed upon between the coastal State and the subcommission.”

c. Pertinent provisions of the Guidelines

“1.2. The Commission prepared these Guidelines for the purpose of providing direction to coastal States which intend to submit data and other material concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The Guidelines aim to clarify the scope and depth of admissible scientific and technical evidence to be examined by the Commission during its consideration of each submission for the purpose of making recommendations.

“9.1.3. The submission will be divided in three separate parts in accordance with the Modus Operandi of the Commission (CLCS/L.3). The requested format contains an executive summary (22 copies), a main body (8 copies) and all supporting scientific and technical data (2 copies).

“9.1.4. The executive summary will contain the following information:

“(a) Charts at an appropriate scale and coordinates indicating the outer limits of the continental shelf and the relevant territorial sea baselines;

“(b) Which provisions of article 76 are invoked to support the submission;
“(c) The names of any Commission members who gave advice in the preparation of the submission; and

“(d) Any disputes as referred to in rule 44 and annex I to the Rules of Procedure of the Commission.”

d. Analysis of the relevant provisions of the rules of procedure and Guidelines

In analysing the provisions of the rules of procedure of the Commission and of the Scientific and Technical Guidelines it must be taken into account that, as noted above, these documents need to be read, understood and interpreted in the light of the Convention, the provisions of which prevail.

It follows from the rules of procedure and the Guidelines that particulars of the limits of the continental shelf and supporting scientific and technical data should be presented to the Commission by a coastal State in the form of a submission. The latter should consist of three separate parts (executive summary, main body and supporting scientific and technical data). It also follows from paragraphs 3, 6 and 10 of annex III to the rules of procedure that the subcommission established by the Commission to consider a submission may, in the course of the initial as well as at any stage of the main examination of that submission, request the coastal State concerned to provide additional data, information or clarifications regarding that submission.

As noted in the section concerning the analysis of the pertinent provisions of the Convention, it is expected that additional data, information and clarifications provided by the coastal State to the Commission in response to such requests should support, integrate and clarify the particulars of the limits of the continental shelf contained in the submission, and that they should not amount to a new or revised submission.

However, as pointed out in the same section, it is quite possible that, in preparing a response to requests for additional information, a coastal State, while reassessing the data originally submitted to the Commission, could reach the conclusion that some of the particulars of the outer limits of its continental shelf contained in its original submission to the Commission need to be adjusted. A situation may also arise in which a coastal State reaches that conclusion not in response to a request by the subcommission but on its own. This may occur, for instance, in the light of additional scientific and technical data obtained by the State concerned, or if errors or miscalculations in the submission are discovered that need to be rectified. The State concerned could then bring these to the attention of the subcommission and the Commission.

The rules of procedure and the Guidelines do not directly address these contingencies. The question, however, arises of how they should be treated in the light of the rules of procedure and the Guidelines. It may be recalled in this regard that the rules of procedure contain certain procedural requirements concerning the handling of submissions. After recording a submission (rule 48), acknowledging its receipt to the submitting coastal State (rule 49) and notifying the Commission and all States Members of the United Nations, including States parties to the Convention, of the receipt of the submission (rule 50), the Secretary-General of the United Nations is required to make public the executive summary of the submission, including all charts and coordinates indicating the outer limits of the continental shelf (paragraph 9.1.4 of the Guidelines).
In the event that a coastal State submits new particulars related to the proposed outer limits of its continental shelf, either in response to requests by the Commission for additional data and information or clarifications or on its own, an issue may arise with regard to the due publicity given to the original submission. If the new particulars lead to a significant departure from the original limits contained in the executive summary that was given due publicity by the Secretary-General of the United Nations, it appears that the newly proposed particulars of the outer limits of the continental shelf should be given similar publicity. All States have an interest in being notified about the limits proposed in a submission. The outer limits of the continental shelf of a State also define the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction), which is, together with its resources, the common heritage of mankind (article 136 of the Convention). According to the preamble of the Convention, the exploration and exploitation of the Area and its resources “shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States”. The Commission therefore should consider whether it would be advisable to address the issue of due publicity with regard to new particulars submitted to the Commission in the course of the examination of the original submission in one of its documents.

The question of whether there is a significant discrepancy between the originally submitted and the newly proposed particulars can be properly addressed only by the body with the required scientific and technical competence, namely the Commission. If the Commission concludes that such a discrepancy is significant, it may consider requesting the coastal State concerned to provide the Secretary-General of the United Nations with an addendum to its executive summary so that due publicity is given to this new information through its circulation to all States Members of the United Nations, including States parties to the Convention. The coastal State, of course, could make such a determination itself and directly provide an addendum to the Secretary-General for the purposes of due publicity. However, the Secretary-General should be guided in this regard by the Commission.

It should be observed that the analysis of State practice which has developed following the circulation of the executive summary of the first submission shows that sometimes other States find it necessary to provide comments on particular aspects of the executive summary by sending notes verbales to the Secretary-General with a request that those comments be brought to the attention of the Commission and be circulated to all States Members of the United Nations. The Commission may wish to consider whether this emerging practice should be taken into account and a time frame be established giving States an opportunity to provide comments on the addendum to the executive summary containing the new particulars of the limits of the continental shelf or substantial part thereof of the coastal State concerned.

Conclusions

Additional material and information relating to the limits of the continental shelf or substantial part thereof, provided by a coastal State to the Commission in response to its requests for additional data, information or clarification in the course of the examination by the Commission of the submission of that coastal State, is expected to support,
integrate and clarify the particulars of the limits of the continental shelf contained in the submission.

However, there is nothing in the Convention that precludes a coastal State from submitting to the Commission, in the course of the examination by it of the submission of that State, revised particulars of the limits of its continental shelf if the State concerned reaches a conclusion, while reassessing in good faith the data contained in its submission, that some of the particulars of the limits of the continental shelf in the original submission should be adjusted, or if it discovers errors or miscalculations in the submission that need to be rectified.

Likewise, the Convention does not prevent a coastal State from submitting to the Commission, in the course of the examination by it of the submission of that State, new particulars of the limits of its continental shelf, or substantial part thereof, if in the view of the coastal State concerned, acting in good faith, this is justified by additional scientific and technical data obtained by it.

Consequently, in the cases described above it is permissible for a coastal State which has made a submission to the Commission in accordance with article 76 of the Convention to provide to the Commission, in the course of the examination by it of the submission, additional material and information relating to the limits of its continental shelf or substantial part thereof, which constitute a significant departure from the original limits and formulae lines that were given due publicity by the Secretary-General of the United Nations in accordance with rule 50 of the rules of procedure of the Commission.

As the rules of procedure and the Guidelines do not address the contingencies described above and at the same time require that the executive summary of the submission by a coastal State be given due publicity by the Secretary-General of the United Nations, the Commission may wish to consider whether it would be advisable to address this issue in one of its documents and to provide the necessary guidance to the Secretary-General of the United Nations in this regard.

In concluding, it should be emphasized that it is ultimately up to the Commission in the light of its mandate defined by the Convention to determine, after examining and evaluating data and information provided to it by a coastal State, what particulars of the limits of the continental shelf of the coastal State concerned meet the requirements of article 76 of the Convention.
B. LEGAL OPINIONS OF THE SECRETARIATS OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. International Labour Organization

(Submitted by the Legal Adviser of the International Labour Conference)

(a) Provisional record No. 18, ninety-third session, fourth item on the agenda: Occupational safety and health, Report of the Committee on Safety and Health

Legal status of a declaration in the context of the International Labour Organization (ILO)—Difference between declarations, recommendations and conventions with regard to the legal obligations they entail

The Legal Adviser [ . . . ] explained [to Committee on Safety and Health] that international labour conventions were multilateral treaties that conferred rights and responsibilities on member States that ratified them, and that there was a mechanism for supervising their implementation. International labour recommendations were non-binding instruments that recommended practices, monitoring and so on. Unlike conventions and recommendations, declarations were not mentioned in the ILO Constitution and were not legal instruments. They did not create legal obligations but could recall existing ones. Declarations were more political than other instruments and ILO had not adopted many. Some, such as the Declaration of Philadelphia, were subsequently included in the ILO Constitution, so that when a country became an ILO member it subscribed to the Declaration as well. Others were the Declaration on Apartheid, 1964; the Declaration of Principles Concerning Multinational Corporations and Social Policy, 1977; and the Declaration on Fundamental Principles and Rights at Work, 1998. The last mentioned had an ad hoc follow-up mechanism, an expensive one, and outside the usual practices for Conventions.

(b) Provisional record No. 18, ninety-third session, fourth item on the agenda: Occupational safety and health, Report of the Committee on Safety and Health

Legal significance of “framework” conventions

[ . . . ] the Legal Adviser reminded the Committee [on Safety and Health] that there were only two international labour standards recognized by the International Labour Organization legal system, conventions and recommendations. Although certain conventions had been declared by the Governing Body or Conference to be “fundamental” or “priority” conventions, the terms did not appear either in the text or in the titles of the instruments. Thus, a “framework” convention would likewise not differ from any others in the way its ratification and implementation were monitored by the Organization. However, just as applying the term “fundamental” to some conventions showed that the Organization felt that there was something special about them, using the word “framework” as

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1 ILC93-PR-18–232-En.doc, paragraph 70.
2 Ibid., paragraph 75.
proposed in the amendment would also lead readers to expect an instrument that was different in some way. If the Committee wished to use “framework”, Members should be clear as to whether the word implied that the proposed Convention provided a frame for Conventions adopted in the past, a framework on which future Conventions could be built, or a framework to support member States’ actions in implementing other Conventions.

(c) Provisional record No. 18, ninety-third session, fourth item on the agenda: Occupational safety and health. Report of the Committee on Safety and Health

Significance of the terms “fundamental rights” and “core conventions”

[... ] The International Labour Organization (ILO) Legal Adviser explained that the terms [fundamental rights and core conventions] had no agreed legal significance but had been articulated by the Office and approved by the International Labour Conference in 1998, when it adopted the ILO Declaration on Fundamental Principles and Rights at Work. At that time it was understood that the rights and principles contained in the so-called ILO core Conventions were “fundamental” only insofar as their protection was necessary for the enjoyment of the rights contained in the other ILO instruments. However, fundamental human rights had been laid down in other documents such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, rather than in ILO “core Conventions”. The right to a safe and healthy working environment, encompassed in the right to life, could be inferred from these other instruments. It would therefore be meaningless to relate the right to a safe and healthy working environment, as proposed in the above sub-amendment, to the fundamental principles and rights at work or to so-called ILO core Conventions.

(d) Provisional record No. 19, ninety-third session, fifth item on the agenda: Work in the fishing sector (second discussion). Report of the Committee on the Fishing Sector

Definition of the term “worker”

The Legal Adviser [...] explained that the term “worker” had defied definition since the founding of the International Labour Organization in 1919. While there was as yet no definitive answer, elements of a definition could be inferred from an examination of inter-

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* The statement by the Legal Adviser relates to a proposed amendment to insert the words “subtitled Framework Convention” after the word “Convention” in the statement of the form of the proposed instrument. (See paragraph 74 of the provisional record No. 18.)

** ILC93-PR-18–232-En.doc, paragraph 283.

*** The statement by the Legal Adviser relates to a proposed sub-subamendment to refer to “a right to a safe and healthy working environment” instead of “a right to life” in the conclusions contained in the report Promotional framework for occupational safety and health, prepared by the Office for a first discussion of the fourth item on the agenda of the Conference: “Occupational Safety and Health—Development of a new instrument establishing a promotional framework in this area”. (See paragraphs 282 and 283 of the provisional record No. 18.)

**** ILC93-PR-19–234-En.doc, paragraph 573.
national labour conventions. Although unstated, the notion of a “waged” or “salaried” person was often implicit. In the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), however, the concept of “worker” had been extended beyond a person who earns a wage or salary to encompass any person who works, even including an employer. In the current draft Convention [draft Convention concerning Work in the Fishing Sector], in the absence of a definition, the concept of worker would include not only waged workers, but also independent or self-employed fishers, who might be covered by their country’s social security system, which applied to a wide range of people.

(e) Provisional record No. 19, ninety-third session, fifth item on the agenda: Work in the fishing sector (second discussion). Report of the Committee on the Fishing Sector

Impact of the adoption of a new convention on other international labour standards

The Chairperson invited the Legal Adviser to shed light on the impact of the adoption of the new Convention [draft Convention concerning Work in the Fishing Sector] under discussion on the status of other international labour standards related to the fishing sector.

The Legal Adviser noted that the Preamble of the draft Convention mentioned the need to revise the seven international instruments adopted specifically for the fishing sector to bring them up to date. Preambular paragraphs had no mandatory force, however. Should the Committee wish to decide that some or all of the Conventions listed in the Preamble were to be considered revised by the draft Convention, a provision to that effect would need to appear within the body of the Convention. The revised Conventions would be closed to further ratification once the new Convention came into force, although they would remain binding on those members that had previously ratified them and did not ratify the new Convention. Only the new Convention would be open to ratification. The Committee would need to provide a clear indication as to which of the earlier Conventions had been revised by the new Convention and which, if any, were to remain open to ratification.

[ . . . ] the Legal Adviser explained that the ratification of the new Convention would also entail automatic denunciation of the revised Convention(s) by the ratifying member, unless the Committee wished to have a clause that provided otherwise included in the new Convention. The Drafting Committee would need clear guidance from the Committee on whether or not the new Convention revised any or all of the earlier Conventions and whether the ratification of the new Convention would entail the automatic denunciation of the revised Conventions.

ILC93-PR-19–234-En.doc, paragraphs 650 to 652.
2. United Nations Industrial Development Organization

(Submitted by the Legal Adviser of the United Nations Industrial Development Organization)

(a) Interoffice memorandum re: Tax exempt status of the United Nations Industrial Development Organization in a State


Reference is made to the email message of [name] dated [ . . . ] requesting advice as to the following issue. A UNIDO project [number] funded by an institute in [State] to be executed both in [State] and [State (city)] is requested to pay taxes (26 per cent) for contributions made in [State]. The email of [name] however did not indicate in what respect such taxes were claimed (import of equipment, publications, services, etc.).

Background information: the legal framework governing project implementation—including issues relating to privileges and immunities of the executing agency—is contained in the Standard Basic Cooperation Agreements (SBCA) signed by most countries either with the United Nations Development Programme (UNDP) or directly with UNIDO. When the SBCA has only been signed with UNDP, the recipient Government is normally requested to sign a Government Declaration accepting the application of the SBCA concluded with UNDP to the project to be executed by UNIDO.

In the present case, the [entity] was the donor but some activities were also to be executed in [State], therefore the Legal Office, during the clearance process of the draft trust fund agreement, requested in a memorandum dated [ . . . ] to [name], that such declaration be signed by [State]. This issue was reiterated in another memorandum to him dated [ . . . ]. However, the Government Declaration was not among the documents submitted to the Legal Office. It is also worth mentioning that the draft trust fund agreement did not get the clearance from this Office (last two memoranda to [name] dated [ . . . ]). All memoranda referred to in this paragraph are attached for ease of reference.""

Notwithstanding, the absence of the Declaration rendering the normal legal framework governing the execution of UNIDO projects inoperative, does not mean that UNIDO is deprived from the basic privileges and immunities. In this context, two international treaties to which [State] is a party apply: (1) the Convention on the Privileges and Immunities of the United Nations to which [State] acceded on [date], and (2) the UNIDO Constitution. These documents contain the following provisions.

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** A/CONF.90/19.
*** The memoranda are not reproduced herein.
Chapter VI

Convention on the Privileges and Immunities of the United Nations
Sections 7 and 8:

Section 7:

“The United Nations, its assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restrictions in imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) Exempt from customs duties and prohibitions and restrictions in imports and exports in respect of its publications.”

Section 8:

“While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.”

UNIDO Constitution, article 21, legal capacity, privileges and immunities:

“1. The Organization shall enjoy in the territory of each of its Members such legal capacity and such privileges and immunities as are necessary for the exercise of its functions and for the fulfilment of its objectives. . . .

2. The legal capacity, privileges and immunities referred to in paragraph 1 shall:

(a) . . .

(b) In the territory of any Member that has not acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Organization but has acceded to the Convention on the Privileges and Immunities of the United Nations, be as defined in the latter Convention, unless such State notifies the Depositary on depositing its instruments of ratification, acceptance, approval or accession that it will not apply this Convention to the Organization; the Convention on the Privileges and Immunities of the United Nations shall cease to apply to the Organization thirty days after such State has so notified the Depositary;

(c) . . .”

In the absence of a Government Declaration but in view of [State’s] accession to the Convention on the Privileges and Immunities of the United Nations, on [date], and in the absence of any notification as provided for in article 21 (b) of the Constitution, UNIDO should be granted all necessary privileges including tax exemptions in the territory of [State].

In view of the above, I would suggest that a letter be prepared to the Ministry of Foreign Affairs of [State] requesting that the above information be provided to relevant
authorities so as to obtain (1) exemption of the concerned taxes, and (2) reimbursement of the taxes already paid by the project. Legal Services could review a draft.

(b) Letter re: Possible amendments to the Statute and Rules of the Administrative Tribunal of the International Labour Organization

Proposed amendments to the Statute and Rules of the Administrative Tribunal of the International Labour Organization—Staff associations standing before the Administrative Tribunal—Right to intervention—Amicus curiae briefs—Tribunal’s discretion to hold oral proceedings

I refer to your letters of [dates] on the subject of possible amendments to the Statute and Rules of the Administrative Tribunal of the International Labour Organization (ILOAT). The principal proposal concerns the ILOAT jurisdiction over claims filed by a staff association where a right of the association has allegedly been infringed. I regret that I was not able to reply earlier to your letter of [date], because we required more time to discuss the matter internally. I would note, however, that I discussed this matter with your Deputy at the [date] meeting of United Nations Legal Advisers in [city]. In the light of your most recent letter, I take this additional opportunity to offer the UNIDO views on the subject.

In our letter of [date], we echoed the reservations raised by other organizations to the proposed amendments and expressed the view that the International Labour Office should continue the consultation process in order to reach consensus on a text. At that time, besides the proposal to give a staff association a direct right of action to defend its own rights, there was also a “class action” proposal to give a direct right of action to a staff association in cases involving decisions of a regulatory nature affecting all or a certain category or categories of staff members. In your letter of [date], you submitted draft amendments to the Statute of ILOAT that concern solely the former proposal. We agree with the decision to set aside the latter proposal and therefore concentrate our views on the proposal to give standing to a staff association in respect of a claim alleging the infringement of a right of the association recognized by the organization’s staff regulations and rules.

First, and foremost, we are concerned that additional litigation will result if the proposed amendments are implemented. The fact that, under the current proposal, it will be up to each individual organization to amend its staff regulations and rules to allow a staff association the right to file a claim does not, alone, sufficiently address this concern. It is anticipated that the organization’s staff association will apply continuous pressure on the administration until the necessary reforms to the staff regulations and rules are implemented. We believe, therefore, that it is not advisable to amend articles II and VII of the ILOAT Statute, as currently proposed, unless an amendment to article IX of the Statute is concurrently made so that the expenses occasioned by the staff association’s complaint are borne in equal fashion between the organization and the staff association.

Second, we are of the opinion that an award of costs to an organization that successfully defends a complaint brought by its staff association should also be contemplated. Currently, an adverse award of costs may be imposed, at the ILOAT discretion, where an individual staff member’s complaint is tantamount to an abuse of process. See ILOAT
Judgment No. 2211. The “abuse of process” standard is high because ILOAT is mindful of the dissuasive and chilling effect that an adverse award of costs has on individual staff members. However, we believe this standard to be too high in the case of staff associations. Since staff associations receive dues from staff members who choose to join, the financial risk involved in filing a complaint is not the same as in the case of an individual staff member. We would welcome the views of ILOAT on this idea prior to endorsing the current proposal to amend the ILOAT Statute.

Third, it is our view that the proposed amendments to the Statute of ILOAT, although in principle limited to cases involving a direct infringement of a staff association’s rights under the organization’s regulations and rules, will, nevertheless, result in litigation on administrative decisions of a regulatory nature affecting all or a certain category or categories of staff members. As evident from the relevant regulations and rules of UNIDO [. . . ], the staff association’s representative body (the UNIDO Staff Council) is entitled to effective participation in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other matters of personnel policy. Therefore, although under the current proposal the staff association will not have standing to file a claim on behalf of staff members affected by an administrative decision of a regulatory nature, it will, nevertheless have standing to challenge such a decision on the grounds that it was taken in breach of the staff association’s right of “effective participation”. If the ILOAT remedy in such instances is to overturn the administrative decision, then the current proposal to amend the ILOAT Statute will have the same effect as the previous “class action” proposal that has now been set aside. We would, accordingly, welcome the views of ILOAT on the question of the appropriate remedy in cases where a staff association challenges a decision of a regulatory nature on the grounds that its right of “effective participation” has been infringed.

Finally, if it is possible I would kindly request that you send me copies of the responses you have received from the other organizations who have accepted the jurisdiction of ILOAT in connection with the proposed amendments to the Statute as mentioned in footnote [. . . ]. If additional responses are submitted in reply to your letter of [date], I would appreciate also receiving a copy of such responses. Feel free to circulate this letter among the Legal Advisers of the other organizations as you see fit.

Your letters also request our views on additional proposals, i.e., concerning a staff association’s right of intervention, the possibility of allowing a staff association to file an amicus curiae brief, and the ILOAT discretion to hold oral proceedings if so requested by a party. We share below our observations in respect of these proposals.

Right of intervention to another staff association of the same organization

Although UNIDO at present only has one staff association, we would think that the above-mentioned concerns should apply with equal force in respect of the additional proposal to give a right of intervention by representative staff associations with identical interests in cases of direct right of action by any other association recognized by the same organization.

Amicus curiae briefs submitted by a staff association

You ask for our views on the possibility for ILOAT to receive, at its discretion, observations in the nature of amicus curiae, submitted by representative staff associations in matters involving decisions of a regulatory nature which may affect the staff as a whole or a specific category thereof. In particular, you ask for our views on the following issues: (a) who could initiate such requests other than ILOAT; (b) at which procedural stage(s) such a request could be made and observations could be submitted; (c) what form such observations could take; (d) how the parties could express their views; and (e) what the role of the Registrar of ILOAT would be in communicating among all concerned. If accepted, this proposal would involve modifications to the ILOAT Rules.

In respect of (a), (b) and (e), it is our view that an amicus brief by a staff association may be submitted only on the condition that it brings to the attention of ILOAT a relevant matter not already brought to its attention by the complainant and which concerns the entire staff or a specific category thereof, and, absent a request from ILOAT, it is accompanied by the written consent of all the parties. Where the necessary consent has not been obtained, leave to file an amicus brief should be submitted by the staff association to ILOAT, with copies also sent by the staff association to the parties. The request should state in a concise and summary way the necessity for filing an amicus brief, and the party opposing the request should be given an opportunity to comment. If ILOAT agrees with the staff association’s request to file an amicus brief (or if the prior written consent of the parties had been obtained), then the amicus brief should be filed within the same time as allowed for the respondent’s reply to the complaint, with copies also sent by the staff association to the parties. This procedure would limit the role of the Registrar of ILOAT to communicating the ILOAT decision on the request for leave to file an amicus brief to the parties and the staff association.

In respect of (c) and (d), we believe that the amicus brief should be short and strictly limited to the subject matter of the complaint. The respondent organization should be permitted to address the matters raised in the amicus brief in its surrejoinder. Unless requested by ILOAT, the staff association may not submit an amicus brief in response to the respondent’s reply.

ILOAT discretion to hold oral proceedings if requested by a party

An amendment to article V of the ILOAT Statute has been proposed to make it clear that ILOAT has the discretion to hold oral proceedings if so requested by one of the parties. It is our understanding that the amendment only clarifies a prerogative of ILOAT and, as such, we have no comments in respect of this proposal.

(c) Internal e-mail message re: Scope of decision-making authority of a Director-General elect

Decision-making authority of a Director-General elect

In the course of our brief meeting last evening, you asked for my advice on the scope of decision-making authority of a Director-General elect, i.e., a person who has been rec-
ommended by the Industrial Development Board (IDB) to the General Conference for the post of Director-General.

I wish to confirm the tentative views I conveyed to you at that meeting, i.e., the legal framework of UNIDO does not confer any decision-making authority upon a Director-General elect between the session of IDB that makes a recommendation to the General Conference and the session of the General Conference that considers the recommendation of IDB. If a Director-General elect is already a staff member of UNIDO, he is subject to the authority of the incumbent Director-General and is bound by the terms of his employment contract as long as (1) the terms of the contract of the incumbent Director-General have not expired; (2) the General Conference has not adopted the recommendation of IDB; and (3) the employment contract attached to the General Conference decision has not been signed by the Director-General elect.

For your information, I have also copied some relevant provisions of the Constitution as well as the Staff Regulations of UNIDO which shed light on the scope of authority of an incumbent Director-General and staff who are administered by him.

ATTACHMENT

RELEVANT PROVISIONS OF THE CONSTITUTION AS WELL AS THE
STAFF REGULATIONS OF UNIDO

1. The Constitution of UNIDO

Article 11 (Secretariat)

2. The Director-General shall be appointed by the Conference upon recommendation of the Board for a period of four years. He may be reappointed for a further term of four years, after which he shall not be eligible for reappointment.

3. The Director-General shall be the chief administrative officer of the Organization. Subject to general or specific directives of the Conference or the Board, the Director-General shall have the over-all responsibility and authority to direct the work of the Organization. Under the authority of and subject to the control of the Board, the Director-General shall be responsible for the appointment, organization and functioning of the staff.

5. The staff shall be appointed by the Director-General under regulations to be established by the Conference upon recommendation of the Board. Appointments at the level of Deputy Director-General shall be subject to approval by the Board. The conditions of service of staff shall conform as far as possible to those of the United Nations common system. The paramount consideration in the employment of the staff and in determining the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting staff on a wide and equitable geographical basis.
2. Staff Regulations of UNIDO

Regulation 1.9: The oath or declaration shall be made orally by the Director-General at a public meeting of the General Conference. Staff shall make the oath or declaration before the Director-General or his or her authorized representative.

Regulation 3.1: Staff shall be selected and appointed by the Director-General in accordance with the provisions of the Constitution and of the present regulations.

Regulation 3.6: Upon appointment each staff member shall receive a letter of appointment signed by the Director-General or by an official in the name of the Director-General. The letter of appointment shall contain expressly or by reference all the terms and conditions of employment. Samples of letters of appointment will constitute an annex to the Staff Rules.

Regulation 4.1: Staff are subject to the authority of the Director-General and to assignment by him or her to any of the activities or offices of the Organization. They are responsible to him or her in the exercise of their functions. The Director-General shall establish a normal work week.

(d) Internal e-mail message regarding correction of an error in the text of an exchange of letters of [2005]

CORRECTION OF FACTUAL ERROR IN AN EXCHANGE OF LETTERS—ARTICLE 79 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES, 1969—CORRECTIONS TO ORIGINAL LETTERS AND IN COPIES THEREOF

I refer to your e-mails of [dates] concerning the correction of a factual error in the texts of the exchange of letters of [2005] (the EoL) extending the duration of UNIDO-[member State] Agreement regarding the Establishment of the [Centre] in [member State] (the Agreement). In your e-mail of [date], you inform me that the letter of [date] from the Permanent Representative of [member State] refers to article VII, paragraph 5, instead of article VII, paragraph 4, of the Agreement (the “error”). I recall that article VII, paragraph 5, relates to annual review of activities of the [Centre] and article VII, paragraph 4, relates to duration of the Agreement and its possible extension. You have asked for my advice on the following issues:

(a) Is it possible to correct the error in the texts of the EoL by hand which would alleviate the need for conclusion of a new exchange of letters which may otherwise be bureaucratic and time consuming?

(b) If my answer to the above is in the affirmative, whether the correction should be made in the original letters or in their copies?

I conveyed my tentative answers to the above questions over the phone to [name] on [date]. As you were away on leave, I promised to send an e-mail or memo confirming my answers.

As the EoL constitutes an Agreement in accordance with the Vienna Convention on the Law of Treaties of 1969 (the Convention), the correction of the error can be done on the basis of paragraph 1 of article 79 of the Convention which reads:

Article 79 (Correction of errors in texts or in certified copies of treaties)

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

The reference to article VII, paragraph 5, of the Agreement in the text of the original EoL could thus be replaced by a reference to article VII, paragraph 4, of the same Agreement in accordance with paragraph 1 (a) of article 79 of the Convention. The correction should be initialled by the Director-General of UNIDO and the Permanent Representative of [member State] to UNIDO or their duly authorized representatives.

I therefore return the original of the letter of [date] from the Permanent Mission of [member State]. Once the error has been corrected in the originals of the letters of [dates], you may return the original of the letter of [date] to the Legal Service with a copy of the corrected letter of [date] from the Director-General of UNIDO.

(e) Note verbale to the Permanent Mission of [member State] relating to United Nations Industrial Development Organization officials’ tax exemption on salaries and emoluments


The Secretariat of the United Nations Industrial Development Organization (UNIDO) presents its compliments to the Permanent Mission of [member State] and has the honour to refer to a fax from the [revenue office] dated [ . . . ] addressed to an official of the Organization, [name], in respect of [her] [year] tax declaration. [Name] joined UNIDO effective [date].

[Name] made a statement by which [she] indicated that an employee of the [revenue office], requested by fax that [she] provide information about [her] income received during the period [ . . . ]. [She] informed [the employee of the revenue office] that [her] income for that period represented salaries from UNIDO that were tax exempt. [The employee of the

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revenue office] accepted the information but explained that “according to the [member State’s] fiscal concept of ‘progression’ the salary earned through [her] work for UNIDO would be added to the remuneration received before from the [member State] Government in order to identify the tax rate to be applied to [her] earnings in [member State]” for the year [ . . . ].

By the present note the Secretariat of UNIDO would like to express the view that the fiscal authorities’ position to take into account the exempt income earned by UNIDO officials who are citizens of [State] in setting the rate of taxation of non-exempt income runs counter to the international obligations of [member State] in regard to UNIDO.

The Convention on the Privileges and Immunities of the Specialized Agencies, to which the Government of [member State] acceded on [date], applies to UNIDO and its officials, in accordance with article 21, paragraph 2 (a), of the Constitution of UNIDO, which reads as follows:

“2. The legal capacity, privileges and immunities referred to in paragraph 1 shall:

(a) In the territory of any Member that has acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Organization, be as defined in the standard clauses of that Convention as modified by an annex thereto approved by the Board . . . .”

Article VI, section 19 (b), of the Convention on the Privileges and Immunities of the Specialized Agencies states that:

“Officials of the specialized agencies shall:

. . .

(b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations . . . .” (emphasis supplied)

Officials of the United Nations are exempt from taxation in respect of their salaries paid to them by the United Nations in accordance with section 18 (b) of the Convention on the Privileges and Immunities of the United Nations. It has been the consistent view of the United Nations that the determination of the rate of tax on non-exempt income by taking into account the exempt income from the United Nations is not consistent with a State’s obligations under section 18 (b) of the Convention on the Privileges and Immunities of the United Nations.

It may further be observed that there is a well-established practice of the United Nations Secretariat, whereby no distinction is made among the officials of the United Nations based on their nationality or residence. All members of the staff of the United Nations are officials of that Organization and enjoy the same privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations, with the exception of staff recruited locally and assigned to hourly rates.

For the reasons explained above, it has been the constant position of UNIDO that States party to the Convention on the Privileges and Immunities of the United Nations or that of the specialized agencies may not take into account the tax-exempt salaries of UNIDO officials in establishing tax rates on non-exempt private income. It is pertinent to recall that the rationale of immunity from taxation accorded by the conventions in respect of the salaries and emoluments paid by international organizations is to protect officials.
and ensure the independent exercise of their functions as well as to attain equality in the salary treatment for officials of equal rank throughout the entire Organization.

The Permanent Mission of [member State] is, accordingly, requested to convey the position of the Organization to the [revenue office] in order for it to apply the exemptions from taxation in respect of the salaries and emoluments received by the official in question, [name], during the period [ . . . ], in keeping with section 19 (b) of the Convention on the Privileges and Immunities of the Specialized Agencies.

The Secretariat of the United Nations Industrial Development Organization avails itself of this opportunity to renew to the Permanent Mission of [member State] the assurances of its highest consideration.

(f) Note verbale to the Federal Ministry of Foreign Affairs of [member State] relating to United Nations Industrial Development Organization officials’ customs privileges

Customs privileges of United Nations Industrial Development Organization officials—Agreements with other international organizations containing more favourable terms or conditions

The Secretariat of the United Nations Industrial Development Organization (UNIDO) presents its compliments to the Federal Ministry of Foreign Affairs of [member State] and has the honour to refer to the briefing concerning the customs privileges of officials of UNIDO, which was held at the Federal Ministry on [date] and to which representatives of the Secretariat were kindly invited.

The Secretariat has the honour to thank the [member State] authorities for the information they have provided regarding proposed new procedures relating to the customs privileges of officials of UNIDO, which were due to take effect from 1 January 2006, and wishes to inform the Federal Ministry that, in the opinion of the Secretariat, the proposed procedures would appear to limit those privileges in so far as they relate to officials who do not enjoy diplomatic status. The Secretariat has regrettably concluded that aspects of the proposed procedures would not be fully consistent with the provisions of section 37 (o) (i) of the Agreement of [1995] between UNIDO and the [member State] regarding the Headquarters of UNIDO, or with established practice in implementing that section, which provides inter alia that all officials—regardless of rank—have the right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same. In consequence, the Secretariat would not be in a position to justify the introduction of the proposed procedures to the affected officials.

It has furthermore come to the attention of the Secretariat that, in view of differing formulations in the various headquarters agreements, it is not intended to implement the proposed procedures in respect of every organization based at the [City]. Notwithstanding the foregoing paragraph, therefore, the Secretariat has the honour to recall that, pursuant to section 55 (b) of the Agreement between UNIDO and the Government of [member State], if and to the extent that the Government shall enter into any agreement with any intergovernmental organization containing terms or conditions more favourable to that organization than similar terms or conditions of the Agreement between UNIDO and the
Government, the Government shall extend such favourable terms or conditions to UNIDO, by means of a supplemental agreement.

In light of the above, the Secretariat wishes to affirm its readiness to participate in any further consultations with the Federal Ministry that may be required to ensure continued observance of the provisions of section 37 (o) (i) of the aforementioned Agreement, and, should this become necessary, to negotiate a supplemental agreement with the Government as foreseen in Section 55 (b) of the same Agreement.

The Secretariat of the United Nations Industrial Development Organization avails itself of this opportunity to renew to the Federal Ministry of Foreign Affairs of [member State] the assurances of its highest consideration.
Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS
Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. INTERNATIONAL COURT OF JUSTICE

The International Court of Justice is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(i) Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, 10 February 2005.


2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2005.

3. Pending cases as at 31 December 2005

(i) Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) (2005-).

(ii) Maritime Delimitation in the Black Sea (Romania v. Ukraine) (2004-).

(iii) Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore) (2003-).


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1 The texts of the judgments, advisory opinions and orders are published in the I.C.J Reports. Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website at http://www.icj-cij.org. In addition, the summaries can also be found in Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice (United Nations Publication, ST/LEG/SER.F/1 and Add.1 and 2), which is published in the six official languages of the United Nations. The summaries of the decisions listed above will appear in the third addendum to this publication covering the period from 2003 to 2007. See also Chapter III A, section 14, above.

B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.\(^3\) The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea, signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.\(^4\)

1. Judgments

No judgments were delivered by the International Tribunal for the Law of the Sea in 2005.

2. Pending cases as at 31 December 2005

Case No. 7—Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community) (2000- ).

\(^2\) For more information about the Tribunal’s activities, including relating to orders rendered in 2005, see the Annual report of the International Tribunal for the Law of the Sea for 2005 (SPLOS/136) and the Tribunal’s website at www.itlos.org. See also the Reports of Judgments, Advisory Opinions and Orders/Recueil des arrêts, avis consultatifs et ordonnances, Volume 9 (2005), Martinus Nijhoff Publishers, 2008.


C. INTERNATIONAL CRIMINAL COURT\(^5\)

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.\(^6\) As at 31 December 2005, in accordance with the Statute and the Rules of Procedure and Evidence, the Prosecutor had opened investigations into four situations.

(i) **Situation in the Democratic Republic of the Congo ICC-01/04**

In 2005, no indictment or significant decision was made following the opening of the first investigation by the ICC concerning the situation of the Democratic Republic of the Congo in June 2004.

(ii) **Situation in Uganda ICC-02/04**

On 6 May 2005, following the opening of an investigation into the situation concerning Northern Uganda in 2004, the Prosecutor presented an application to the Pre-Trial Chamber for arrest warrants for five of the most senior commanders of the Lord's Resistance Army. On 8 July 2005, the Pre-Trial Chamber issued the five arrest warrants for crimes against humanity and war crimes committed in Uganda since July 2002 (The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen (ICC-02/04–01/05)).

(iii) **Situation in the Central African Republic ICC-01/05**

In January 2005, the Prosecutor announced a referral by the Government of the Central African Republic concerning the situation of crimes within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002, the date of entry into force of the Rome Statute. Thus, the Presidency of the ICC assigned the situation in the Central African Republic to Pre-Trial Chamber III.

(iv) **Situation in Darfur, the Sudan ICC-02/05**

Following the recommendation made by the International Commission of Inquiry on Darfur\(^7\) to the United Nations Secretary General on 25 January 2005, the Security Council referred the situation in Darfur to the Prosecutor of the ICC by resolution 1593 of 31 March 2005. The Council requested the Sudan and all other parties to the conflict in Darfur to cooperate with the Court. On the basis of a preliminary examination of the situation, on 1 June 2005, the Prosecutor opened an investigation into the situation in Darfur.

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\(^5\) For more information about the Court’s activities, see Report of the International Criminal Court (A/60/177 and A/61/217). See also the Court’s website at http://www.icc-cpi.int/.


\(^7\) Acting under Chapter VII of the Charter of the United Nations, on 18 September 2004, the Security Council adopted resolution 1564 requesting, *inter alia*, that the Secretary-General “rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable”. On 7 October 2004, the International Commission of Inquiry on Darfur was established by the Secretary-General. For the Commission’s report, see (S/2005/60).
D. International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 of 25 May 1993.

1. Judgements delivered by the Appeals Chamber


2. Judgements delivered by the Trial Chambers


The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 of 22 February 1993 (S/25704 and Add.1).
(iii) *Prosecutor v. Slobodan Milosevic*, Case No. IT-02–54, Decision on Contempt of the Tribunal (Kosta Bulatovic), 13 May 2005 (IT-02–54-R77.4).


### E. International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 of 8 November 1994.\(^{11}\)

#### 1. Judgements delivered by the Appeals Chamber


#### 2. Judgements delivered by the Trial Chambers


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\(^{11}\) The Statute of the Tribunal is contained in the annex to the resolution.

**F. SPECIAL COURT FOR SIERRA LEONE**

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.13

1. Judgements

Other cases


2. Decisions of the Appeals Chamber

There were no decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court in 2005.

3. Decisions of the Trial Chambers14

Civil Defence Forces


**G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,15 entered into force the 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

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12 The texts of the judgements and decisions are available on the Court’s website at http://www.sc-sl.org. For more information on the Court’s activities, see the Third Annual Report of the President of the Special Court, covering the period from January 2005 to January 2006.


14 Only decisions of the Trial Chambers made pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (Motions of judgment of acquittal) are covered in this section.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Canada

Court of Appeal*

Province of Quebec, District of Montreal, 2 November 2005**

Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the Staff Association of the International Civil Aviation Organization and Wayne Dixon, Respondents***

Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the International Civil Aviation Organization and Dirk Jan Goossen, Respondents****

Question of immunity of an international organization and its officials—Act respecting the privileges and immunities of foreign missions and international organizations—Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization (ICAO)—Immunity from jurisdiction of officials of ICAO—Functional immunity—Irrelevance of seniority of official for the purpose of immunity—Immunity with respect to an organization’s internal operations

Decision

1. The Court had before it the appeal of a judgement issued on 20 November 2003 by the Superior Court, District of Montreal (The Honourable Claude Tellier, presiding). The judgement granted the request of the Attorney-General of Canada that case No. 500–05–061028–005 be declared inadmissible and that the action brought by the Applicant against the Staff Association of the International Civil Aviation Organization and Wayne Dixon be dismissed, and also granted the Attorney-General’s request that case No. 500–05–063492–019 be declared inadmissible and that the action brought by the Applicant against the International Civil Aviation Organization and Dirk Jan Goossen be dismissed.

*** Case No. 500–05–061028–005. (See the United Nations Juridical Yearbook, 2003 (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)
**** Case No. 500–05–063492–019. (See the United Nations Juridical Yearbook, 2003 (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)
2. The judge of the court of first instance reached this conclusion on the grounds that ICAO and its staff enjoyed immunity pursuant to the Act respecting the privileges and immunities of foreign missions and international organizations (the Act). The Act incorporates the full text of a number of international treaties.

3. The Court of Appeal reviewed the record, heard the parties and deliberated, as described below:

I

4. ICAO is an international organization within the meaning of the Headquarters Agreement, with Headquarters in Montreal.

5. The Applicant was hired as a contractual employee by ICAO for the period 27 June 1990 to 12 October 1992. The contract was subsequently renewed for the period 1991–1992. The Applicant thus occupied a clerical post at ICAO from 27 June 1990 to 30 December 1992.

6. His employment contract stipulated that the appointment could be cancelled on one month’s notice.

7. On 6 November 1992, the Secretary General notified the Applicant that his contract would not be renewed on 31 December 1992.

8. The Applicant claims in his pleading that Respondent Dirk Jan Goossen, at the time ICAO’s deputy director of personnel, informed him that his contract had not been renewed because the number of General Service posts, including his clerical position, was being reduced and that therefore his post would not be filled in 1993.

9. On 5 January 1993, the Applicant noticed that his post had not been abolished and that, on the contrary, it had been filled.

10. The Applicant then attempted to appeal the decision of 6 November 1992 not to renew his contract through internal ICAO mechanisms but was rebuffed on the grounds that he had not submitted his appeal within one month of receipt of the notice of 6 November 1992 informing him that the contract would not be renewed.

11. The Applicant filed an unsuccessful appeal with the United Nations Administrative Tribunal (UNAT).

12. The Applicant faults Respondent Goossen for having deliberately thwarted his appeal to UNAT by sending an internal note to the ICAO Secretary General indicating that no exceptional circumstances justified granting permission to the Applicant to address UNAT regarding the Secretary General’s refusal to waive the time limit for appealing the decision of 6 November 1992.

* L.C.C. c. F-29.4.
** The Vienna Convention on Diplomatic Relations of 18 April 1961 (Schedule I); the Vienna Convention on Consular Relations adopted on 24 April 1963 (Schedule II); and the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946 (Schedule III).
II

13. The nature of the pleadings the Applicant has lodged is germane here.

14. The Applicant deems ICAO responsible for malicious actions on the part of its employee, Dirk Jan Goossen. He blames Respondent Goossen for having failed properly to apprise him of his rights and for providing the Secretary General with erroneous information which misled the Secretary General regarding the Applicant’s situation, thereby depriving him of his right of appeal.

15. The Applicant also lodged a separate pleading against the ICAO Staff Association for refusing to assist him even though he was a member of the Association at the time his employment ended (500–05–061028–005). In the same pleading, he requested damages from Wayne Dixon, an ICAO staff member and president of the Federation of International Civil Service Associations (FICSA), blaming him for wrongful and malicious actions which, he claimed, unduly influenced the ICAO Staff Association’s decision not to support his efforts to have UNAT reconsider its decision.

III

16. The claim against ICAO and Dirk Goossen, an ICAO official at the time, clearly conflicts with the immunity granted by Canada to ICAO and its officials. Indeed, the claim stems from the allegation that Mr. Goossen, in providing information of a particular nature to the ICAO Secretary General, prevented the Applicant from seeking redress from an international organization.

17. It is clear that the Applicant is requesting damages in connection with the conduct of his former employer, ICAO, and an ICAO supervisor. As the Superior Court recognized in Miller v. Canada [2001], 1 R.C.S. 407, ICAO, as an employer, has immunity conferred by the Headquarters Agreement, and this immunity naturally applies as well to the actions of ICAO’s representatives.

18. All the actions for which Respondent Dirk Jan Goossen is blamed relate to his duties at ICAO. Whether he performed the actions in his capacity as a senior official or as an ordinary staff member, he enjoys immunity under the Act.

19. The second complaint was lodged against the ICAO Staff Association and Wayne Dixon, an Association supervisor at the time. In his statement to the Superior Court, the Applicant blames the Association and Mr. Dixon, one of his colleagues at the time, for failing to represent him following the decision by ICAO not to renew his contract. The complaint clearly was prompted by the termination by ICAO of the Applicant’s employment contract and is a matter governed by ICAO’s staff rules and Service Code. In other words, the internal operations of ICAO apply to the case. To attempt to compel compliance with such rules through recourse to the Canadian courts conflicts with the immunity ICAO enjoys with respect to its internal operations.

20. For these reasons:

21. The court rejects the appeal, with costs.

* Supra., note 3.
Part Four

BIBLIOGRAPHY
A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. General


Klabbers, Jan. Two concepts of international organization. *International organizations law review* 2(2) 2005: 277–293.


2. Particular questions


Stahn, Carsten. Governance beyond the state. *International organizations law review* 2(1) 2005: 9–56.


B. UNITED NATIONS

1. General


Marchisio, Sergio. La capacità globale dell’ONU per la pace. La Comunità internazionale LX(1) primo trimestre 2005: 3–17.


Prove, Peter. Reform at the UN: waiting for Godot? The University of Queensland law journal 24(2) 2005: 293–316.


Series of articles.


Series of articles.

Verhoeven, Sten. The UN High-level Panel Report and the proposed institutional reform of the UN: would the UN be ready to face the new challenges? International law forum 7(2) June 2005: 101–107.


2. Principal organs and subsidiary bodies

General Assembly


International Court of Justice


Series of articles.


_______. The World Court’s ruling regarding Israel’s West Bank Barrier and the primacy of international law: an insider’s perspective. *Cornell international law journal* 38(2) 2005: 553–568.


du Plessis, Max and Shannon Bosch. Immunities and universal jurisdiction—the World Court steps in (or on?). *South African yearbook of international law*, vol. 28 (2003): 246–262.


Toufayan, Mark. The World Court’s distress when facing genocide: a critical commentary on the Application of the Genocide Convention Case (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)). *Texas international law journal* 40(2) winter 2005: 233–261.


**Secretariat**


Viñuales, Jorge E. *The U.N. Secretary-General between law and politics: towards an analytical framework for interdisciplinary research* (Genève: Institut universitaire de hautes études internationales, 2005). 93 p.
Security Council


Voeten, Erik. The political origins of the UN Security Council’s ability to legitimize the use of force. *International organization* 59(3) summer 2005: 527–557.

3. Particular questions or activities

Aviation law

Honnebier, B. Patrick. The fully-computerized international registry for security interests in aircraft and aircraft protocol that will become effective toward the beginning of 2006. The journal of air law and commerce 70(1) winter 2005: 63–82.


Collective security


Commercial arbitration


**Consular relations**


Halberstam, Malvina. Lagrand and Avena establish a right, but is there a remedy? Brief comments on the legal effect of Lagrand and Avena in the U.S. *ILSA Journal of international & comparative law* 11(2) spring 2005: p. 415–419.


**Definition of aggression**


**Diplomatic relations**


**Disarmament**


Patel, Bimal N. Understanding the concept of peace dividend through the chemical weapons disarmament process. *Indian journal of international law* 45(2) April-June 2005: 153–179.


**Environmental questions**


**Financing**


**Friendly relations and cooperation among States**


**Human rights**


Estrada, Oswaldo A. Human dignity and the Convention against torture: has the burden of proof become heavier than originally intended? *Regent journal of international law* 3(1) 2005: 87–114.


Say, Brooke, Ripe for justice: a new UN tool to strengthen the position of the “comfort women” and to corner Japan into its reparation responsibility. *Penn State international law review* 23(4) spring 2005: 931–968.


Zelony, Adiv. Don’t throw the baby out with the bathwater: why a ban on human cloning might be a threat to human rights. Loyola of Los Angeles international and comparative law review 27(3) summer 2005: 541–568.

International administrative law


International criminal law


**International economic law**


**International terrorism**


International trade law


International tribunals


Series of articles.


Kerr, Kate. Fair trials at international criminal tribunals: examining the parameters of the international right to counsel. Georgetown journal of international law 36(4) summer 2005: 1227–1254.


Swart, Mia. To recuse or not to recuse? How independent are the judges of international criminal tribunals? *South African yearbook of international law*, vol. 28 (2003): 182–199.


van der Vyver, Johan D. International justice and the International Criminal Court: between sovereignty and the rule of law. *Emory international law review* 18(1) spring 2004: 133–150.


Zappalà, S. The Prosecutor’s duty to disclose exculpatory materials and the recent amendment to Rule 68 ICTY RPE. *Journal of international criminal justice* 2(2) June 2004: 620–630.


**International waterways**


**Intervention and humanitarian intervention**


**Jurisdiction**


**Law of armed conflict**


Series of articles.

**Law of the sea**


Casado, Carmen. Vessels on the high seas: using a model flag state compliance agreement to control marine pollution. *California Western international law journal* 35(2) spring 2005: 203–236.


Scott, Karen N. The day after tomorrow: Ocean C02 sequestration and the future of climate change. *Georgetown international environmental law review* XVIII(1) 2005: 57–108.


**Law of treaties**


McLachlan, Campbell. The principle of systemic integration and article 31(3) (c) of the Vienna Convention. *International and comparative law quarterly* 54(2) April 2005: 279–319.

**Narcotic drugs**

Aoyagi, Melissa T. Beyond punitive prohibition: liberalizing the dialogue on international drug policy. *New York University journal of international law and politics* 37(3) spring 2005: 555–610.


**Natural resources**


**Non-governmental organizations**


**Outer space law**


**Peaceful settlement of disputes**


**Peacekeeping and related activities**


Day, Adam. No exit without judiciary: learning a lesson from UNMIK’s Transitional Administration in Kosovo. *Wisconsin international law journal* 23(2) spring 2005: 183–204.


Knoll, Bernhard. From benchmarking to final status? Kosovo and the problem of an international administration’s open-ended mandate. European journal of international law 16(4) 2005: 637–660.


**Political and security questions**


**Progressive development and codification of international law (in general)**


**Refugees**


**Self-defence**


**Self-determination**


**State responsibility**


Ni, Kuei-Jung. Third-State countermeasures for enforcing international common environmental interests: the implication and inspiration of the ILC’s Articles on state responsibility. *Chinese (Taiwan) Yearbook of international law and affairs*, vol. 22 (2004): 1–47.


**State sovereignty**


**Trusteeship**


**Use of force**


Voeten, Erik. The political origins of the UN Security Council’s ability to legitimize the use of force. International organization 59(3) summer 2005: 527–557.


C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

Food and Agriculture Organization


International Atomic Energy Agency

International Centre for Settlement of Investment Disputes


International Labour Organization

Alston, Philip. Facing up to the complexities of the ILO’s Core Labour Standards Agenda. European journal of international law 16(3) 2005: 467–480.


International Monetary Fund

Billi, Andrea. Toward IMF reform: understanding critics and perspectives. La Comunità internazionale LX(2) secondo trimestre 2005: 293–308.


International Telecommunication Union

United Nations Educational, Scientific and Cultural Organization


World Bank Group


World Health Organization
Bishop, David. Lessons from SARS: Why the WHO must provide greater economic incentives for countries to comply with international health regulations. Georgetown journal of international law 36(4) summer 2005: 1173–1226.


World Intellectual Property Organization


World Trade Organization


Perez, Oren. Multiple regimes, issue linkage, and international cooperation: exploring the role of the WTO. *University of Pennsylvania journal of international economic law* 26(4) winter 2005: 735–778.


Series of articles.